



# Submissions

To

## MINISTRY OF ECONOMIC DEVELOPMENT

### Proposed Petroleum Block Offers Offshore Reinga Basin

**Date:** 24 September 2009

**Submitter:** Abraham Witana

**Organization:** Te Rūnanga o Te Rarawa

**Number of Individuals we represent:** Approximately 15,000.<sup>1</sup>

**Postal Address:** PO Box 361, Kaitaia.

**Phone (daytime):** (09) 408 1971

**Mob:** 027 408 0100

**Fax:** (09) 408 1998 **Email:** [abe@terarawa.co.nz](mailto:abe@terarawa.co.nz)

**Signed:**

---

<sup>1</sup> Based on the 2006 Census iwi population count. However, on our own iwi estimations our iwi population is nearer to 30,000.

## 1. INTRODUCTION

Te Runanga o Te Rarawa is the iwi authority representing the interests of the marae and hapu that make up the iwi of Te Rarawa. The Runanga is made up of one Trustee and one alternate Trustee for each of the affiliated marae in the rohe of Te Rarawa. Currently there are 23 marae affiliated. The traditional rohe of Te Rarawa is described as the area from Hokianga to Maungataniwha, down through Victoria Valley river to Maimaru, across from Awanui Bridge west to Te Oneroa a Tohe (the Ninety Mile Beach) at Hukatere, then down to Mitimiti and Hokianga<sup>2</sup>.

The Runanga meets every month on the third Wednesday at Toka Tumoana, Kaitaia. It elects an Executive that oversees the day-to-day operations of the Runanga. The Executive meets in between monthly Runanga meetings to govern the operations of the Runanga working alongside the Executive Officer. It reports back to the Runanga each month and prioritises issues to bring to each meeting. The Runanga offices are based in Kaitaia and it employs more than 50 staff.

## 2. BACKGROUND

This submission reinforces the previous submission submitted to the Ministry of Economic Development on the 14<sup>th</sup> November 2008 regarding the Northland Block Offers.

## 3. ACKNOWLEDGEMENTS

We wish to acknowledge Rob Robson and Dr Richard Cook in meeting with hapu and iwi in order to bring meaningful expression to our mana over the areas affected by the Proposed Petroleum Permit Blocks Offer (PBO).

It was firmly expressed at the meeting "That the hui vehemently opposes any exploration, mining, prospecting permits and applications within the rohe of Te Hiku o Te Ika out to the EEZ (200 miles)".

There were two Te Rarawa Hapu represented at the meeting who supported the motion. The Mission Statement of Te Runanga o Te Rarawa is to provide leadership and support to enable the hapu to develop and the whanau to flourish.

## 4. STATEMENTS OF POSITION

- a. **Crown Maori Relationships:** We are a partner not a stakeholder
- b. **Treaty Settlements:** There is to be no more discussions in Te Hiku until these matters have been negotiated.
- c. **Natural Resources:** We are the owners of natural resources in Te Hiku.
- d. **Kaitiakitanga:** We are the Kaitiaki of our natural resources in Te Hiku o Te Ika.

---

<sup>2</sup> Refer to Appendix 1: Te Rarawa Area of Interest

## **5. TE RARAWA IWI STRATEGIC DIRECTION**

### **Treaty Claims**

Te Rarawa has been attempting to have its Treaty claims dealt with for many years. While the settlements will not provide the solution to all our problems, it is important that we complete the process to reinforce our history and create a platform for future economic and cultural development.

### **Kaitiakitanga**

There is a strong desire from our hapu communities to take on the responsibilities of kaitiakitanga in relation to our natural resources and environment. Asserting our mana whenua and our kaitiakitanga rights will help us to re-establish hapu engagement of the management of our natural resources.

### **Importance of relationships**

Te Rarawa will be reliant on good relationships if it is to succeed in its long term plans. There is a need to build and sustain relationships within Maoridom, with the government and local authority sector, in business, and in the wider community.

## **6. SUBMISSIONS**

To iterate these are further submissions to the submission dated the 14 September 2008<sup>3</sup>.

### **Matters in Relation to the Northland block offer**

- a. Blocks 2, 3 and 4 are within the Te Rarawa area of Interest which extends from Hukatere south to Hokianga Harbour out to the 200 mile EEZ.

### **Request for amendments to the Northland block offer**

- a. Te Rarawa recognises that these blocks are already in the tendering process. However Te Rarawa requests that any decision regarding progress upon closure of the tender process be deferred until completion of the Te Rarawa Historical Treaty Settlements Negotiation.

### **Matters in Relation to the Reinga block offer**

- a. Blocks 7 and 10 are within the Te Rarawa area of Interest which extends from Hukatere south to Hokianga Harbour out to the 200 mile EEZ.

### **Request for amendments**

- a. That blocks 7 and 10 are withdrawn from the Offshore Reinga Basin proposed block offer and that any decisions regarding these blocks be deferred until completion of the Te Rarawa Historical Treaty Settlements Negotiation.

### **Cultural Advisor**

During the meeting it became evident that there is not a Maori Cultural Advisor or a Maori Liaison person to assist the Ministry in enhancing Maori Engagement. This is of major concern to Te Rarawa and submits that we consider it appropriate in meeting the obligations of the Principles of The Treaty of Waitangi that a position be explored and made available by the Ministry.

## **7. CONCLUSION**

We acknowledge the Ministry of Economic Developments obligations under section 4 of the Crown Minerals Act 1991 that All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi.

We attach also to this submission a copy of the UN Paper on Extractive Users and Indigenous Peoples dated May 2009<sup>4</sup> for your consideration in conjunction with the principles of the Treaty of Waitangi and future involvement of Iwi in these processes.

We look forward to the Minister's response to our submissions, and to staying in contact with you regarding this and other exploration and mining matters in the future.

---

<sup>3</sup> Attached as Appendix 2

<sup>4</sup> Attached as Appendix 3

**APPENDIX 1: TE RARAWA AREA OF INTEREST**  
(Te Rarawa Agreement in Principle 7th September 2007)



## APPENDIX 2

14 November 2008

Rob Robson  
Manager, Petroleum and Minerals Policy  
Ministry of Economic Development  
PO Box 1473  
Wellington  
By email: [rob.robson@med.govt.nz](mailto:rob.robson@med.govt.nz)

Tēnā koe Rob,

### **RE: SUBMISSIONS – “PROPOSED BLOCKS OFFER – OFFSHORE NORTHLAND”**

#### **Our Organisation**

1. Te Rūnanga o Te Rarawa (the Rūnanga) is the iwi authority representing the interests of the marae and hapu that make up the iwi of Te Rarawa. The Rūnanga is made up of one Trustee and one alternate Trustee for each of the 23 affiliated hapu marae in the rohe of Te Rarawa. The Rūnanga meets on the third Wednesday of the month in Kaitaia. It elects an Executive that meets monthly with the Executive Officer to oversee the Rūnanga day-to-day operations. The Executive reports monthly to the Rūnanga. The Rūnanga offices are based in Kaitaia and it employs more than 50 staff.

#### **Background**

2. This submission follows the Ministry of Economic Development (the Ministry) consultation meeting in Kaitaia on 6 November 2008 which we attended along with interested parties from a number of local hapū and iwi groups.

#### **Acknowledgments**

3. We wish to acknowledge your comments apologising for the Ministry not having met and consulted with Te Hiku o Te Ika iwi sooner. We also note your remark that the meeting was consistent with the Ministry's desire to consult with hapū and iwi in order to bring meaningful expression to our mana over the areas affected by the Proposed Petroleum Permit Blocks Offer (PBO).
4. Having said that, there are issues concerning “meaningful expression to our mana” which go to the heart of Crown minerals policy. We therefore recognise that the PBO process itself will be unable to address some of our issues. We hope, nonetheless, that you will convey our submissions in their entirety to the Minister.
5. Our submissions below are basically consistent with those made at the consultation meeting on the 6<sup>th</sup>.

#### **Our Rights and Interests – Manawhenua**

6. The hapu of Te Rarawa hold manawhenua (authority) rights and interests over our traditional territories described as the area from Hokianga to Maungataniwha, north through

Victoria Valley river to Maimaru, across from Awanui Bridge west to Hukatere at Te Oneroa a Tohe (Ninety Mile Beach), then south to Mitimiti and Hokianga. More specifically, this manawhenua includes the takutaimoana (foreshore and seabed) adjacent to our traditional rohe as described above.<sup>5</sup>

7. The takutaimoana is indivisible from the whenua (or 'dry' land) it adjoins, and includes:
  - a. The canoe trails that stretch out to and beyond Te Tarenga a Rawhaki ("the Continental Shelf);
  - b. The subsoil, bedrock, and other matters below the areas described including those not yet discovered; and
  - c. All natural resources, as defined in section 2 of the Conservation Act 1987 within, above and below the areas described.
8. Te Oneroa a Tohe also holds a particular significance to all iwi of Te Hiku o Te Ika and, dare we say it, nationally as Te Ara Wairua, or the spiritual pathway to Te Rerenga Wairua (the final departing place of the spirits).
9. The Crown has already recognised that the mana tuku iho of Te Rarawa in relation to the public foreshore and seabed within its rohe is<sup>6</sup>:
  - a. Unbroken, inalienable and enduring; and
  - b. Held and exercised by the hapū of Te Rarawa as a set of collective rights.
10. The Ministry may wish to note that based upon the manawhenua of the hapu of Te Rarawa, the Rūnanga is currently involved in a number of matters to which the Proposed Block Offer (PBO) relates, including:
  - a. Direct historical claims settlement negotiations with the Crown;
  - b. Te Hiku o Te Ika Regional claims settlement negotiations with the Crown (including the development of a five-iwi management regime for Te Oneroa a Tohe);
  - c. Foreshore and Seabed Act 2004 negotiations with the Crown; and
  - d. WAI 262 Flora and Fauna / Mātauranga Māori Waitangi Tribunal Inquiry (Te Rarawa being a claimant to the claim).
11. In the context of the activities in 10. above, therefore, Te Rarawa's point of departure is that we hold manawhenua rights and interests over those lands and resources within our traditional territories, which we have not relinquished.

## **Giving Effect to Te Rarawa Rights and Interests re Resources Affected by the PBO**

### General

12. We know that the Crown is presently constrained by legislation, policy and a lack of effective constitutional arrangements<sup>7</sup> which prevents it from giving effect to Te Rarawa

---

<sup>5</sup> Te Rarawa recognises that other iwi also claim manawhenua over certain areas, and that in parts Te Rarawa's rights and interests may not be exclusive. A process is being developed in the Hiku Forum to address shared manawhenua issues.

<sup>6</sup> Refer to clause 5, Foreshore and Seabed Terms of Negotiation between Te Rūnanga o Te Rarawa and the Crown, <http://www.justice.govt.nz/foreshore/negotiations/te-runanga-o-te-rarawa/terms.html> .

petroleum rights and interests. While we recognise the Crown's actions which go some way to rectifying the situation,<sup>8</sup> these actions do not go far enough. We ask that the Crown takes more meaningful steps to address this shortcoming, and request that the Crown re-engage in a focussed dialogue with Te Rarawa on these issues.<sup>9</sup>

13. In the context of Te Rarawa opposition to Crown assertions of ownership over our lands and resources, we make the following submissions.

### **PBO Process**

14. The PBO concerns not only the petroleum, but also the environment, any other natural resources and areas of cultural significance (e.g. Te Ara Wairua) affected by the PBO-related activity. The Rūnanga wishes to ensure that, to the greatest degree possible, Te Rarawa's rights over and interests in all those lands and resources are given effect to, including:
  - a. Our kaitiakitanga rights and obligations to protect the environment;
  - b. That our free, prior and informed consent is obtained before any exploration or extraction activity takes place; and
  - c. That we benefit appropriately from any approved extraction.
15. In terms of increasing our control and influence through the PBO tender process, we recognise that Te Rarawa essentially has three options:
  - a. Te Rarawa tenders a Work Program Bid ourselves (a very difficult option for the iwi given the nature and degree of technical, capital and financial resources required);
  - b. Te Rarawa enters a Joint Venture with an applicant (e.g. mining company) and/or other iwi or third party – or a combination of parties to submit a bid; or
  - c. Te Rarawa waits until the successful bidder/s are known, and approaches them to establish a Joint Venture.

### **Relationships, and Engagement**

16. With regard to any bidding options, we consider that Te Rarawa should not have to compete with anyone else for what we believe is already ours. At the very least, the Crown should follow policy precedents already established (e.g. re fishing quota, aquaculture management areas, etc), with regard to a direct allocation of resources to Māori.

---

<sup>7</sup> E.g. entrenchment of guarantees to Māori under Te Tiriti o Waitangi.

<sup>8</sup> E.g. ref Crown involvement in activities listed in para 10. above.

<sup>9</sup> We note that the release of the Waitangi Tribunal WAI 262 Report, hopefully in the new year, may trigger a process for Māori-Crown dialogue. However, there are a number of other contexts under which the Crown could initiate engagement with Māori, perhaps for example around the Government's position on the United Nations Declaration on the Rights of Indigenous Peoples. A review of the New Zealand policy on the DRIP might be especially timely, given that our Government may soon be facing the somewhat embarrassing reality of being the only UN state opposing the DRIP (as the newly-elected United States President, Barak Obama, is reported as having made statements signally a change to US support for the Declaration).



17. Similarly, while we note that a percentage of the profits or some other benefiting arrangement can be negotiated with third parties, matters concerning ownership, use, access to, management of and benefits deriving from those resources are rightly for the partners to Te Tiriti o Waitangi – Māori and the Crown – to discuss (or in our case, Te Rarawa and the Crown). Te Rarawa should be able to negotiate with the Crown an agreed allocation of the benefits (royalties or otherwise) of extracted petroleum *as of right*. It is objectionable to expect that Māori should have to go ‘cap in hand’ and negotiate with third parties over our own resources. More objectionable still is that the Crown policy is to maintain a ‘hands off approach’ to those negotiations, while at the same time encouraging Māori to negotiate with potential PBO bidders in the knowledge that the negotiating power will favour the non-Māori parties.<sup>10</sup>
18. Te Rarawa supports the need for local iwi to have strong working relationships with all stakeholders involved (including the successful bidders), but even the Crown has stated that it cannot force mining companies to strike up relationships with iwi. This is why Te Rarawa stresses that the primary relationship should be Te Tiriti relationship between Te Rarawa and the Crown. This buffers Te Rarawa from risks associated with third party relationships.

#### Amendments to PBO

19. In the meantime, and in the absence of the Crown agreeing to establish with Te Rarawa the primary Tiriti relationship as set out above, the Rūnanga makes the following submissions.
20. The Rūnanga had requested at the consultation meeting on the 6<sup>th</sup> that *the PBO* include a clause advising potential bidders to engage with Te Rarawa before submitting bids. The Crown has since advised that the blocks offer notice, which is to be gazetted, must apply to all iwi/hapu in the Auckland and Northland regions and *should not be seen to single out particular iwi/hapu*. Therefore, a commercial venture that an applicant may enter into with a particular iwi/hapu is not something that the Crown can properly take into consideration in deciding to whom it will award a permit.
21. In that respect,<sup>11</sup> the Rūnanga supports the following PBO measures, that:

#### *Engagement*

- a. The Ministry advises any potential bidder<sup>12</sup> (as opposed to including a requirement in the PBO document itself) that they should engage with Te Rarawa as an iwi which holds manawhenua in the area (and for other reasons as set out above in this submission, including that Te Rarawa may also wish to enter into a relationship of a commercial nature with the potential bidder);

---

<sup>10</sup> Te Rarawa holds this concern despite an awareness of motivations mining companies may have to engage with and negotiate acceptable arrangements with iwi in order to avoid trouble on the ground (which could translate into a bottom line negative effect on their profits).

<sup>11</sup> And recognising also the submission made at the consultation meeting by Mr R Porter that Te Rarawa be provided with a say in development because of long term effects that, if left determined by outsiders, could be detrimental.

<sup>12</sup> A person who approaches the Ministry with an expression of interest in the blocks offer.

- b. On award of the Blocks, the Ministry write to the successful bidder(s) (and copy to the Te Rarawa) advising the same - that the permit holder should engage with Te Rarawa (for the reasons referred to in 21. a. above);

*Human Rights Audit*

- c. Bidders are required to include in their block bid information regarding their 'human rights record' – in particular, the effect their activities and past dealings have had on indigenous peoples; and
  - d. As part of the selection process, the Crown supplement the information in 21.c. above by undertaking a 'Human Rights Audit' on the bidders, and that this be a factor to be sufficiently weighted and taken into account when selecting the successful tenders.
22. We look forward to the Minister's response to our submissions, and to staying in contact with you regarding this and other exploration and mining matters in the future.

Naku noa,

Catherine Davis  
Policy Analyst  
Te Runanga o Te Rarawa

## **APPENDIX 3: Permanent Forum on Indigenous Issues**

**E/C.19/2009/CRP. 8**

**4 May 2009**

**English**

### **Permanent Forum on Indigenous Issues**

#### **Eighth session**

New York, 18 - 29 May 2009

### **Report of the international expert group meeting on extractive industries, Indigenous Peoples' rights and corporate social responsibility**

#### *Summary*

The present report provides an overview of the issues discussed and recommendations made at the international expert group meeting on Extractive Industries, Indigenous Peoples' Rights and Corporate Social Responsibility, held from 27 to 29 March 2009 in Manila, Philippines.

<b>Content</b>	<b>Page</b>
I. Introduction.....	3
II. Organization of work.....	3
III. Narrative, Conclusions and Recommendations	
A. Introductory Remarks.....	4
B. The Role of Corporations.....	5
C. The Role of Indigenous Nations, Governments and Organizations and Civil Society Organizations.....	7
D. The Role of States.....	9
E. The Role of the UN and the International Financial Institutions.....	11
F. Recommendations.....	13
Annex I. List of participants.....	22
Annex II: Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples.....	23

## **I. Introduction**

1. In addressing the UN Permanent Forum on Indigenous Issues and other UN fora, Indigenous Peoples have consistently expressed the crucial need to address human rights issues related to extractive industries. In response to the continuing call for indigenous representatives from affected communities to come together to share their experiences and to strategize on how to address common problems, during its Seventh Session, the Permanent Forum adopted a recommendation for holding an expert workshop on extractive industries. The International Expert Group Workshop is organized by Tebtebba Foundation in cooperation with the Secretariat of the Permanent Forum on Indigenous Issues. The recommendation which called for this meeting is in paragraph 72 of the Permanent Forum's Report of the 7<sup>th</sup> Session (E/2008/43), which states:

*The Permanent Forum decides to authorize a three-day international expert group workshop on indigenous peoples' rights, corporate accountability and the extractive industries, and requests that the results of the meeting be reported to the Forum at its eighth session, in 2009. The report of that workshop can feed into the eighteenth and nineteenth sessions of the Commission on Sustainable Development, which will address the themes of mining, chemicals, waste management and sustainable consumption and production patterns, and contribute to the review by the eighteenth session of the Commission.*

## **II. Organization of work**

### **A. Attendance**

2. The meeting was attended by indigenous experts from the seven indigenous sociocultural regions; members of the Permanent Forum; a member of the Expert Mechanism on the Rights of Indigenous Peoples; representatives of departments, agencies, funds and programmes of the United Nations systems; representatives of other intergovernmental organizations, non-governmental organizations (NGOs), donor and academic institutions; and representatives of Member States. The list of participants is contained in annex I.

## **B. Documentation**

3. The participants had before them a draft programme of work and a background paper. In addition, a number of documents were submitted to the meeting by participants. Meeting documents are available on the website of Tebtebba at: <http://www.tebtebba.org> and the Permanent Forum at: [http://www.un.org/esa/socdev/unpfii/en/EGM\\_IPCR.html](http://www.un.org/esa/socdev/unpfii/en/EGM_IPCR.html)

## **C. Opening of the meeting**

4. At the opening of the meeting, a representative of the Secretariat of the Permanent Forum on Indigenous Issues made an opening statement.

## **D. Election of officers**

5. Ms. Victoria Tauli-Corpuz was elected Chairperson of the workshop and Ms. Paimaneh Hastaie was elected Rapporteur.

## **E. Adoption of the recommendations**

6. On 29 March 2009, the workshop adopted, by consensus, the conclusions and recommendations contained in section III below.

## **F. Closure of the workshop**

7. The meeting was closed after the conclusions and recommendations were adopted in the final meeting, held on 29 March 2009.

# **III. Narrative, Conclusions and Recommendations**

## **A. Introductory Remarks**

8. The Chairperson of the International Expert Group Workshop and introduced the subject of the meeting. She observed that, although there have been substantial developments in the promotion and protection of the human rights of Indigenous Peoples in recent years, Indigenous Peoples around the world have continued to suffer violations of their human rights on a regular basis. This is especially the case in the context of extractive industries, such as mineral, oil and gas extraction, which disproportionately impact Indigenous Peoples. Human rights violations range from violations of Indigenous Peoples' right to self-determination, rights to lands, territories and resources, health and culture, food and water, as well as displacement and violations of the most basic civil and political rights, such as arbitrary arrests and detention, torture, enforced disappearances and killings. Women and youth are often in a particularly vulnerable position with regard to the impacts of extractive industries, including loss of livelihoods, violence and impacts on health and well-being.

9. She gave a brief overview of the International Conference on Extractive Industries and Indigenous Peoples, which was held from 23-25 March 2009. This was attended by representatives of indigenous peoples' organizations and nations, NGOs, donor community, and some members of the academe from 35 countries. This conference discussed links between the global economic crisis, climate change, extractive industries, and the experiences of Indigenous Peoples from all over the world. She reported that a global network on Indigenous Peoples and extractive industries has been established by the conference. The conference also agreed on the Manila Declaration which was formally submitted to the Expert Group Workshop. She thanked the Christensen Fund and the Norwegian Agency for Development Cooperation (NORAD) who were the main funders for the International Conference and the Expert Group Meeting.

10. The call to address the problems faced by Indigenous Peoples in relation to extractive industries had been strengthened by the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) by the General Assembly in September 2007, which established minimum standards and has provided a new opportunity to establish plans and methods to promote and protect Indigenous Peoples rights.

11. It was recognized that the term "extractive industries" includes transnational corporations, States, public and privately-held corporations, companies and other entities participating in the exploration and extraction of natural resources. In this particular expert group workshop the industries dealt with were oil, gas and mineral extractive industries. Throughout this report, these entities will generally be referred to as "companies" or "corporations" unless specifically noted.

## **B. The Role of Corporations**

12. The right of Indigenous Peoples to self-determination is of fundamental importance in the context of extractive industries and should be the basis for all discussions. In relation to activities on indigenous lands or territories, Indigenous Peoples are rights holders, and not merely stakeholders.

13. According to the provisions of the UNDRIP, extractive industries must not operate on indigenous lands or territories without obtaining the free, prior and informed consent (FPIC) of the relevant communities and Indigenous Peoples. This includes the right to say no to extraction or exploration. FPIC is a right and not an obligation and it is therefore for Indigenous Peoples to determine whether they will engage in discussions or not. FPIC is not a single decision but rather a process that occurs in stages and which can be revoked.

14. It was noted that although corporations, due to pressures and struggles of Indigenous Peoples, were now more willing to consult with communities, efforts fall far short of true free, prior and informed consent. There is a major problem with the lack of full disclosure of information regarding environmental, social, cultural and human rights impacts. One frequently encountered problem was that corporations, in collusion with government authorities, selected indigenous individuals or specific communities with which to negotiate without ensuring that they represented their communities and/or the impacted area. By doing this they divide the indigenous peoples within the communities. Participants expressed frustration that extractive

industries often treated benefit-sharing or social programs as charity, rather than a human rights issue.

15. In instances where indigenous communities consent to extractive industry activity, they have a right to a fair share of the benefits from the activities on their lands. These terms should be settled through appropriate negotiations and with the authorities recognized by the indigenous peoples.

16. In negotiating with indigenous communities, some extractive industries have become willing to pay more for their use of indigenous territories. Benefit sharing generally takes one of two forms: either an upfront one-time payment or payment over time of a percentage of profits earned. The latter is far more beneficial to communities, but the former is more common. It was emphasized that, if an indigenous community chose to engage in benefit sharing, it was important to base it on future annual revenues so the community would receive an income for the duration of the extractive activity. As mining is non-renewable and as the impact of mining goes beyond the term of the project, it is especially important that long-term economic planning is undertaken from the start. Funds should also be allotted for the rehabilitation of the indigenous communities which have been polluted and destroyed by extractive industries operations.

17. Participants expressed concern that, although corporations were now more flexible in terms of benefit sharing, due to pressures and struggles of Indigenous Peoples, there was no increased interest in acknowledging the sovereignty or traditional decision-making of Indigenous Peoples and their rights to their territory or in redressing past human rights abuses. It was as though corporations believed they could solve all problems associated with extractive industries through mere financial compensation. Moreover, payments to indigenous communities often had negative impacts on the community and were divisive. In some instances, corporations created NGOs to implement “development” projects in Indigenous Peoples’ communities with the ultimate goal of gaining the support of these communities. However, these processes and the use of financial or “tangible benefits” resources were generally not transparent. When this occurs prior to obtaining consent it is regarded by many as undue influence and even bribery.

18. Participants emphasized that, although the concept of “best practices” or “good practices” is frequently used in the context of extractive industries and Indigenous Peoples, the term remained abstract, as concrete examples were rarely presented. In instances where cases were offered, they were lacking in detail and therefore inadequate for use as examples for emulation by other companies. Further discussion was required to determine the factors that would constitute a good practice.

19. Participants stressed the need for transparency on the part of extractive industries. Although the Extractive Industries Transparency Initiative (EITI) had been established to address this concern, it focuses on financial transparency and does not include transparency with regard to the environmental, social, cultural and economic impacts of extractive industries on Indigenous Peoples. A lack of transparency in these areas facilitated the spreading of misinformation. For example, corporations often argued that they offered economic benefits to indigenous communities in the form of job creation. In fact, extractive industries often result in a net job loss



particularly for Indigenous Peoples because they are not offered jobs by the company and their original livelihoods are impacted or lost due to environmental contamination and forced displacement. In addition, those subjected to scrutiny by the initiative are only those who have formally applied to be part of this. There are very few members of this, at present.

20. Extractive industries corporations generally fail to comply with national laws that protect the rights of Indigenous Peoples. It was emphasized that this was occurring on a global basis, regardless of a State's developed or developing status and regardless of a State's industrialized, political or economic status. Participants expressed concern that corporations were even less likely to respect the rights of Indigenous Peoples in countries where the State itself showed little respect for their rights, or where the State maintained close relations with the extractive industries themselves. Additional challenges were faced in situations where domestic laws offered little protection to Indigenous Peoples or, worse, where laws were slanted towards the protection of the interests of extractive industries. Extractive industries were also seen to be complicit in the formulation of policies and laws that diminish the rights of Indigenous Peoples. Most national laws on mineral, oil and gas extraction were made without consultations with Indigenous Peoples and many of those contradict or undermine Indigenous Peoples' rights, in particular the failure to adequately protect spiritual areas commonly referred to as "sacred sites".

21. In considering approaches to motivating extractive industries to respect the human rights of Indigenous Peoples, it is important to analyze the strategies corporations use to respond to their critics. Corporations often initially deny that such criticism has validity. If they encounter social pressure, they may acknowledge that problems exist, but generally respond in primarily symbolic ways. It is only when their continued operation is jeopardized that they will accept significant regulation or reform. Moral responsibility was found to be insufficient to motivate corporations to change their behavior and the need for additional incentives was highlighted. Motivational factors ranged from reputation costs to actual costs associated with litigation, or the introduction of new regulations.

22. In addition to seeking external forms of accountability, corporate structures and law needed to be reformed. Corporate governance was often corrupted and needed to be more devolved and limited liability laws had to be reformed. Similarly, accountability should not cease in the transfer of permits or concession from one company to another. Participants observed that companies often used such transfers to disown blame or responsibility for past acts. FPIC should also be obtained before the transfer of any concessions. In agreements with Indigenous Peoples (Impact Benefit Agreements or Memorandum of Agreements) conditions pertaining to future transfer of mining concessions must be negotiated, clearly stated and explained. Where agreements are not explicit in relation to this, Indigenous communities must have the right to renegotiate the terms of these agreements with the company acquiring the concession.

23. Participants described actions undertaken to ensure the protection of their human rights in relation to extractive industries and emphasized the importance of combined strategies. These included legal and extra-legal strategies, and efforts at local, national and international levels.

24. At the local and national level, efforts should include educating the public, mobilizing impacted villages and seeking the involvement of all sectors of civil society so that all members can claim ownership of the movement. Extractive industry issues should be linked to other people's issues, including agriculturalists and fisherfolk's rights, worker's rights and women's rights. It was important to build strategic alliances with other advocacy groups that could offer support and contribute to shaping public opinion. Ensuring strong media coverage was also an important component of successful advocacy.

25. Good practices included the organization of indigenous elders, whose wisdom and role in the struggle for human rights was crucial. Another good practice was the use of unity pacts or agreements between Indigenous Peoples from different communities.

26. The use of international mechanisms was also recommended and could include bringing cases or submitting shadow reports to international treaty bodies. Similarly, the use of laws that establish extra-territorial jurisdiction was encouraged, for example, the Alien Tort Claims Act in the United States.

27. It was emphasized that indigenous communities must develop the content of their advocacy strategies based on their own aspirations. Questions to consider included specific demands to be directed to the extractive industry and government, as well as indigenous alternative models and policy proposals for reforming the industry and the underlying socio-economic framework. In terms of alternative models and policies, Indigenous Peoples should formulate proposals for reforming extractive industries to make them truly serve as an engine for genuine economic development at national and local levels. Even if not legal tools, these could be educational and political tools.

28. The need for training on research and human rights work, as well as leadership training, was emphasized. Such training would maximize the effectiveness of advocacy efforts focused on extractive industries. Participants agreed that more materials and guidelines regarding free, prior and informed consent were needed for indigenous community use. However, guidelines should not be used at the expense of the views and approaches of communities themselves. Ultimately it is for communities to work out what consent means for themselves.

29. Participants noted that, while environmental impact assessments are now required in many countries, these rarely account for the climate change impacts of projects. Also, social impact assessments and human rights impacts assessments are usually neither conducted nor required. This should be remedied and international standards for social, cultural and human rights impact assessments should be jointly developed with Indigenous Peoples and complied with. It is also

important that communities taking part in the assessment work are paid for their costs to participate and that the results are theirs and theirs to control. The information emerging from these assessments should be required as input into FPIC decision-making processes.

30. There is often a misconception that Indigenous Peoples from developed States share in the wealth of their States or are otherwise in a different position than other Indigenous Peoples. This was shown generally not to be the case. For example, socio-economic indicators regarding Indigenous Peoples in developed States demonstrated the urgent need for attention to the rights to lands, territories and resources, the right to self-determination and the rights to health, culture and health, as well as issues relating to the criminal justice system and other concerns. The plight of Indigenous Peoples in developed States is, generally, not addressed by the UN, except by the UN Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. It is important to recognize that Indigenous Peoples from these States require international assistance, including capacity building and funding.

31. Indigenous participants expressed concern regarding the use of metals and minerals mined from their lands and territories for weapons of mass destruction, as well as the dumping of toxic byproducts from mining of these products back into the communities. An example is the dumping of radioactive waste materials from nuclear power plants in indigenous peoples territories. The question is how to connect corporate accountability to the use of minerals within the aerospace industry and the military-industrial complex.

32. Indigenous participants discussed their difficulties in getting access to the justice system in their countries to raise their issues related to the environmental damages and injustices they suffer from operations of extractive industries corporations. There is a lack of lawyers who can provide pro-bono services to them and public law interest groups are very few. As many of them are in dire poverty situations, they cannot pay private lawyers to take up their cases. In addition, bribery and corruption is commonly observed in the judiciary in many countries.

33. There is an increasing number of indigenous peoples' organizations filing complaints, making submissions and shadow reports and using early warning/urgent procedures on issues related to mining and oil extraction before Treaty Bodies like the Committee on the Elimination of all forms of Racial Discrimination (CERD). These efforts are being done jointly with support NGOs. The General Comments of the Treaty Bodies are useful for indigenous peoples to pursue their cases further at the national level. Since the Treaty Bodies ask the relevant States to respond to their comments and recommendations the issue becomes more visible and there are better chances to develop dialogues between States and indigenous peoples.

#### **D. The Role of States**

34. States are responsible for ensuring that the UN Declaration on the Rights of Indigenous Peoples and other International Human Rights Instruments and Multilateral Environmental Agreements are effectively complied with, and for promoting and protecting the rights of

indigenous peoples with regard to extractive industry corporations. States also have the responsibility to increase their regulatory powers to ensure that extractive industries corporations become more socially and environmentally accountable and responsible.

35. States must ensure that, in accordance with the provisions of the UNDRIP, extractive industries do not operate on indigenous lands or territories without obtaining the free, prior and informed consent (FPIC) of the relevant communities and Indigenous Peoples. This includes the right to say no to extraction or exploration. FPIC is a right and not an obligation and it is therefore for Indigenous Peoples to determine whether they will engage in discussions or not. FPIC is not a single decision but rather a process that occurs in stages and which can be revoked.

36. Many States maintain contradictory or antiquated laws with regard to indigenous rights and with regard to mineral, oil and gas extraction. Domestic laws, in particular those regarding sacred sites or spiritual areas, the environment, extractive industries, indigenous recognition, governance, consultation, corporate trade and investment laws, should be evaluated and assessed to determine the extent to which they are consistent or contradictory with the human rights of Indigenous Peoples.

37. In some States where constitutional and legislative protection have been afforded to indigenous peoples rights, examples were shared on the roles played by the extractive industries in shaping the associated implementing rules and regulations, for example guidelines related to FPIC. This has led to guidelines which are very insensitive to indigenous peoples cultures and traditional systems of decision-making and made it easier for corporations to manipulate and divide the indigenous communities between themselves.

38. Participants highlighted the gap between governmental rhetoric and laws and actual implementation of these, including specifically with regard to self-determination. Such gaps exist even in States that have progressive laws in place. Participants noted that, in Bolivia, ILO Convention 169 and the UN Declaration are national laws and the right to free, prior and informed consent is enshrined in the constitution. Nonetheless, implementation is not only dependent on the national government, it also depends on local governments and the corporations, themselves. There is strong resistance from some local governments in respecting and protecting the rights of indigenous peoples.

39. Indigenous Peoples face significant barriers in accessing domestic courts. First, most of them barely have resources to ensure their basic survival, much less to bring their cases to court. Secondly, members of the judiciary in many countries are bribed by corporations and are threatened or killed if they rule in favor of indigenous peoples. States have an obligation to provide Indigenous Peoples with better access to justice and maintain an independent judiciary.

40. In terms of home-state responsibility to regulate transnational corporate behavior, it was highlighted that home-states' obligations under international law include the duty to exercise extraterritorial jurisdiction over corporate activities. This includes in particular, the minimum standards set forth in the UN Declaration and obligations set forth in the International Convention on the Elimination of All Forms of Racial Discrimination, The International

Covenant and Civil and Political Rights, the Convention on Economic, Social and Cultural Rights, ILO Convention No. 169 and other instruments where applicable. It was noted favorably that the Committee on the Elimination of Racial Discrimination has in two instances issued Specific recommendations to States Parties underscoring their obligations under the Convention with respect to the activities of their corporations outside of their borders.

41. Participants noted that States have demonstrated more interest in protecting corporate interests than the rights Indigenous Peoples. This historic trend has to be reversed. States should show political will and enhance their capacities to protect indigenous activists, human rights defenders and lawyers working on human rights issues. Where the State itself was involved in perpetrating human rights abuses, including through the actions of military or security forces, it must bring abusive practices to an end.

42. Destruction of Indigenous Peoples sacred sites and areas of spiritual and cultural significance by extractive industries has to stop. States-Parties to the UNESCO Convention for the Protection of the World Cultural and Natural Heritage have to address the urgent need for the genuine recognition of indigenous religious, cultural and spiritual rights, including their sacred sites in the context of extractive projects. Indigenous peoples' capacities to lobby for the inclusion of their sacred and spiritual sites as part of the the world's cultural heritage should be enhanced.

### **E. The Role of the UN and the International Financial Institutions**

43. Participants were concerned that in some cases, UN agencies and UN country offices did not adequately promote the rights of Indigenous Peoples. It was urged that UN Country Offices take immediate constructive actions in this regard.

44. UN agencies generally offer technical assistance to governments and rarely to indigenous communities and organizations. UN agencies should expand their technical assistance to include Indigenous Peoples. It was also recommended that a mechanism to support indigenous communities in their negotiations be created.

45. As the impacts of extractive industries are both extremely serious and controversial, sources of credible independent information and assessment are essential to the protection of Indigenous Peoples' rights. UNPFII, the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and other UN bodies and agencies could help to remedy this by working with Indigenous Peoples to research and document the impacts of mining and other extractive industries. It is also important that the WHO study and document the health impacts of extractive industries on Indigenous Peoples. The UNESCO should also study the roles played by the extractive industries in

destroying sacred, cultural, religious, spiritual heritage sites of indigenous peoples and support efforts of indigenous peoples to protect these sites.

46. Indigenous Peoples do not always have access to domestic courts and that the international system could not cope with the existing volume of egregious cases. Given the catastrophic impacts that extractive industries have had on indigenous communities around the world, participants called for a new formal process, such as an ombudsman or an international court system specifically focused on this issue.

47. Participants expressed concern that the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises (SRSG) had not engaged adequately in indigenous issues to date. Participants would strongly welcome the SRSG's greater attention to indigenous issues, including his attendance of future sessions of the UNPFII in 2009 and the holding of consultations specifically on the issue of transnational corporations and the human rights of Indigenous Peoples.

48. Participants noted the relevance of ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation. This Convention can be utilized to protect the rights of Indigenous Peoples in relation to extractive industries, which often destroy traditional occupations. Other ILO Conventions such as Convention No. 169 on Indigenous and Tribal Peoples should be used by indigenous peoples whose countries have ratified this.

49. Participants noted that while international financial institutions (IFIs) tend to have policies on Indigenous Peoples that can safeguard their rights and interests, particularly in countries that do not have good laws, these policies are not always implemented. Moreover, it is extremely problematic that IFIs have not adopted the requirement for free, prior and informed consent (FPIC). Indeed, IFIs have confused the issue by instead calling for free, prior and informed "consultation", which has no clear meaning and has had problematic results. For example, in some cases, governments have used this as grounds to simply notify indigenous communities of extractive industries projects that would impact them, rather than asking for their consent.

50. Participants expressed concern that although the World Bank has supported review processes, including its Extractive Industries Review and the World Commission on Dams, that have concluded with recommendations to adopt the requirement of FPIC, it has rejected these conclusions. It was noted, however, that the European Bank for Reconstruction and Development (EBRD) Environmental and Social Policy references the UNDRIP and calls for the free, prior and informed consent (FPIC) of Indigenous Peoples any time an EBRD project affects their interests.

51. Participants expressed concern on the significant increase of money allotted by the International Finance Corporation (IFC) for extractive industries and hydro-electric dam projects. This poses serious threats to indigenous peoples whose lands and territories are being eyed by the industry for extraction. Hydro-electric dam projects are closely linked to extractive industries because this is the source of energy used by the industry. This development is undermining the pronouncements the World Bank Group in relation to its contribution in addressing climate change. Whatever resources allotted to climate change projects and impacts

gained through projects supported by the World Bank Group will be undermined by the bigger loans extended for extractive industries.

52. It was noted that the Asian Development Bank is currently updating its safeguard policy on Indigenous Peoples. While indigenous peoples appreciate the efforts of the ADB to consult with them, the issue of inclusion of the requirement of FPIC in this policy has been strongly advocated by them has been disappointing. The scope of FPIC in the current draft policy is limited and therefore not consistent with the UN Declaration on the Rights of Indigenous Peoples.

53. Opposition to the adoption of FPIC requirements for IFIs often comes from IFI board members, which are the governments that both provide money and receive assistance from the banks. Several of the governments that do not wish to see FPIC implemented nationally are not willing to support it at the IFI level either.

54. One additional obstacle to the requirement of the enforcement of FPIC and the UN Declaration on the Rights of Indigenous Peoples at IFIs is the reality of the financial system right now. In addition to the traditional financial actors, new powerful banks are emerging. These banks do not have standards as strong as the IFIs or are still in the process of developing their standards. As a result, governments can choose which bank to go to – one with standards or one without.

55. IFIs could play an important role in setting international environmental and human rights standards concerning extractive industries. Participants noted that, if IFIs seek to influence the mining laws of states, they should do so in an open and transparent manner, inviting full civil society participation.

## **F. Recommendations**

56. The meeting notes with appreciation the papers submitted and the many constructive recommendations, suggestions and ideas presented by the participants on a variety of subjects, as highlighted in the present report.

### **The Workshop recommends that extractive industries corporations:**

57. Adopt the UN Declaration on the Rights of Indigenous Peoples as a minimum standard;

58. Respect the rights enshrined in the UN Declaration regardless of a host government's acknowledgment of the human rights of Indigenous Peoples or failure to protect these through national law;

59. Fully integrate considerations of human rights and environmental standards in all areas of their work, including staff assessments based on staff records;

60. Recognize the rights of Indigenous Peoples over their lands as the basis for negotiations over proposed extractive industries, as well as the organization of engagement, partnership and

sharing of financial benefits. In instances where Indigenous Peoples consent to extractive activities on indigenous land, payments or benefit sharing arrangements should be based on annual reviews throughout the life of the activity. Incomes from any extractive activity must cover all costs associated with closure and restoration and include sufficient funds to provide for potential future liabilities;

61. Where benefit-sharing arrangements are channeled through a foundation or other entity, corporations must ensure that these entitlements remain under the control of the indigenous people;

62. Develop and enforce policies on human rights;

63. Set insurance levels and establish insurance funds in agreement with Indigenous Peoples and at a level appropriate for the risks involved. The duration of the insurance program must match the duration of any impact of the extractive industry activity beyond the term of the project itself;

64. Be accountable to Indigenous Peoples for damages resulting from past extractive activities that affected indigenous lands and livelihoods and provide compensation and restitution for damages inflicted upon the lands, territories and resources of Indigenous Peoples, and the rehabilitation of degraded environments caused by extractive industry projects that did not obtain FPIC;

65. Submit themselves to the jurisdiction of indigenous courts and judicial systems in whose territories they operate

66. Ensure respect of FPIC including full transparency in all aspects of their operations and stop dividing communities to obtain FPIC.

67. Always regard indigenous communities as having control and ownership of the land and territory, regardless of whether these rights are recognized by the relevant governments or not.

The Workshop recommends that civil society organizations and NGOs;

68. Adopt the UN Declaration on the Rights of Indigenous Peoples as a minimum standard to guide any work that impacts Indigenous Peoples and raise awareness of their staff and management as well as their Governing Bodies on the UNDRIP.

69. Include on their boards and/or advisory groups, where possible, representation by Indigenous Peoples or their organizations;

70. Recognize the existence and impacts of extractive industries on all Indigenous Peoples including those in developed States.

71. Help establish more Public Interest Law Centers and legal funds which indigenous peoples can access when they bring cases against extractive industries in courts or who can help draft contracts which will ensure that benefit-sharing agreements are fair.



72. Provide the information indigenous peoples need in relation to track records and investors of extractive industries.

73. Support campaigns of indigenous peoples on Extractive Industries by facilitating exchanges between indigenous peoples affected by the same corporations or the same sector, facilitating speaking tours and participation of indigenous peoples in relevant bodies dealing with issues of extractive industries, etc.

74. Developing guides, multi-media awareness-raising and monitoring tools which can be used by indigenous peoples and organizing workshop-seminars on extractive industries.

### **The Workshop recommended that Indigenous Peoples, Nations and Organizations**

75. Build relationships with non-indigenous groups and movements concerned with the problem of extractive industries, nationally and internationally, to find common ground;

76. Strengthen further their work in organizing and raising awareness of their own communities so that they are in much better positions to decide collectively on how to deal with extractive industries.

77. Develop further their capabilities to understand and use existing instruments such as the UN Treaty Bodies and grievance mechanisms of the Multilateral Financial Institutions, e.g. Inspection Panels of the WB and the ADB, the Ombudsman of the IFC, OECD Guidelines for Multinational Enterprises, etc.,

78. Recognize and plan activities accordingly for the summer solstice, June 21<sup>st</sup>, as World Peace and Prayer Day, honoring sacred sites.

79. Discuss and design their self-determined development and identify the role of extractive industries in this.

### **The Workshop recommended that States:**

80. Endorse the UNDRIP if they have not already done so and, for those States who have, to uphold and implement the rights articulated therein as minimum standards;

81. Ratify ILO Convention 169 if they have not already done so and, for those States who have, to uphold and implement the rights articulated therein;

82. Take steps to secure and guarantee land rights of Indigenous Peoples including by accelerating land titling and ensuring effective resolution of disputes regarding land rights;

83. Review laws and policies and structures on extractive industries that are detrimental to Indigenous Peoples, and ensure consistency with the UNDRIP and other international

instruments protecting the rights of Indigenous Peoples. There should be a moratorium on further extractive industry projects that affect or threaten Indigenous Peoples until structures and processes are in place to ensure respect for human rights.

84. Ensure that the legislation governing the granting of concessions includes provisions on consultation and FPIC, in line with international standards and which recognize the right of Indigenous Peoples to say no;

85. Require social, cultural and human right impact assessments to be undertaken for all extractive industries projects impacting Indigenous Peoples. Social impact assessments should be required by law and should be undertaken prior to any phases of any extractive industry project. Social, cultural and human rights impact assessments should be required as input into FPIC decision making processes;

86. All too often FPIC has been reduced in the minds of State officials to a “veto” power. States need to appreciate the cumulative impacts of extractive industries. States should fund research on free, prior and informed consent processes in order to support and promote “informed” decision-making on the part of Indigenous Peoples. Research should make clear that the impacts of refusing to respect FPIC rights in one project can taint all future relationships and negotiations with Indigenous communities, along with creating mounting legal expenses and uncertain access in the context of other sectors.

87. Ensure that consultation processes are undertaken with the informed participation of Indigenous Peoples, organizations and communities that are impacted. The government must respect FPIC and therefore must provide information in a culturally appropriate manner regarding the project before consultations are undertaken.

88. Open themselves up to international monitoring of the implementation of FPIC processes;

89. Effectively regulate the overseas operations of extractive industries, and establish adequate penalties for human rights and environmental violations, including denial of officially supported export credits and insurance.

90. Promote greater transparency and access to information relating to all areas of extractive industries;

91. Ensure the full participation of Indigenous Peoples in the design, implementation and evaluation of development plans at the national, regional and local levels. Governments must additionally support the efforts of Indigenous communities and their allies to enhance existing livelihoods and develop community-created alternative forms of livelihood and poverty alleviation;

92. Ensure the full and effective participation of Indigenous Peoples in negotiations about climate change and the development of national and international action plans and strategies on climate change. Mitigation and adaptation measures related to climate change must be designed and implemented in keeping with Indigenous Peoples' rights;

93. Mainstream climate change considerations in policy formulation and development planning;
94. In light of current failures of environmental standards, States must advance and more effectively enforce higher standards of environmental protection, including by banning particularly harmful extractive practices;
95. Redress environmental harms affecting Indigenous Peoples as a result of trans-boundary pollution from extractive ventures or from oil and gas pipelines traversing their territory;
96. Protect indigenous activists, human rights defenders and lawyers working on human rights issues, and end any criminalization of the actions of Indigenous Peoples in this regard;
97. In view of the adoption of the UN Declaration and increasing international awareness of the importance of the protection of remaining natural forest and forest soils, governments should adjust their land planning to ensure the protection of indigenous lands and landscapes, particularly zones of remaining forest. States should prioritize the maintenance and of these lands and should prioritize the protection of human rights and the environment over granting corporate privileges to exploit and degrade such resources.
98. States must ensure transparency and accountability especially in governance institutions and bodies that deal with indigenous people' communities. Cases of alleged corruption must be addressed.
99. Establish a complaints system for the complaints of Indigenous Peoples regarding extractive industries and provide redress and restitution for related harms;
100. Ensure that when FPIC is used in policies, it is used as contained in the UNDRIP, with a requirement of consent.

**The Workshop calls upon the Permanent Forum to:**

101. Given the catastrophic impacts that extractive industries have had on indigenous communities around the world, the Permanent Forum should promote the establishment of a new UN formal process, such as a special rapporteur, an ombudsman or an international court system specifically focused on this issue. Assessing the effectiveness of the Oxfam Australia's ombudsperson for mining might be useful in this regard;
102. Establish a body to monitor FPIC and to consider complaints of the abuse of FPIC. The body should be comprised of independent figures, including Indigenous Peoples, who enjoy the respect and confidence of indigenous communities;
103. Work with Indigenous Peoples, their organizations and civil society organizations to provide technical assistance to communities, States and companies on the implementation of

FPIC. This should promote the capacity-building of Indigenous Peoples and their organizations through training on negotiation, FPIC, leadership, research and human rights;

104. Gather existing materials and guidelines on free, prior and informed consent and make these available on the UNPFII website. UNPFII should further analyze existing guidelines to determine whether there are gaps, which should then be filled through the development of new materials and should study the experience of states and territories with existing legislation pertaining to FPIC. The knowledge on free, prior and informed consent that has resulted from Permanent Forum sponsored processes should be communicated to Indigenous Peoples in plain-language and culturally appropriate ways so that they can begin to implement FPIC conditions on the ground;

105. Invite Indigenous Peoples to submit information on best and worst practices;

106. Request the International Council on Mining and Metals to provide a list of ten projects that they recommend as best practices. This list should be accompanied by an open invitation for members of the UNPFII body to visit, have access to project sites and files;

107. Request the Global Compact to participate in meetings of the Permanent Forum so they can share examples of good practices received from its members.

108. Advocate for the Extractive Industries Transparency Initiative secretariat in Norway to coordinate an effective strategy to ensure that environmental and social impacts on indigenous communities are considered part of the “transparency” protocols that are to be prepared by governments that are certified under this initiative;

109. Permanent Forum sponsored processes have spurred unparalleled expertise on FPIC and that expertise must be invoked to test and challenge company claims on community engagement. There would need to be safeguards, including investigating comparative examples not just company best practices and revisiting consent cases to ensure that they are ongoing;

110. The UNPFII, the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other UN bodies and agencies should work with Indigenous Peoples to research and document the impacts of mining and other extractive industries;

111. Invite the Special Representative of the Secretary General on Business and Human Rights to participate in its sessions, in particular, the 8<sup>th</sup> Session where the report of this Expert Group Meeting on Extractive Industries will be presented. Encourage him to do special studies on extractive industries and indigenous peoples and make recommendations on how this issue should be addressed by the UN System and by corporations.

112. Hold expert group meetings at the regional level focused on the rights of Indigenous Peoples in relation to extractive industries;

113. Insist on explicit incorporation of the UN DRIP in the policies of the international financial institutions. IFI policies should not only refer to the UN Declaration, but must also be fully consistent with the provisions of the UN Declaration;

114. Work with Indigenous Peoples and the World Bank Group to monitor implementation of IFI policies on Indigenous Peoples.

115. Recognize the Summer Solstice, June 21<sup>st</sup> as World Peace and Prayer Day, honoring sacred sites.

116. Request the Special Rapporteurs on the Right to Food and on the Special Rapporteur on the Right to Health to also look into issues raised in during the Expert Group Workshop that are relevant to their mandates.

**The Workshop recommends the following to UN agencies, bodies, programmes and funds:**

117. The World Health Organization should, with the participation of Indigenous Peoples, conduct a study on the impact of extractive industries on the health of affected indigenous communities including also, but not limited to, attendant plant life, animal and other life, soil, air and water impacts, as well as cultural and spiritual consequences and downstream impacts. In addition, it should require strict implementation of health and environmental standards for both workers and communities.

118. The International Atomic Energy Agency should establish a task force, which includes Indigenous Peoples' participation, to consider the disproportionate, ongoing and future impact of uranium mining and nuclear pollution on indigenous communities worldwide with membership from particularly affected indigenous communities;

119. The ILO should disseminate information concerning the gaps in the application of Convention No. 169 relating to the activities of extractive industries, including specific examples; and consider taking steps to promote respect for the Convention's principles by the extractive industries operating or seeking to operate in the lands of Indigenous Peoples, through its relevant programmes. It should also look into the situation of indigenous workers in extractive industries as well as disseminate relevant ILO Conventions which indigenous peoples can use, e.g. Convention 111, etc.;

120. UNESCO should undertake studies on how extractive industries are destroying the apiritual, religious, sacred, cultural heritage sites of indigenous peoples and support the efforts of indigenous peoples to protect these. Disseminate more widely the relevant Conventions it has so indigenous peoples and States can do joint projects in terms of protecting heritage sites.

121. UNCTAD should conduct a study on the relationship between bilateral and multilateral investment treaties and the rights of Indigenous Peoples, and ensure that its technical assistance in this area does not undermine the ability of states to implement UNDRIP;

122. UN agencies, IFIs and other multilateral institutions and international groups, including the European Union, should ensure consistency of their Extractive Industries sector programmes with the UN DRIP and their own policies regarding Indigenous Peoples' rights.

123. UN Framework Convention on Climate Change should ensure that mechanisms established to mitigate and adapt to climate change respect the rights of Indigenous Peoples. Since the use of oil, gas and coal is the main contributor to climate change, the States should aim to decrease dependency on fossil fuels and hasten the shift towards the development and use of energy from renewable sources.

124. All UN agencies, bodies, programmes and funds should implement the UNDG Guidelines on Indigenous Issues;

125. All UN agencies, bodies, programmes and funds should make indigenous concerns in industrialized or developed States a focus of reporting and distribution of materials, technology and training.

126. The UNDP's internal committee on indigenous peoples should assess how the UNDP is supporting indigenous peoples in asserting their rights especially in relation to extractive industries and to discuss how the UNDP can further support the self-determined development of indigenous peoples. It should also consider providing technical and financial assistance to indigenous peoples on how to address conflicts and governance issues related to extractive industries as well as implementing their self-determined development.

The Workshop recommends that International Financial Institutions:

127. Recognize and enforce the rights Indigenous Peoples to FPIC as laid out in UNDRIP, as opposed to the weaker approach currently favored by IFIs for "consultation";

128. Review their policies, standards and guidelines to ensure they conform with current minimum international standards and law and embody the UN Declaration;

129. Operate in a transparent manner with regard to all activities that impact Indigenous Peoples; and

130. Provide training to Indigenous Peoples on how to use IFI accountability and grievance mechanisms.

131. Respect the recommendations of the 2004 Extractive Industry Review report, including the withdrawal from funding the oil and gas sectors.



## **Annex I. List of participants**

### Indigenous Peoples' Organizations and Bodies

Association of Indigenous Peoples of Khabarousk Region (Russia); Australian Nuclear Free Council and Kokatha Senior Women's Council (Australia); Batani International Development Fund for Indigenous Peoples of the North, Siberia & the Far East (Russia); Center for Environmental Research and Development (Papua New Guinea); Centre for Human Rights and Development (Mongolia); Centre for Pastoralists Development (Kenya); Confederacion Mapuche (Argentina); Coordinadora Andida de Organizaciones Indigenas (Peru); Coordinadora de las Organizaciones Indigenas de la Cuenca Amazonica (Ecuador); Cordillera People's Alliance (Philippines); FCUNAE (Ecuador); Galdu Centre for the Rights of Indigenous Peoples (Norway); Indigenous Peoples Alliance of the Archipelago (Indonesia); Kanak Agency for Development (New Caledonia); Movement for the Survival of the Ogoni People (Nigeria); National Native Title Council (Australia); National Union of the Swedish Sami People (Sweden); RAIPON (Russia); Western Shoshone Defense Project (United States)

### Institutions and Networks

Business and Human Rights Resource Center (USA); Center for International Environmental Law (USA); College of Social Science, University of the Philippines Baguio (Philippines); Department of Anthropology, University of Michigan (USA); Indigenous Peoples Links (UK); Irish Center for Human Rights (Ireland); North South Institute (Canada); University of Vermont (USA); World Resources Institute (USA)

### UN Bodies and Multilateral Financial Institutions

Asian Development Bank; European Commission; Expert Mechanism on the Rights of Indigenous Peoples; International Finance Corporation; International Labour Organization; International Organization for Migration; Secretariat of the UN Permanent Forum on Indigenous Issues; United Nations Development Programme; United Nations Permanent Forum on Indigenous Issues; World Health Organization

### Governments

Norway; Philippines



## **Annex II: Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples**

23-25 March 2009

Legend Villas, Metro Manila, Philippines

*When all the trees have been cut down,  
When all the animals have been hunted,  
When all the waters are polluted,  
When all the air is unsafe to breathe,  
Only then will you discover you cannot eat money.*

- Cree prophecy

*Treat the earth well, it was not given to you by your parents, it was loaned to you by your children. We do not inherit the Earth from our Ancestors, we borrow it from our Children.*

- Chief Seattle

We, Indigenous Peoples and support organisations from 35 countries around the world and representing many more Indigenous Nations, have gathered together in this International Conference on Extractive Industries and Indigenous Peoples. As Indigenous Peoples we have a unique cosmic vision, diversity of languages, histories, spirituality and territories which have existed since time immemorial. However, we now find ourselves within the borders of States which have established norms and laws according to their interests. On account of this situation, we have suffered disproportionately from the impact of extractive industries as our territories are home to over sixty percent of the world's most coveted mineral resources. This has resulted in many problems to our peoples, as it has attracted extractive industry corporations to unsustainably exploit our lands, territories and resources without our consent. This exploitation has led to the worst forms of, environmental degradation, human rights violations and land dispossession and is contributing to climate change.

Environmental degradation includes, but is not limited to, erosion of our fragile biological diversity, pollution of land, air and water, and destruction of whole ecological systems. Extractive industries, and particularly those relating to fossil fuels, also have significantly contributed to the climate change that is destroying our Mother Earth.

Human rights violations range from violations of Indigenous Peoples' right to self-determination (which includes the right to determine one's own economic, social and cultural development), rights to lands, territories and resources, as well as displacement and violations of the most basic civil and political rights, such as arbitrary arrests and detention, torture, enforced disappearances and killings.

Our cultural diversity has also been grossly eroded because of the destruction of biological diversity and lands, territories and resources by extractive industries upon which our cultures are based. This erosion of our cultural diversity is also a result of the imposition of colonial systems and the settlement of non-Indigenous Peoples. Corporations enter into our territories with the promise of “development” through

employment, infrastructure building and payment of governmental taxes. Despite these promises, there still exists a situation of dire poverty in those living close to extractive industry projects. This situation has fuelled conflicts between Indigenous Peoples and the State and extractive industry corporations, as well as causing divisions within the Indigenous communities themselves.

On 6-16 May 1996, a first “Mining and Indigenous Peoples Conference” held in London produced the “Indigenous Peoples' Declaration on Mining”. This declaration highlighted conflicts occurring between our communities and corporations. It reiterated that Indigenous Peoples need to be the decision makers on whether or not mining should take place in their communities and under what conditions this may occur.

Almost 13 years have passed since this conference was held, but overall our situation on the ground has not noticeably improved. The opportunities and threats since the 1996 conference include:-

- the welcome adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP) by the UN General Assembly on 13 September 2007;
- new UN mechanisms for the protection of the rights of Indigenous Peoples, such as the UN Permanent Forum on Indigenous Issues, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the Expert Mechanism on the Rights of Indigenous Peoples;
- a greater interest on the relationship between human rights and corporate behaviour, including the work of the UN Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises;
- the recognition of corporate social responsibility and a claimed willingness on behalf of corporations to negotiate agreements directly with Indigenous Peoples, although so far much of this seems to be more on paper or promises, as opposed to practice;
- the climate change crisis, coming about mainly because of dependence of the current economy on fossil fuels. These resources are mined on our land and many of our peoples are disproportionately affected by such activities; and
- the global financial crisis, caused by the unregulated liberalisation of finance.

Based on the foregoing observations, we assert that:-

- Indigenous Peoples are rights holders, with an inextricable link to their lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and should not be treated merely as stakeholders. We have a right to self-determination of our political condition and to freely choose our economic, social and cultural development (UN DRIP Article 3);
- our rights are inherent and indivisible and seek recognition not only of our full social, cultural and economic rights but also our civil and political rights;
- all doctrines, policies and practices based on the presumed superiority of colonial peoples and worldviews should be condemned;
- we contribute to the diversity and richness of the cultures that make up humanity and believe that we can teach valuable lessons to the rest of the world through our values and world views in how to tread gently upon the earth;
- destruction of Indigenous Peoples sacred sites and areas of spiritual and cultural significance by extractive industries must stop;
- the vulnerable position of women and youth with regard to the impacts of extractive industries, including loss of livelihoods, violence and impacts on health and well-being must be recognized;
- the development model premised on unsustainable consumption and production, and corporate globalisation, which fuels the entry of extractive industries onto our lands, must be rejected;
- respect for the preservation of life on earth, and our right to food, must have precedence over extractive industry projects;
- extractive industry projects must not take precedence over our right to land - regardless of whether our rights are based on legal recognition or usufruct rights;
- there must be an immediate end to the criminalization of community resistance, the violent intimidation, harassment, and murder of our leaders, activists and lawyers, who are working for the defence of our lands and lives;
- extractive industry projects must not take precedence over the human right to water. Water is especially important in our lives and is sacred to us. In addition the major reserves of fresh water are found in our territories;
- the right to water is a fundamental human right which must be recognized. We therefore condemn the conduct of the World Water Council which demotes the right to water a “basic need”;
- negotiations about climate change should not be conducted by States and international organisations unless there is full and effective participation of Indigenous Peoples. Furthermore, mitigation and adaptation measures related to climate change must be designed and implemented in keeping with Indigenous Peoples' rights;
- the failure to hold extractive industries to account in host and home countries must be addressed and mechanisms for accountability and enforcement must be created immediately; and
- implementation of interstate infrastructure initiatives - such as the South American Regional Infrastructure Initiative (IIRSA) - that lead to mega-projects on our lands and territories without first obtaining our free prior and informed consent (FPIC) are destructive to our cultures and survival, and a denial of our right to self determination.

Given the above, in order to ensure respect for the rights recognized in the UN DRIP, as well as the ecological integrity of our planet and communities, we call for:-

- a stop to the plunder of our lands, territories and resources;

- a moratorium on further extractive industry projects that affect or threaten our communities, until structures and processes are in place that ensure respect for our human rights. The determination of when this has been realized can only be made by those communities whose lives, livelihoods and environment are affected by those projects;
- due process and justice to victims of human rights violations who are resisting extractive industries;
- review of all on-going projects that are approved without respect for our FPIC and self determination rights; and
- compensation and restitution for damages inflicted upon our lands, territories and resources, and the rehabilitation of our degraded environments caused by extractive industry projects that did not obtain our FPIC.

We call on Indigenous Communities and their Supporters:-

- to actively participate in the global network of indigenous peoples on extractive industries which was established at this international conference and will be aimed at strengthening the capacities of local organization through sharing of information, education and training programmes, research and advocacy in the defence of our rights;
- to coordinate research on mining companies, processes and investment sources to empower communities, build strategic plans and ensure recognition and respect for our rights;
- to assert their right to control the authorization of projects, and where FPIC has been given, the conduct of extractive activities in indigenous lands and territories through the use of indigenous customary laws;
- to create a mechanism to compile legal precedents from relevant court decisions on Indigenous Peoples and extractive industries;
- to build relationships with non-indigenous groups concerned with the problem of extractive industries, nationally and internationally, to find common ground; and
- to establish an International Day of Action on Extractive Industries and Indigenous Peoples.

We call on Civil Society Organisations:-

- to increase their support, and solidarity in a manner that is sensitive to the issues of Indigenous Peoples; and
- especially conservation and other NGOs, not to impose themselves or their views upon us, but respect our legitimate leadership, and also seek the FPIC of communities before intervening; this also applies to academics including anthropologists.

We call on Companies:-

- to respect international standards as elaborated on in the normative framework of indigenous peoples rights, especially the minimum standards as set forth in the UN DRIP, ILO Convention 169 and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which includes in particular, the right to lands, territories and resources and attendant right to FPIC. This also applies to consultants;
- to submit to independent and credible monitoring;
- to be accountable for the environmental disasters, destruction and human rights violations as a result of their operations;
- to employ proven technology and adhere to the precautionary principle at all levels and in each project;
- to recognize the specific vulnerability of indigenous women to the negative impacts involved with extractive industries;
- to respect the traditional knowledge and intellectual property of Indigenous Peoples. This implies not appropriating the language or names of Indigenous Peoples for companies or projects;
- to ensure full transparency in all aspects of their operations, and especially to ensure affected communities have full access to information in forms and languages they can understand; and
- to conduct and implement environmental, social, cultural and human rights impact assessments to the highest international standards ensuring independent review and participation of indigenous peoples.

We call on Investors:-

- to ensure that policies in relation to investments in indigenous territories reflect the rights articulated in the UN DRIP, and that ethical index listings used by them should base their investment recommendations on third party information, as opposed solely to information from the company in which they may invest;
- to ensure access to information and transparency in relation to all investments in extractive industries in indigenous territories; and
- not to invest in fossil fuel related projects.

We call on States:-

- specifically those States that have not done so yet, to endorse the UN DRIP and ratify International Labour Organization (ILO) 169, and for those States who have to uphold the rights articulated therein;
- to establish, in consultation with Indigenous Peoples, clear mechanisms and procedures at national levels for the implementation of international juridical instruments, specifically the UN DRIP, ILO 169 and ICERD;
- to review laws and policies on extractive industries that are detrimental to Indigenous Peoples, and ensure consistency with the UN DRIP and international instruments protecting Indigenous Peoples rights;

- to recognize and enforce the rights Indigenous Peoples to FPIC as laid out in UN DRIP, in accordance with our customary laws and traditional practices;
- to recognize and ensure the demarcation and titling of our ancestral lands;
- to recognize our customary laws and traditional mechanisms of conflict resolutions;
- to support the efforts of Indigenous Peoples to develop economic alternatives to extractive industries, in order to alleviate the poverty that creates false dependencies on extractive industries;
- to abolish hedge funds and all forms of private equity that are not transparent and well regulated, and which distort the price of minerals;
- to legislate and regulate thorough processes for independently conducted environmental, social, cultural and human rights impact assessments, with regular monitoring during all of the phases of production and rehabilitation;
- to protect indigenous activists, human rights defenders and lawyers working on human rights issues, and where the State is the violator we demand an end to the violations against our peoples;
- to ban particularly harmful extractive practices, including riverine tailings disposal, gas flaring, effluent discharges, submarine tailings disposal, mountain top removal and large scale open-pit mining. Given the risks posed by climate change, serious re-consideration should be given to the construction of tailings containment in low-lying coastal areas and in areas exposed to increasingly severe weather events; and
- to ensure that their development cooperation policies and programmes respect Indigenous Peoples rights', in particular in the context of extractive industries and our right to FPIC.

We call on the UN Permanent Forum on Indigenous Issues (PFII):-

- to conduct a study, with the participation of Indigenous Peoples, on the impact of extractive industries on them, by consolidating all recommendations, observations and decisions of UN Treaty and Charter bodies pertaining to the subject and identifying the measures taken by States to adhere with these;
- to elaborate mechanisms and procedures for States to implement the minimum standards set forth in the UN DRIP, including in particular the right to FPIC and to call on other UN procedures, mechanisms, agencies and bodies and other multilateral bodies to do likewise;
- to establish procedures which provide indigenous communities with the opportunity to request the relevant UN agencies to assist them in the monitoring and provision of independent information in FPIC processes;
- to support the proposal that there be an international Mother Earth Day, and encourage all UN agencies, mechanisms and bodies to do likewise;
- to demand the full and effective participation of Indigenous Peoples in all discussions and decisions pertaining to international agreements and conventions that address issues of biological diversity and or climate change;
- to emphasize the need to address the direct and indirect impacts of extractive industry on climate change, including those associated with mitigation measures;
- to emphasize the need for the widespread diffusion of information and critical debate between Indigenous Peoples about the ongoing mechanisms and negotiations relative to carbon trading and the carbon market;
- to request that the Special Representative to the Secretary General on the issue of human rights and transnational corporations and other businesses, John Ruggie, to actively engage with impacted indigenous community through workshops addressing indigenous peoples rights and the extractive

industry, and together with other UN procedures, bodies and agencies, promote the enactment of legislation in home states of transnational corporations that provides for extraterritorial jurisdiction in relation to their activities;

- to facilitate dialogue between indigenous peoples, investors, fund managers, extractive industry corporations and consultants;
- to recommend that the World Bank Group and other International Financial Institutions (IFIs) update their operational directives and safeguard policies pertaining to Indigenous Peoples to include the right to FPIC, as required under the UN DRIP. Specifically to recommend to the Asian Development Bank (ADB) that it include the requirement to obtain FPIC in its safeguard policies on Indigenous Peoples environment and resettlement;
- to recommend that the World Bank Group and other IFIs immediately stop funding, promoting and supporting fossil fuel related projects and large scale mining and hydro electric projects on indigenous lands, and provide a set timeline for ending of all such funding;
- to recommend that the World Bank and other IFIs stop influencing the design of national policies in developing countries in a manner that promotes the interests of transnational mining corporations over the rights of indigenous communities;
- to recommend that the World Health Organisation consider conducting a study on the impact of cyanide and heavy metals on the right to health of communities impacted by mining;
- to address the urgent need for the genuine recognition of indigenous religious, cultural and spiritual rights, including their sacred sites in the context of extractive projects; and to recommend that all bilateral trade agreements should guarantee that Indigenous Peoples' human rights are respected.