

Submission to the UN Committee on the Elimination of all forms of Racial Discrimination with regard to Norway's responsibility to ensure respect indigenous peoples rights overseas in the context of its investment and transnational corporate activity impacting on them.

On behalf of: Middlesex University Department of Law, Indigenous Peoples Links and the Irish Centre for Human Rightsⁱ

Context:

An increasing number of transnational companies involved in oil, gas and mineral extraction as well as the hydroelectricity and fishing sectors, that are either Norwegian registered or have significant investments from Norway's large pension fund, operate in territories of indigenous peoples overseas. A number of these projects are having, or have the potential to have, profound negative impacts on these indigenous peoples' enjoyment of their rights (see appendix I). Norway has taken some positive steps to address human rights violations of companies operating in indigenous territories overseas in which it has investments. For example removing companies such as Barrick Gold, Freeport McMoran, Rio Tinto and Samling Global from its pension fund portfolio.ⁱⁱ It has also been proactively supporting initiatives such as Reducing Emissions from Deforestation and Degradation, which requires respect for indigenous peoples' rights including the requirement to obtain their Free Prior and Informed Consent (FPIC). In addition, Norway's responsibility towards indigenous peoples impacted by its own actions or by the actions of its corporations has been addressed in a number of Norwegian Fora. In 2004 the Norwegian Ministry for Foreign Affairs published 'guidelines on efforts to strengthen support for indigenous peoples in development cooperation', committing to a human rights-based approach to development cooperation premised on ILO Convention No. 169. Likewise a 2003 report 'Look North! Challenges and Opportunities in the Northern Areas' produced by Norwegian Government appointed committee of experts in 2003ⁱⁱⁱ included a unanimous recommendation that 'public and private petroleum companies in indigenous areas must comply with the consultation requirements of ILO-169 as the basis for their activities'.^{iv} The report also stated that: 'In light of ILO the term FPIC [Free Prior and Informed Consent] constitutes a foundation when it comes to requirements for companies seeking to operate in indigenous territories.'^v

However, an inconsistency exists between this recognition of the rights of indigenous peoples and the fact that a number of Norwegian companies, and companies with significant investments from the Norwegian pension fund, have failed, and continue to fail, to live up to these standards in practice. This trend is expected to increase, particularly in the energy and

extractive sectors where Norway and its companies are making major investments. Increased investment in these sectors is in general correlated with high risk of potentially profound negative impacts on indigenous peoples' rights to land, health, living environment and the way of life. In this context, and in light of similar recommendations made by the CERD to Canada and the U.S., it would appear appropriate that Norway be given guidance in relation to the importance of 'taking appropriate legislative or administrative measures to prevent acts of transnational corporations registered in' Norway 'which negatively impact on the enjoyment of rights of indigenous peoples in territories outside' Norway, and to ensure that they are held to account.^{vi} This is particularly relevant in light of the fact that Norway has ratified ILO Convention 169, has indigenous peoples residing within its own territories and has been a consistently vocal supporter of the UN Declaration on the Rights of Indigenous Peoples.

Suggested recommendation:

In accordance with its previous recommendations to Canada and the U.S., it is suggested that the CERD draw attention to concerns raised in relation to the impacts of Norwegian companies and investments on indigenous peoples' enjoyment of their rights recognized in ICERD articles 2.1(d), 4 (a) and 5(e); the ICERD's committee's general recommendation no 23 (1997); the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention 169 on Indigenous and Tribal Peoples. It is respectfully suggested that the committee recommend that the state party:

Take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Norway which negatively impact on the enjoyment of rights of indigenous peoples, in territories outside Norway. In particular, the state party should explore ways to hold transnational corporations registered in Norway accountable.

As part of this exercise the state party should address the absence of independent monitoring processes that can receive complaints from indigenous peoples and which have the capacity to conduct investigations leading to sanctions enforceable by the Norway.

Furthermore it is suggested that the committee request that:

As part of its follow-up procedure the state party outline the effects of activities of transnational corporations registered in Norway, and of companies in which Norway has significant investments, on indigenous

peoples abroad and any measures take to address these. In particular, outline the measure taken to ensure that its corporations, and those in which it invests in through its pension fund, comply with the requirements of ILO Convention 169 and adopt the principle of FPIC as the foundation for all operations in indigenous territories overseas as recommended by the 2003 'Look North! Challenges and Opportunities in the Northern Areas' report produced by a Norwegian Government appointed committee of experts.

Finally, it is suggested that Norway consider updating its 2004 'guidelines on efforts to strengthen support for indigenous peoples in development cooperation' to reflect the provisions of the UN Declaration on the Rights of Indigenous Peoples, in particular its requirement for FPIC.

Appendix 1: Examples of Norwegian impacts on indigenous peoples overseas.

The following are some examples of involvement of Norwegian companies, or companies with significant investments from Norway's pension fund, in indigenous peoples' territories overseas. The Philippines case is based on the direct experience of the submitting organizations, some of whom are party to the current OECD investigation in relation to it. The remaining cases are drawn from a range of cited sources which include OECD complaints, NGO and indigenous peoples' organizations reports, corporate press releases and local, national and international media sources.

The Philippines:

Since 1997, a Norwegian based mining company (currently registered as Intex Resources) has been attempting to conduct large scale nickel mining in the Mangyan territories on Mindoro Island, the Philippines. Detailed issues in relation to violations of indigenous peoples' rights by Intex and its predecessors (Norwegian based Mindex and Norwegian / Canadian CrewGold) were brought to the attention of the ICERD committee in the 2009 Philippines ICERD Indigenous Peoples Shadow Report. These include the failure to respect the consultation and FPIC requirements of the 1997 Indigenous Peoples Rights Act; threatening the cultural and physical survival of the Mangyan people and ignoring ordinances based on the provincial government's Agenda 21 sustainable development framework plan, which explicitly exclude large scale mining in order to protect critical watershed and forested areas impacted by the project. A 2007 report of Norad (Norwegian Aid) concluded that the watershed area, which would be directly impacted by Intex's operations was in urgent need of rehabilitation to prevent major flooding. This conclusion is inconsistent with large scale nickel strip mining in that same watershed. In 2007, following a Mangyan visit to Norway, the Norwegian Ambassador to the Philippines conducted a fact finding trip to the site and concluded that 'the vast majority of the Mangyan strongly opposed the project'. However, the company continued to press on with the application. A complaint was filed with the OECD National Contact Point (NCP) in Oslo in January 2009 and is currently under investigation by the NCP. In November 2009, Mangyan leaders and community members went on hunger strike following the issuance of an Environmental Clearance Certificate (ECC) to Intex, leading to the ECC suspension. They stated in their letter to the President that 'Our "whole life" is at risk. Our sacred grounds will be ruined, we will be displaced from our land and the environment

will be devastated. Lives are at risk because of the proposed mining within our ancestral domain.^{vii}

Canada:

Cermaq, a Norwegian Fish Farming company, has 29 tenures in the territory of the Musgamagwa-Tsawataineuk people in British Columbia. Wild salmon form 'an intricate part of [the Musgamagwa-Tsawataineuk peoples'] existence, diet and culture'.^{viii} According to Chief Bob Chamberlin, Chairman of the Musgamagwa-Tsawataineuk Tribal Council "Norwegian-owned salmon farms operating in our traditional territorial waters are killing wild salmon and strangling the lifeblood of our whole culture".^{ix} The Union of British Columbia Indian Chiefs (UBCIC), which supports the Musgamagwa-Tsawataineuk Tribal Council in their struggle against the Norwegian company, holds that these salmon fish farms "have had a lethal and irreversibly toxic impact on indigenous runs of wild salmon" and therefore threaten the Musgamagwa-Tsawataineuk culture.^x In 2009, a case was taken by Friends of the Earth Norway to the Norwegian OECD NCP under the OECD guidelines for multinational corporations addressing the impacts of Cermaq's fish farming operations on indigenous peoples' rights in Canada and Chile.^{xi} The NCP declared that it could not process the information regarding Chile due to a lack of resources for translation. The complaint regarding the Canadian operations has resulted in a series of meetings between the parties in June 2010 but information concerning their outcome has not yet been made publically available.^{xii}

Chile:

In addition to the alleged impacts of Norwegian fish farming companies on their enjoyment of their rights, the Mapuche people, who have historically suffered from repeated relocations for dam projects, are also threatened by Norwegian hydroelectric projects in their territories.^{xiii} In 2007, Mapuche communities actively protested against the plans of the Norwegian hydroelectric power company, Sñ Power, to construct major power plants on the grounds that they would threaten their livelihoods, their access to water, fishing activities, their spiritual practices, access to medicinal plants, their potential for sustainable development and their very existence.^{xiv} As of December 2010 Trayenko (a Chilean company 80% owned by Sñ Power) is still pursuing plans for the construction of a major hydroelectric project in Mapuche territories.^{xv} The UN Special Rapporteur on the Rights of Indigenous Peoples noted in his 2009 report that he had received allegations in relation to 'the project

of SN Power, a company funded by Norwegian state capital, in Liquine, Conaripe and Rupumeica, in the region of Los Rios, to construct four hydroelectric centres which will result in the flooding of between 400 and 1,2000 hectares. According to the information, SN Power obtained the water rights and the electricity concession in 1999 and has advanced in its project without realizing a consultation process with the affected communities.^{xvi} The fact that Chile has ratified ILO Convention 169, but according to the UN Special Rapporteur has yet to put adequate consultation mechanisms as required under the Convention in place,^{xvii} should increase the burden on Norway to ensure that its companies adhere to standards in place in Norway under ILO Convention 169 with regard to consultations with, and respect for the rights of, its own indigenous peoples.

Burma

A December 2010 report of Earth Rights International 'Broken Ethics: The Norwegian Government's Investments in Oil and Gas Companies Operating in Burma (Myanmar)' documents the negative impacts on Burmese indigenous peoples / ethnic minorities, including those in the Shan and Kachin states, of oil and gas projects in which Norway has made significant investments.^{xviii} These investments made through its Pension Fund Global, which according to the report total over \$4.7 billion, are in companies whose operations in Burma allegedly involve 'serious, ongoing human rights abuses'. Specific issues the report raises in the context of indigenous peoples and ethnic minorities are the lack of FPIC, environmental and livelihood impacts and escalation in ethnic conflict and tensions. The report recommends 'expand[ing] the strict standard of exclusion for companies involved in onshore pipeline construction in Burma to a wider range of extractive industry activities, including offshore oil and gas project development, large-scale minerals mining, and hydroelectric dam construction'.^{xix}

Russia and Alaska:

The Norwegian corporation Statoil, through its large shareholding in the Kharriaga oil field, is one of the few international companies involved in drilling in the Nenets Autonomous Okrug (region). The impacts on the lifestyle, traditional practices and cultural heritage of the Nenets of oil and gas extraction have been significant and continue to this day.^{xx} Statoil has also announced plans to drill for oil in the Chukchi Sea,^{xxi} one of the world's most vulnerable seas, along whose coasts indigenous communities live. These plans have been strongly

criticized by environmentalists for their potentially devastating impacts on the marine environment upon which indigenous communities depend for their livelihoods.^{xxii} Statoil will also have a significant role in developing the prospective Shtokman gas field deposit in the Barents sea.^{xxiii} Norway and Russia have recently signed a maritime border agreement,^{xxiv} which is primarily motivated by the mutual wish to remove obstacles to Arctic oil and gas exploitation and indicative of the fact that future expansion of the industry is inevitable. In the light of the recent BP disaster in the Gulf of Mexico the Russian Association of Indigenous Peoples of the North (RAIPON) has called for a moratorium on Arctic oil development in Russia due to its and environmental organizations' concerns regarding the uncontrollable impact of potential Arctic oil spills.^{xxv}

Brazil and the Amazon:

The double role played by Norway both in preserving and at the same time threatening the Amazon has been pointed out by the World Rainforest Movement.^{xxvi} On the one hand Norway has donated significant funds towards the protection of the Amazon while on the other its state-owned company, Norsk Hydro ASA, has recently taken over major bauxite mining and aluminium processing businesses in Brazil.^{xxvii} The bauxite industry in Brazil directly threatens the well-being of the Amazon's indigenous peoples and contributes to deforestation.^{xxviii} Compounding these impacts is the fact that major hydroelectric dams are required to supply the energy needs of these aluminium processing plants. Norwegian corporate involvement in the extractive sector in Brazil, a sector which necessitates the displacement of Brazilian Amazonian indigenous peoples and destruction of their territories in order to serve its energy demands, would appear to stand in direct contradiction with its position in relation to respecting the rights of these peoples in the context of deforestation projects. The Belo Monte dam which is strongly opposed by the indigenous peoples of Kingu is one such project which will contribute towards the energy needs of the aluminium industry in Brazil.^{xxix} The controversy in relation to the Belo Monte dam is emblematic of the issues facing indigenous peoples in a series of other dams planned as part Initiative for the Integration of Regional Infrastructure in South America (IIRSA). The IIRSA will construct an infrastructure network of roads, ports and hydroelectric projects throughout the Amazon region, facilitating the export of primary materials including minerals and soybeans.^{xxx} It has been criticized by indigenous peoples for its potentially destructive impacts on the Amazon and the failure to hold good faith consultations with the impacted indigenous peoples to seek

their FPIC.^{xxx1} Norway does not currently have investments in the Belo Monte dam or other IIRRA projects and the potential for involvement of Norwegian companies in these projects is as yet unknown. However, through its trust fund, Norway has existing investments in oil and gas companies (e.g. Occidental Petroleum and Repsol), that have controversial operations impacting on indigenous peoples in the Peruvian Amazon.^{xxxii}

Laos and the Mekong River Basin:

Norway has a history of involvement in controversial dam projects which, as result of major reductions in fish and displacement of communities, have allegedly impacted negatively on the livelihood and well-being of indigenous peoples along the Mekong river basin.^{xxxiii} Norwegian companies, Statkraft and Norplan, are currently involved in the Theun-Hinboun dam expansion project.^{xxxiv} This project has been criticized by Norwegian organizations for its potentially devastating impact on indigenous peoples who reside along the river and who are dependent on it for their livelihoods and survival.^{xxxv} In October 2010 the World Bank confirmed that it would not finance any investments in mainstream hydro projects on the Mekong following the publication of a strategic environmental assessment undertaken for the Mekong River Commission^{xxxvi} which identified the potential negative impacts on riverine communities of proposed dams.^{xxxvii}

ⁱ Prepared by Cathal Doyle Middlesex University Department of Law

ⁱⁱ See Norway Finds Canada's largest publicly-traded company, Barrick Gold, unethical

<http://www.corpwatch.org/article.php?id=15286> Norwegian government declares Malaysian timber giant an unethical company <http://www.culturalsurvival.org/news/malaysia/norwegian-government-declares-malaysian-timber-giant-unethical-company>;

see also Norway throws out Freeport June 2006

<http://www.minesandcommunities.org/article.php?a=220> and Norway blacklists miner Rio Tinto September 2008

<http://news.bbc.co.uk/1/hi/business/7608097.stm>

ⁱⁱⁱ "Look North! Challenges and Opportunities in the Northern Areas" produced by Norwegian Government appointed committee of experts in 2003, (henceforth Look North! Report) available at:

<http://www.regjering.no/Rpub/NOU/20032003/O32/PDF/NOU200320030032000DDDPDF.pdf>.

^{iv} Look North! Report page 100 Norwegian text: 'Offentlige og private petroleumsktører i urfolkomsråder må legge konsultasjonskravene i LO-169 til grunn for sin virksomhet.'

^v Look North! Report (page 86) Norwegian text 'I lys av LO danner begrepet «free, prior and informed consent» et grunnlag nå det gjelder krav til aktører som skal igangsette prosjekter i urfolkomsråder.'

^{vi} CERD/C/CAJ/CO/18 para 17 and CERD/C/USA/CO/6 para 30

^{vii} An open letter President Gloria Macapagal-Arroyo was written in Mangyan 'Hanunuo' script Written and signed by Ponyong Kadlos Coordinator of the Mangyan Federation Kapulungan Para sa Lupaing Ninuno (KPLN) November 23 2009.

^{viii} Letter From MUSGAMAGW TSAWATAIWEK TRIBAL COUNCIL to Vice President Sami Parliament May 18 2009 cc to Norwegian Government, available at <http://www.puresalmong.org/pdfs/sami-parliament-letter-final.pdf>

^{ix} CAJADA: First Nations Leaders Urge Norway to Protect B.C.'s Wild Salmon, Resource Centre for the Rights of Indigenous Peoples (GALDU) <http://www.galdu.org/web/index.php?odas=4347&ngjellal=eng>

^x *ibid*

^{xi} Friends of the Earth Norway complaint to Norwegian Contact Panel For OECD's Guidelines For Multinational Enterprises 19 May 2009 http://www.noa.no/data/f/1/31/00/5_2401_0/Cermaq_klage_NNV_ForUM_18-05-09_%28ENG%29-1.pdf

^{xii} ForUM and Friends of the Earth Norway vs Cermaq AS http://oecdwatch.org/cases/Case_166

^{xiii} The new conquistadors? 'In Power in Chile: Hydropower Project on the Mapuche Indians' territory (De nye conquistadorene? 'In Power i Chile: Vanlykraftprosjekt på Mapuche-indianernes territorium) (FIVAS, Oslo 2008) http://www.fivas.org/fivas/vedlegg/de%20nye%20conquistadorene_fivas%20rapport%202007_30.01.2008_13.55.59.pdf

^{xiv} Chile · Mapuche territory · Protests against Norwegian Hydroelectric Power

<http://www.latinlaser.net.org/node/141>

^{xv} Threat of Dam Construction For Huilliche Communities in Los Rios Region

Posted on 28/11/2010 by Laura Seelan <http://indigenousnews.org/2010/11/28/threat-of-dam-construction-for-huilliche-communities-in-los-rios-region/#more-736>

^{xvi} Report of the Special Rapporteur on the situation of human rights and Fundamental Freedoms of indigenous people, James Anaya Addendum The situation of indigenous peoples in Chile: Follow-up to the recommendations made by the previous Special Rapporteur October 2009 UN Doc A/HRC/12/34/Add.6 Para 35. Translated from the Spanish text.

^{xvii} *Ibid* paras 9-23

^{xviii} Broken Ethics The Norwegian Government's Investments in Oil and Gas Companies Operating in Burma (Myanmar) A Report by EarthRights International, December 2010 available at

<http://www.earthrights.org/publication/broken-ethics>

^{xix} *Ibid* Page 39

^{xx} StatoilHydro's Alaska plans irk environmentalists

http://www.Forskningradet.no/en/Newsarticle/Norwegian_researchers_arm_indigenous_people_in_their_struggle_for_existence/1236685398660

^{xxi} <http://bestshippingnews.com/freight-news/conocophillips-statoil-jointly-announced-interest-in-chukchi-sea-gulf-of-mexico/> see also Report of the Special Rapporteur on the situation of human rights and Fundamental Freedoms of indigenous people, James Ranaa Addendum Situation of indigenous peoples in the Russian Federation A/HRC/15/37/Add.5 23 June 2010 para 47

^{xxii} StatoilHydro's Alaska plans irk environmentalists 08 02 2008

<http://www.aftenposten.no/english/business/article2245126.ece>, US: Court order halts Chukchi Sea oil and gas activity 22 Jul 2010 <http://www.encyclopedia.com/article.aspx?articleid=141412>

^{xxiii}, see http://en.wikipedia.org/wiki/Shtokman_Field

^{xxiv} <http://www.bbc.co.uk/news/business-11316430>

^{xxv} see <http://www.iwgia.org/sw42161.asp>

^{xxvi} Brazil: The double role of Norway in conserving and destroying the Amazon by Chris Lang, 26th May 2010 <http://www.redd-monitor.org/2010/05/26/brazil-the-double-role-of-norway-in-conserving-and-destroying-the-amazon/>

^{xxvii} See Hydro takes over Vale's aluminium business in transforming transaction (May 2, 2010) Norsk Hydro ASA has signed an agreement to take over Vale SA's aluminium businesses to form a resource-rich and fully integrated aluminium company, securing Hydro's bauxite supplies in a 100-year perspective. <http://www.hydro.com/en/Press-room/News/Archive/Stock-exchange-announcements/2010/5/Hydro-takes-over-Vales-aluminium-business-in-transforming-transaction/> See also Janne Ekström 'The Belo Monte project, the world's third largest hydroelectric dam, will be one of the biggest disasters of mankind in history' Amazonas 31, September/ October 2010, Seite 8-12

^{xxviii} Plundering the Amazon August 2009 Michael Smith and Adriana Brasileiro

http://www.bloomberg.com/apps/news?pid=newsarchive&name=mkt_0909_story3.html

^{xxix} Report of the Special Rapporteur on the situation of human rights and Fundamental Freedoms of indigenous people, James Ranaa Addendum REPORT ON THE SITUATION OF HUMAN RIGHTS OF INDIGENOUS PEOPLES IN BRAZIL A/HRC/12/34/Add.2 August 2009 para 57

^{xxx} IIRSA <http://www.iirsa.org/index.asp?CodIdioma=ESP> See also IIRSA <http://www.internationalrivers.org/latin-america/iirsa> Significant areas are expected to be cleared for soybean production. Norway is a major importer of soybean to supply its fish farming business.

^{xxxi} The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples 23-25 March 2009 Legend Villas, Metro Manila, Philippines. See also Report of the Special Rapporteur on the situation of human rights and Fundamental Freedoms of indigenous people, James Ranaa Addendum REPORT ON THE SITUATION OF HUMAN RIGHTS OF INDIGENOUS PEOPLES IN BRAZIL A/HRC/12/34/Add.2 August 2009 para 58 recommending

^{xxxii} "People without rights? The responsibility of Repsol YPF in the Peruvian Amazon" Intermon Oxfam 2007 http://www.intermonoxfam.org/Unidades/Informacion/anexos/8578/070724_People_without_rights.pdf Amazonian Indigenous Leaders Confront Occidental Petroleum at Annual General Shareholder Meeting in LA. Acharu Indigenous Leaders, Actress Daryl Hannah Demand "Occidental Petroleum, Clean Up Pollution in Rainforest!" Amazon Watch May 7, 2010 <http://amazonwatch.org/news/2010/0507-amazonian-indigenous-leaders-to-confront-occidental-petroleum-at-annual-general-shareholder-meeting-in-la>

See also Joint Letter of Concern for the Safety of Tony James December 17, 2010 <http://amazonwatch.org/news/2010/1217-joint-letter-of-concern-for-the-safety-of-tony-james>

^{xxxiii} *Power Conflicts 7 · The Mekong Region* <http://www.fivas.org/sider/tekst.asp?side=114> 'In December 1991 the World Bank approved financing for the Pak Mun project, despite protests from several thousand villagers. USA, Australia and Germany opposed the project in the World Bank because of social and environmental concerns, while Norway supported the project.'

^{xxxiv} *ibid*

^{xxxv} A dam shame Norway's state electricity company is investing in an environmentally unsound project in Laos Tom Fawthrop [guardian.co.uk](http://www.guardian.co.uk), Wednesday 24 September 2008

<http://www.guardian.co.uk/commentisfree/2008/sep/24/energy.norway>; see also Theun-Hinboun Dam Nightmare

Revealed: Resettlement Plan and EIA Riddled with Flaws April 17, 2008 *International Rivers and FIVAS*,

'Norwegian-backed project will plunge 50,000 Laotians into Deeper Poverty'

<http://www.internationalrivers.org/node/2714> Laos: The impact of the Nam Theun 2 dam on indigenous peoples

<http://www.wrm.org.sv/bulletin/62/Laos.html>

^{xxxvi} *Results of Strategic Environmental Assessment of Hydropower on the Mekong Mainstream Released*

Vientiane, Lao PDR 15 October 2010 http://www.mrcmekong.org/MRC_news/pressIO//Results-of-SEA-of-hydro-mekong-mainstream15-Oct-10.htm

^{xxxvii} *World Bank Group Welcomes Strategic Environmental Assessment of Mekong Mainstream Dams*

Confirms that it will not finance investments in mainstream hydro projects

http://www.worldbank.or.th/WBSITE/EXTERNAL/COUNTRIES/EASTASIA/PACIFIC/THAILAND/0,contentMDK:22740418~pagePK:1497618~piPK:217854~theSitePK:333296,00.html?cid=3001_3