

ANDY WHITMORE, PIPLINKS & CATHAL DOYLE, UNIVERSITY OF MIDDLESEX LAW DEPT  
EMRIP/Andrew 120

**Statement to the Second session of the UN Expert Mechanism on the Rights  
of Indigenous Peoples  
Presentation under Agenda Item 4b  
- UN Declaration on the Rights of Indigenous Peoples: Adjudication,  
remedies, repatriation, redress and compensation**

**Comments on paper A/HRC/EMRIP/2009/5 - Report of OHCHR organized  
International Workshop on the Natural Resource Companies, Indigenous  
Peoples and Human Rights**

With reference to this agenda item, the extractive industries are a cause of considerable conflict for Indigenous Peoples. The recent shooting and killing of Indigenous Peoples in Peru while protecting their lands from extractive companies is a particularly brutal example.

We therefore thank the Office of the High Commissioner for Human Rights for submitting to this Experts Mechanism meeting their report on the '*International Workshop on Natural Resource Companies, Indigenous Peoples and Human Rights: Setting a Framework for Consultation, Benefit-Sharing and Dispute Resolution*', which took place in Moscow in December 2008, as a follow up to the 2001 Workshop on the same issues.

The Moscow Workshop was an attempt to bring Indigenous Peoples and extractive industry representatives together, and therefore consisted of frank discussions on issues of major concern to Indigenous Peoples. These included the need to recognize them as rights holders (as opposed to just stakeholders), the requirement to obtain their Free Prior and Informed Consent (FPIC) in relation to all extractive projects in their territories and the need for models of corporate engagement which are based on the recognition of Indigenous Peoples' land rights, regardless of the national legislative framework.

The Office of the High Commissioner report captures much of what was discussed. However, it remains relatively silent on one of the most salient issues raised during the conference from the perspective of Indigenous Peoples - namely that extractive companies recognize the requirement to obtain FPIC, and that FPIC act as the framework and context for all consultations with Indigenous Peoples, including related negotiations pertaining to benefit sharing and mitigation measures.

We feel that it is particularly important for the report of the Workshop to emphasize the requirement to obtain FPIC given the following:

- a) The 2001 workshop (which was the precursor to the Moscow workshop) recommended that *'consultation between indigenous peoples and the private sector should be guided by the principle of free, prior, informed consent of all parties concerned'*. Indigenous representatives at that meeting were clear that the special value of the Office of the High Commissioner as a convener of such discussion was to prioritise a human rights framework for discussions;
- b) In the intervening period the UN Declaration on the Rights of Indigenous People has been adopted in the General Assembly with Article 32 requiring that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.";
- c) This issue of consent was raised by a number of attendees at the Moscow workshop, including the government representatives from Greece and Brazil, who emphasized that FPIC was now the minimum standard to be respected.
- e) The Experts Mechanism recommended in its first session that the Durban Declaration and Programme of Action *'should acknowledge that both the right to self determination and the principle of FPIC are now universally recognized through the adoption of the Declaration'*;

We tabled a submission to the Moscow meeting entitled 'Free Prior Informed Consent – a universal norm and framework for consultation and benefit sharing in relation to indigenous peoples and the extractive sector', outlining the status of FPIC in international human rights law. We would like to submit that paper to the Expert Mechanism with regard to any future research upon this agenda item.

Given the above we wish to make the following recommendations:-

- That any follow up studies conducted by the Office of the High Commissioner or the Experts Mechanism explicitly acknowledge FPIC as the recognized minimum standard that must be respected by all actors in the extractive sector, including the private sector, that wish to engage with Indigenous Peoples.
- That any future studies on the topic of the relationship of the extractive sector with Indigenous Peoples initiated by the Experts Mechanism or the Office of the High Commissioner should be informed by the report of the 2009 UN Permanent Forum's International Expert Workshop on Indigenous Peoples Rights, Corporate Accountability and Extractive Industries. A copy of this report and the 'Manila Declaration' are provided as an attachment to this statement to inform the debate, and we are aware that an Indigenous network is being created as a result of this meeting that can be consulted upon this, or related, issues;
- While understanding the obvious financial constraints of organizing such workshops, it is regrettable that Indigenous Peoples' representation at the workshop was very limited. Independent, direct participation of Indigenous Peoples with expertise of extractive industry operations and human rights is essential. In the interest of ensuring both the relevance and legitimacy of any follow up activities we urge that the United Nations provide a more adequate and flexible funding framework for funding Indigenous Peoples to attend meetings, including such expert workshops.

---

<sup>i</sup> Proposal No 2 of the Experts Mechanism to the Human Rights Council in relation to HRC resolution L/17.