Indian Law Resource Center

Centro de Recursos Jurídicos para los Pueblos Indígenas

www.indianlaw.org

MAIN OFFICE

602 North Ewing Street, Helena, Montana 59601

(406) 449-2006 | mt@indianlaw.org

WASHINGTON OFFICE

601 E Street, S.E., Washington, D.C. 20003

(202) 547-2800 | dcoffice@indianlaw.org

Robert T. Coulter, Esq. Armstrong A. Wiggins

Executive Director Director, Washington Office

Jana L. Walker, Esq. Leonardo A. Crippa, Esq.

Christopher T. Foley, Esq. *Admitted only in Argentina*

*Admitted only in PA* Karla E. General, Esq.

 *Admitted only in NY*

**October 2016**

**Second Session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights**

**Oral Statement for Delivery At Panel IV: Open debate on different approaches and criteria for the future definition of the scope of the international legally binding instrument**

To be effective, this new instrument must directly address indigenous peoples’ collective rights and must include clear legal standards regarding public sector financial institutions that fund transnational corporations and other business enterprises.

**Indigenous Rights**

The instrument must address indigenous rights directly. Many of the human rights of indigenous peoples are held collectively by communities, tribes, nations, or peoples. These include extensive rights relating to self-governance and indigenous ownership and control over lands and resources.

Too often businesses fail to appreciate the extent of indigenous land rights or fail to acknowledge or recognize indigenous governments and decision-making institutions. Indigenous peoples’ collective human rights are sufficiently distinct from other, individual human rights that specific language in the instrument is needed to ensure that they are fully protected.

**Public Sector Financial Institutions**

Infrastructure development projects regularly attract financing from public sector financial institutions. These publically-financed projects often occur on or directly impact indigenous peoples’ lands, territories and natural resources, and they are often undertaken by transnational corporations.

Clarifying the standards that apply to public sector financial institutions will ensure that private business actors and public sector lenders compete on the same level ground, adhere to the same legal standards, and are responsible for upholding the same set of human rights obligations.

An instrument that imposes standards on all business actors and lenders, will be most effective at improving human rights enjoyment for everyone, including indigenous peoples. Including public sector financial institutions within its scope will also contribute enormously to the development and consolidation of international human rights law.

**Recommendations**

We recommend that

1. The instrument address indigenous peoples’ collective rights and create clear legal rules regarding jurisdiction and responsibility for all businesses and lenders.

2. The instrument establish complaint procedures for human rights violations arising from projects funded by public sector financial institutions

3. The instrument’s monitoring body should assess compliance with these rules through periodic reports. The body should monitor compliance with any recommendations it might issue by investigating facts, gathering evidence, and examining the law, in order to ensure that the violation at issue does not recur.

4. Finally, the Working Group should discuss establishment of an international court-like body to provide a forum for victims of human rights violations to pursue their claims when domestic remedies are inadequate.