

## **Working Group on the issue of human rights and transnational corporations and other business enterprises – inputs and suggestions for the 2013 Forum on Business and Human Rights**

### **Recommendations by INCOMINDIOS Switzerland**

#### **1) Specific topics for the Forum 2013**

As Indigenous Peoples are affected by the activities of business actors, especially in the area of extractive industries, the issue of Indigenous Peoples, business and human rights should be generally considered as one of the main topics during the Forum on Business and Human Rights 2013.

Incomindios has the following suggestions for specific topics during the forum 2013:

- Free, prior and informed consent (FPIC). Especially in regard to consultation modalities and information sharing:
  - Business responses to the survey carried out by James Anaya and his team, suggested that “questions remain regarding the scope and implication of consultations, as well as the specific circumstances that may trigger the duty to consult.”
  - “Uncertainty also remains for governments and businesses regarding the identification of communities with whom it is necessary to consult [...]”<sup>1</sup>
  - The Indigenous Peoples lack the knowledge about the relevant human rights frameworks, including their right to FPIC and they do not know the conditions under which extractive industries may legitimately operate within or near Indigenous territories.
  
- The right to property should be another topic for discussion. The UN Declaration on the Rights of Indigenous Peoples proclaims in Art. 26 that the Indigenous Peoples have the right to own [...], which includes “the right of these peoples to participate in the use, management and conservation of these resources” (Art. 15 ILO Convention 169), as well as the consultation with Indigenous Peoples and benefit sharing. Even if it is an often-discussed subject, states and companies do not often respect the Indigenous Peoples traditional property rights (e.g. land).
  
- Find solutions for a better coordination between the WG on Business and Human Rights and other UN institutions concerning the issue of Indigenous Peoples (such as the UN EMRIP and UN PFII) and the Special Rapporteur on the rights of Indigenous Peoples.
  
- Implementation of the UN Guiding Principles (GPs):
  - Encouraging the states and companies to implement the GPs. The states should involve the GPs into their national law and the companies into their policies.

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<sup>1</sup> Human Rights Council (Forum on Business and Human Rights) (2012): *Compilation of the conclusions and recommendations of the reports of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on extractive industries affecting indigenous peoples and other issues related to business and human rights*. Conference room paper. Note by the Secretariat.

- Encouraging the exchange between the states, companies and civil society concerning the implementation of the GPs (best practices...). Discussing potential institutions (as forums).

#### **Suggestions as speakers:**

- Prof. James Anaya (USA)
- Willie Littlechild (Canada)
- Pavel Sulyandziga (Russia), besides his position as a member of the working group we would like to hear him as a representative of Indigenous Peoples
- Saro Pyagbara (Nigeria), the leader of the Movement for the Survival of the Ogoni People (MOSOP)

## **2) Regional dynamics in the implementation of the Guiding Principles (or part of it), including the interaction between regional bodies, individual states and companies**

#### **The International Council on Mining and Metals (ICMM):**

ICMM created a platform for leading companies to work together and with others to strengthen the contribution of mining, minerals and metals to sustainable development.<sup>2</sup>

They developed 10 principles in order to pursue this goal. Principle 4 conforms the Guiding Principle's "due diligence" by asking for an implementation of risk management strategies based on valid data and sound science.<sup>3</sup>

#### **OECD Guiding Principles:**

The OECD Guidelines for Multinational Enterprises "contains a human rights chapter that draws upon and is consistent with the Guiding Principles."<sup>4</sup> On the 19 April 2013 government, business, trade and civil society representatives will come together at a panel session to discuss the first year of implementation following the 2011 Update of the Guidelines. Highlighted discussion issues will be the topic of „due diligence in the financial sector“ or for example the „stakeholder engagement and due diligence in the extractive sector.“

#### **Voluntary Principles on Security and Human Rights (VPs):**

The participants of the VPs have recognized the need for more practical tools to help those responsible for implementation in the field. They developed the non-binding "Implementation Guidance Tools" of the VPs, which provide a range of different tools on which companies may draw, according to their individual needs and circumstances.<sup>5</sup>

#### **EU:**

In October 2011 the European Union published a new policy on corporate social responsibility. They redefined certain key terms in it.

Furthermore the EU is in the process of working out an implementation strategy of the UN Guiding Principles and is motivating its member states to do the same.<sup>6</sup> The UK should publish its national implementation strategies in the next few weeks.<sup>7</sup>

<sup>2</sup> <http://www.icmm.com/about-us/strategy-and-action-plan>

<sup>3</sup> <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>

<sup>4</sup> <http://geneva.usmission.gov/wp-content/uploads/2012/12/DIp-Note-075-12.pdf>

<sup>5</sup> [http://www.voluntaryprinciples.org/files/Implementation\\_Guidance\\_Tools.pdf](http://www.voluntaryprinciples.org/files/Implementation_Guidance_Tools.pdf)

<sup>6</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm)

<sup>7</sup> <http://www.bpcc.org.pl/en/article/uk-national-action-plan-implementing-the-un-guiding-principles-the-process-the-content-and-the-challenges%5B2007170%5D.html>

### 3) Examples of Guiding Principles implementation practices by States, business enterprises or other stakeholders on all or certain aspects of the Guiding Principles

#### **Shift:**

Shift is an independent, non-profit center for business and human rights practice. The organization helps governments, companies and their stakeholders to put the UN Guiding Principles on Business and Human Rights into practice.<sup>8</sup>

#### **Global Business Initiative on Human Rights (GBI):**

The Global Business Initiative on Human Rights (GBI) follows up the work of the BLIHR. BLIHR played an instrumental role in building tools and supporting the need for increased clarity about the roles and responsibilities of corporations with regard to human rights. GBI was initiated to focus on deepening peer learning and to recognize the importance of corporations from all global regions showing committed leadership in respect for human rights. GBI has grown to a group that includes corporations headquartered in Europe, North America, India, Colombia, Singapore, Malaysia and Egypt, and represents 13 industry sectors. In the past three years, GBI members have engaged in multiple peer learning workshops covering a range of topics including assessing human rights impacts, grievance mechanisms, training and investing in high risk markets. They have taken an active role in supporting leadership from the United Nations in clarifying the role and expectation on corporations regarding human rights.<sup>9</sup>

#### **USA:**

The U.S. government is disseminating the Guiding Principles and promoting their implementation in different projects, forums and even in the law. Some examples are:

- The Dodd Frank Wall Street Reform and Consumer Protection Act.
- One of their projects is focusing on building “the capacity of civil society organizations in Bangladesh, Nicaragua, and Zimbabwe to engage with and train on the GPs, by adapting and customizing existing materials and co-training staff of the civil societies organizations as trainers for the private sector, peer organizations and government representatives. The program will focus on one sector in each country: agriculture in Nicaragua, garment manufacturing in Bangladesh, and mining in Zimbabwe. This program is intended to produce country- and industry-specific curricula on the GPs; build the capacity of civil society and stakeholders to use the GPs; increase the knowledge and capacity of businesses, civil society organizations, trade unions and governments to protect, respect and remedy; facilitate multi-stakeholder dialogue roundtables on human rights impacts of the private sector; produce case studies tracking changes in implementing the GPs; and collaborate with and support the work of the Working Group.”<sup>10</sup>
- A second example is the OPIC’s office of Accountability. “OPIC is an agency of the United States government. It provides financing and insurance to U.S. businesses in their investments abroad and works to promote U.S. foreign policy through its private-sector support programs.<sup>11</sup> The OPIC’s Office of Accountability offers an independent recourse mechanism to address local concerns and disputes that occasionally emerge around the environmental, human rights, rights of Indigenous Peoples, and labor rights aspects of OPIC-supported projects. The OA offers both problem-solving and compliance review processes.”
- The U.S. continually meets with various external stakeholders and consults with other governments to identify and discuss best practices and challenges in order to best frame U.S. policies and practices regarding implementation of the GPs.<sup>12</sup>

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<sup>8</sup> <http://www.shiftproject.org/page/who-we-are>  
[http://ec.europa.eu/enterprise/policies/sustainable-business/files/doc/csractionstimeline121213webversion\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/doc/csractionstimeline121213webversion_en.pdf)

<sup>9</sup> <http://www.global-business-initiative.org/about/>

<sup>10</sup> <http://geneva.usmission.gov/wp-content/uploads/2012/12/DIip-Note-075-12.pdf>

<sup>11</sup> <http://www.accountabilitycounsel.org/communities/in-depth-cases/mexico/the-accountability-mechanism/>

<sup>12</sup> <http://geneva.usmission.gov/wp-content/uploads/2012/12/DIip-Note-075-12.pdf>

#### **4) Modalities that may be conducive to engaging key stakeholders and promoting multi-stakeholder dialogue at the Forum**

During the last Forum on Business and Human rights in 2012 were too many and in consequence of that too short events - there have been not enough time for a proper treatment of the particular subjects and for questions by the participants.

There should be less, but longer single events during the Forum on Business and Human Rights 2013 in order to treat the particular subject more deeply and offer enough space for participation (questions/answers and statements).

#### **5) How to enhance the geographical balance and participation by key stakeholders from all regions, including business enterprises and affected individuals and communities**

Enabling the participation of Indigenous Peoples from all over the world. In order to reach this goal, two measures should be taken into account:

1. Information: Developing institutions (networks, platforms, forums...) in order to inform the Indigenous Peoples about participation and other consultation possibilities.
2. Financing: Establishing a Voluntary Fund that allows the participation of Indigenous Peoples on open consultations, regional/international forums and other meetings concerning the subject of Business and Human Rights.