

**Submission to the United Nations Universal Periodic Review of the United Kingdom
(U.K.)**

Submission on behalf of: Indigenous Peoples Links (PIPLinks) and Middlesex University Dept. of Law (U.K.)¹

Submission focus: U.K. responsibility to ensure respect for the rights of indigenous peoples overseas in the context of UK transnational corporations (TNC) activities impacting on them.²

Relevant International Human Rights instruments and associated provisions:

International Covenant on Civil and Political Rights (ICCPR):

Articles 1, 25 and 27 and General Comment 25 - right to self-determination, right to participation and right to culture (including rights to way of life & traditional economic & social activities)

International Covenant on Economic Social and Cultural Rights (ICESCR):

Articles 1, 11 and 15 - rights to self-determination, adequate standard of living (including the right to food and water) and the right to culture.

International Convention on the Elimination of all forms of Racial Discrimination (ICERD):

Articles 2, 5 and 6 and General Recommendation 23 – right to non-discrimination, to participation, to property (including lands, territories and resources) and the requirement to obtain free prior and informed consent.

United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP):

Articles 3, 4, 26 and 32 - right to self-determination, autonomy and self-government; right to lands, territories and resources; right to development and the requirement to consult and co-operate in good faith in order to obtain indigenous peoples' free prior and informed consent in the context of extractive projects impacting upon them.

¹ For details of the submitting organizations see: <http://www.piplinks.org/>; http://www.mdx.ac.uk/aboutus/Schools/business_school/departments/law/index.aspx; Contacts Andrew Whitmore whit@piplinks.com & Cathal Doyle: doncathal@gmail.com

² This submission draws on the submission made to the UN Committee on the Elimination of Racial Discrimination 79th Session (8 August - 2 September 2011) which was made by the submitting organizations in conjunction with Down to Earth and the London Mining Network.

Context:

1. In its 2011 concluding observations to the UK the UN Committee on the Elimination of all forms of Racial Discrimination (CERD) noted its concerns with regard to:

'reports of adverse effects of operations by transnational corporations registered in the State party but conducted outside the territory of the State party that affect the rights of indigenous peoples to land, health, environment and an adequate standard of living. The Committee further regrets the introduction of a legislative bill in the State party which, if passed, will restrict the rights of foreign claimants seeking redress in the State party's courts against such transnational corporations (arts. 2, 5 and 6).'

2. The CERD recalled its general recommendation No. 23 (1997) on the rights of indigenous peoples, and recommended that the U.K

'take appropriate legislative and administrative measures to ensure that acts of transnational corporations registered in the State party comply with the provisions of the Convention. In this regard, the Committee recommends that the State party should ensure that no obstacles are introduced in the law that prevent the holding of such transnational corporations accountable in the State party's courts when such violations are committed outside the State party. The Committee reminds the State party to sensitize corporations registered in its territory to their social responsibilities in the places where they operate.'

3. This submission focuses on the need for greater control and accountability from UK-based extractive companies which impact on Indigenous Peoples overseas. It offers A) a series of potential questions and recommendations for the U.K. in relation to this issue, B) background on the issue and C) an appendix which outlines a number of case studies where these impacts have been felt, including cases where action is urgently needed to prevent future violations.

Suggested questions:

4. In light of the recommendation by the UN CERD to the U.K. Government, what measures does the U.K government envisage to give effect to the 2011 recommendations of the UN CERD?

Specifically does it have a plan to develop the necessary legislative and administrative measures to ensure that acts of transnational corporations registered in the U.K. comply with the provisions of the ICERD, the ICCPR, the ICESCR, the UN DRIP and are consistent with the Guiding Principles on Business and Human Rights developed by the UN Special Representative Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Professor John Ruggie?

5. What mechanisms or avenues does it envisage in order to afford impacted indigenous peoples with the potential to hold these transnational corporations to account for contributing toward violations of their rights?

Specifically would it consider:

- i. requiring extractive companies, and public or private investors funding them, to have policies in place, consistent with these human rights standards, which seek to guarantee that their activities and investments do not contribute to discrimination against Indigenous Peoples.³
- ii. addressing the absence of independent monitoring processes that can receive complaints from Indigenous Peoples, and which have the capacity to conduct investigations leading to enforceable sanctions.
- iii. making appropriate provision for indigenous communities to exercise the right to engage with such processes through the provision of adequate legal aid.
- iv. strengthening corporate reporting and disclosure requirements with regard to material (financial) risks in relation to impacts on Indigenous Peoples' rights.⁴
- v. ratifying ILO Treaty 169 and ensuring that UK registered companies, and those funded by UK investments, operate in a manner consistent with it, and the UN DRIP.
- vi. seeking to use its position as a member of the World Bank Board to ensure that the World Bank is compliant with international human rights standards in relation to respect for the rights of Indigenous Peoples. Specifically, encouraging the public sector arm of the World Bank to update its policies to include recognition of the requirement for Free Prior and Informed Consent, in line with the revised performance standards World Bank's Private Sector arm, the International Financial Corporation (IFC).

Background:

6. A significant number of United Kingdom (UK) registered transnational companies have operations within indigenous territories around the world in the extractive (mining, oil and gas), fisheries and agriculture sectors. Operations associated with all of these sectors have resulted in violations of Indigenous Peoples' rights.⁵ However, extractive sector operations

³ This would build on recommendations made by the CESCR's to State Parties e.g. CESCR 2011 recommendation to Germany that it "ensure that its policies on investments by German companies abroad serve the economic, social and cultural rights in the host countries." E/C.12/DEU/CO/5, para. 10.

⁴ <http://www.business-humanrights.org/media/documents/ruggie/weil-memo-re-guiding-principles-11-jan-2011.pdf>

⁵ See appendix for some examples in Asia, Africa, North and South America.

violations constitute a disproportionately high percentage of them.⁶ These extractive companies registered in the UK are largely funded by UK registered banks, finance companies, and institutional investors, including pension funds and insurance companies. London's position as a centre for global investment, attracting capital from across the world, is the reason why such a large number of extractive companies are registered in the UK.⁷

7. The impact of UK-based investments is therefore significant and widespread, affecting Indigenous Peoples across the globe (see appendix 1 for examples).⁸ Regulating the activities of the UK-based extractive and financial sectors, in accordance with international human rights standards, is therefore an essential pillar of efforts to establish safeguards against the widespread violations of Indigenous Peoples' rights. The extant policies and practices of extractive companies are inconsistent with the UN DRIP and human rights standards. In addition there exists a paucity of standards and policies in the mainstream UK investment sector with regard to the impacts of its investments on Indigenous Peoples' rights.

8. One mechanism which may offer some guidance to the UK Government is ILO Convention 169 on Tribal and Indigenous Peoples Rights. However, the UK Government has so far failed to ratify it. The UK Government endorsed the UN Declaration on the Rights of Indigenous Peoples (UN DRIP) in 2007, but in a statement of explanation offered the view that it was not applicable to the UK as there were no Indigenous Peoples within the UK, ignoring the international obligations associated with endorsement of the UNDRIP. Indeed the UK Government has consistently failed to provide effective monitoring or any adequate safeguards to ensure that UK registered companies (both extractive and financial) comply with any of the UK's international obligations. Compliance with these standards would require it to ensure that these companies have appropriate policies in place, examine their human rights records and where a history of violations exists deny them a UK registration.⁹

9. A number of UK-based companies, and companies with significant UK investments, have failed, and continue to fail, to live up to these standards in practice. This trend is

⁶ John Ruggie, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/2006/97 (2006) Para 25 'The extractive sector - oil, gas and mining - utterly dominates this sample of reported with two thirds of the total... The extractive industries also account for most allegations of the worst abuses, up to and including complicity in crimes against humanity. These are typically for acts committed by public and private security forces protecting company assets and property; large-scale corruption; violations of labour rights; and a broad array of abuses in relation to local communities, especially indigenous people.'

⁷ For example most of the major mining companies including Rio Tinto, BHP Billiton, Xstrata, Vedanta and Anglo American are registered in the U.K.. An overview of mining finance, as well as individual examples, are available from:- <http://moneytometal.org/>

⁸ The scale of mining related investments conducted in the U.K. is evidenced by trading activity on the London Metal Exchange which is estimated to be \$11.6 Trillion a year.

⁹ Nostromo Research, *London, City of Spoils: UK mining companies and the case for stricter oversight*. A draft report for London Mining Network by Nostromo Research, June 2011

expected to increase, particularly in the energy and extractive sectors as demand increases for remaining resources, often located in indigenous territories. 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, sacred sites and their way of life.¹⁰

10. In addition to providing funding to the global operations of UK based TNCs, these extractive sector-based investment opportunities are also a major source of revenue for the UK economy. This fact that the UK economy is directly profiting from these rights violating activities should place, in addition to its legal obligations under the Convention, a significant moral burden on the State to design the measures necessary to protect against such occurrences, to monitor for them and to sanction them where they occur.

11. In this context, and in light of the recommendations made by the CERD it is suggested that the UK be given guidance in relation to the importance of, and potential approaches to 'taking appropriate legislative or administrative measures to prevent acts of transnational corporations [and financial entities] registered in' UK 'which negatively impact on the enjoyment of rights of indigenous peoples in territories outside' Britain, and to ensure that they are held to account.¹¹

¹⁰ See Appendix for examples of U.K. Companies which have impacted or are currently impacting on indigenous peoples enjoyment of their rights.

¹¹ CERD/C/CAN/CO/18 para '17; CERD/C/USA/CO/6 para 30 & CERD/C/NOR/CO/19-20 para 17 'The Committee is concerned about the effects on indigenous peoples and other ethnic groups in territories outside Norway, including impact on their way of life and on the environment, of the activities by transnational corporations domiciled in the territory and/or under the jurisdiction of Norway. (arts. 2, 5 and 6)

In light of its general recommendation 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party take appropriate legislative or administrative measures to ensure that the activities of transnational corporations domiciled in the territory and/or under the jurisdiction of Norway do not have a negative impact on the enjoyment of rights of indigenous peoples and other ethnic groups, in territories outside Norway. In particular, the State party should explore ways to hold transnational corporations domiciled in the territory and/or under the jurisdiction of Norway accountable for any adverse impacts on the rights of indigenous peoples and other ethnic groups, in conformity with the principles of social responsibility and the ethics code of corporations.'