

May 4, 2012

Working Group on Human Rights and Transnational Corporations and Other Business Enterprises

Office of the High Commissioner for Human rights
UNOG-OHCHR
CH-1211 Geneva 10
Switzerland

Dear Esteemed Members of the United Nations Working Group,

Re: Open Consultation – 2nd Session (Geneva) – May 10, 2012

The Justice and Corporate Accountability Project (JCAP) is a Toronto based volunteer organization dedicated to providing legal services and advocacy support to communities adversely impacted by extractive industries in the Americas.

JCAP specializes in legal work and advocacy at the intersection of transnational corporate activities, resource extraction, and communities. Our approach to working with communities is guided by the following principles:

- *Community self-determination* – We provide legal support to communities who are asserting their rights in the face of exploitative transnational resource extraction by assisting them in launching complaints using domestic, transnational, international and regional legal regimes and corporate social responsibility mechanisms.
- *Corporate accountability* – We work collaboratively with a global network of civil society actors concerned by the negative impacts of transnational resource extraction. We support the corporate accountability movement by providing actors within this movement with high quality and relevant legal work and academic research.
- *Transnational legal activism* – We ensure that law students gain the skills and experience needed to practice community-based lawyering in the global economy. Our law students are supervised by *pro bono* lawyers and are assigned legal work that is directly related to the concerns and needs expressed by specific communities and global civil society actors.

We look forward to supporting your efforts to further the protection of human rights for individuals and communities and we are pleased to present the attached recommendations (Annex 1) concerning the issues identified in the concept and discussion note for consultation with stakeholders.

JCAP would like to thank the Working Group for the opportunity to contribute to this session and we offer our encouragement and support for your future work.

Yours truly,

Justice and Corporate Accountability Project

Email: info@justice-project.org

Annex 1

Recommendations of the Justice and Corporate Accountability Project

Themes and Topics

JCAP encourages the Working Group to include the following thematic subjects in the agenda of the First Forum on Business and Human Rights.

- *Indigenous Peoples, Extractive Industries and Human Rights*

Indigenous peoples are disproportionately impacted by resource extraction projects and often suffer unique harms associated with the destruction of lands and ecosystems. JCAP encourages the Working Group to investigate the impacts of extractive industries on the rights of Indigenous Peoples by addressing the topic of Indigenous Peoples, Extractive Industries and Human Rights.

- *Security Forces and Human Rights*

As the Working Group is aware, many of the human rights abuses that have occurred in respect of the extractive industry are at the hands of security forces engaged in the protection of the facilities and premises of private corporations. The operational practices of security forces, both public and private, continue to result in grave violations of human rights and JCAP encourages the Working Group to focus its attention on this critical element of business and human rights.

- *Civil Society Capacity Building and Access to Justice*

JCAP is pleased to note the efforts of the Working Group to engage with members of civil society and appreciates the significant role that civil society plays in enhancing access to justice. JCAP recommends that the Working Group continue and deepen its efforts to engage civil society in the promotion of human rights through the collaborative development of resource materials and training opportunities aimed at enhancing the capacity of civil society actors to promote and protect human rights in the extractive industries by increasing access to justice.

Recommendation 1: JCAP recommends that the following thematic subjects be included in the agenda of the First Forum on Business and Human Rights:

- **Indigenous Peoples, Extractive Industries and Human Rights**
- **Private Security and Human Rights**
- **Civil Society Capacity Building and Access to Justice**

Rights-Holders

JCAP has observed the disturbing application of criminal sanctions to silence the voices of community leaders who have sought to confront the violation of human rights. As a result of the criminalization of many forms of protest and opposition, many community leaders are now subject to detention and/or extended periods of incarceration. In many instances these individuals have assumed great personal risk in their efforts to attain the promise of human rights and corporate accountability. As these individuals lack the freedom to attend or participate in the processes developed to further the mandate of the Working Group, JCAP respectfully recommends that Working Group members conducting country visits include visits to detention centers to engage with community leaders who lack the capacity to otherwise contribute to the country-specific knowledge of the Working Group.

Recommendation 2: JCAP recommends that the Working Group include visits to community leaders incarcerated for their involvement in community protests against extractive industry practices during country visits

Synergies (Indigenous Rights)

Indigenous Peoples are disproportionately impacted by extractive industries. The unique cultural and historical circumstances of Indigenous Peoples can result in distinct forms of harm resulting from violations of human and cultural rights. The effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples will foster tangible improvements in the area of business and human rights. The requirement of free, prior and informed consent is fundamental to the protection of both indigenous rights and human rights.

Recommendation 3: JCAP recommends that the Working Group actively promote the implementation of the United Nations Declaration on the Rights of Indigenous Peoples as a means of enhancing standards and practices with regard to business and human rights including the requirement of free, prior and informed consent.

Other Relevant Considerations

JCAP's engagement with communities adversely affected by the operations of extractive industries has provided unique exposure to the many barriers which inhibit effective community engagement with domestic, regional and international human rights mechanisms. Underlying many of the challenges are the inaccessibility of the applicable legal frameworks and absence of awareness of the options available to pursue effective remedies. The Working Group is uniquely positioned to foster the capacities of impacted communities to access effective remedies through facilitating the development and dissemination of practical information. The Working Group also has the capacity to shape public and political opinion concerning the rights of affected communities and we encourage the Working Group to continue to raise awareness of the past struggles of human rights advocates.

JCAP recommends that the Working Group consider developing the following projects, independently or in collaboration with stakeholders and experts, as a means to enhance engagement with human rights mechanisms and to raise awareness of the challenges associated with the deprivation of human rights.

- **Community/Community Lawyering Guide to Legal Mechanisms:** This research project would identify the legal mechanisms available to communities affected by transnational resource extraction projects and would provide guidance relating to the processes for engaging with those mechanisms.
- **Community-Based Lawyering Experiences:** This project would present the experiences of communities and lawyers working in transnational coalitions to use the law to address problems related to extractive industries. This could happen in the form of a conference or a book project. It would be focused on lessons learned, forms of collaboration, experiences of lawyers from the North and South.
- **The Invisible History of Struggle:** This research project would gather information regarding activists, community leaders and mine workers who have lost their lives in the course of their opposition to the extraction practices affecting their communities. This project would attempt to draw attention to the human cost of conflicts related to extractives and the very real violence that characterizes these conflicts. This project could be presented in a number of forms, including with the use of maps.