Oral Statement of the NGO Mining Working Group
23rd Session of the UN Human Rights Council
Panel Discussion: *The Role of the UN System in Advancing the Business and Human Rights Agenda*
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The NGO Mining Working Group at the UN, based in New York with constituencies in a total of 27 mining countries, welcomes this timely discussion on embedding the Guiding Principles on Business and Human Rights into the post-2015 development agenda.

Leading up to Rio+20, the Working Group on issues of human rights and transnational corporations called on Member States to be alert to the governance gap that the Guiding Principles intended to address—namely, those gaps where "the growth in the scope and impacts of the business sector [is] not matched by a similar rise in the capacity of societies to manage the adverse consequences."[1] Unfortunately, based on the Rio+20 outcome document and the first three sessions of the Open Working Group on SDGs, this governance gap is still a major obstacle to establishing a transformative development agenda focused on increased fulfillment of States solemn human-rights obligations.

The Rio+20 outcome document and the SDG process that it has launched has a strong focus on the private sector's role in promoting sustainable development in partnership with governments. The people-centered focus on development where people are acknowledged as rights- and solution- holders remains weak. The UN system as a whole has a role to play in integrating the Guiding Principles into these considerations, to ensure that the State's primary duty to respect, protect, and fulfill and the responsibilities of business' to respect human rights are at the forefront of the post-2015 framework. However—as the architecture of the Guiding Principles with its third pillar makes clear—these responsibilities are meaningful in practice only to the extent that people adversely affected by business activities have access to effective remedy. The integration of the Guiding Principles into the SDGs is conditioned on the degree that civil society, and especially those that are marginalized from and negatively impacted by development projects, have access to accountability measures.

In this light, the Mining Working Group makes the following recommendations:

1. With the predominant emphasis on government and private sector partnerships, UN agencies must be strong advocates for the **people-centered approach** mandated with the Rio Principles and the right to development.[2] The concept of people-centered development must be **informed by the international human rights obligations** that make up the non-negotiable normative base for political commitments.[3] The UN agencies have a key role in extending the human-rights framework in the discussions beyond the right to food and the right to water, to include a comprehensive rights-based approach to poverty eradication, equality and non-discrimination, and the protection of freedom of expression, association, and participation.

2. Mainstreaming the Guiding Principles in the United Nations system, and especially in the post-2015 framework, must place special emphasis on how they relate to the **rights of indigenous peoples, and especially the right to participate in decision-making related extractive industries**.[4] Special

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[1] OHCHR, Background Note: Rio+20 must be aligned with UN Guiding Principles on Business and Human Rights.
[2] "[H]uman beings are at the center of concerns for sustainable development. They are entitled to a healthy productive life in harmony with nature."
[3] *See* Human Rights for All Post-2015 (May 2013), *available at*: http://www.worldwewant2015.org/es/node/346687.
[4] *See, e.g.*, Comment on the Human Rights Council's Guiding Principles on Business and Human Rights as related to Indigenous Peoples and the Right to Participate in Decision-Making with a Focus on Extractive Industries, UN Doc. A/HRC/EMRIP/2012/CRP.1 (July 4, 2012); Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries, UN Doc. A/HRC/EMRIP/2012/2 (April 30, 2012).

3. Rapporteur James Anaya has given special attention in his mandate to exploring the "negative, even catastrophic impacts of extractive industries" on the social, cultural and political rights of indigenous peoples.[5] This body of work emerging after the adoption of the Guiding Principles must inform how they are disseminated and implemented.

4. The actual advance of the business and human rights agenda in the post-2015 framework will depend on the extent that people around the world understand, support, and invest in the development agenda and the process to define it. The UN has a key role in presenting the SDG process and outcome as an **opportunity for people to increase their ability to meaningfully participate and engage with their representatives at local and national levels**. The international human-rights framework and UN mechanisms remain important spaces for civil society to participate in conversations to further efforts made to fulfill human rights in their country. We support the recommendation that Special Procedure mandate-holders made to Members States for building a mechanism based on the Universal Periodic Review.[6] There should be participatory accountability mechanisms at the national level where civil society can participate and monitor national and sub-national targets aligned with international human rights obligations.[7] Importantly, the existing human rights mechanisms and protection regime should also be envisioned to actively monitor and encourage detailed reporting on the progress toward relevant human-rights related indicators.

Finally, the Mining Working Group would like to pose the following question for discussion:

How will UN strategies and policies in the post-2015 framework prioritize the governance gap in those sectors, such as the extractive industry, which are being uncritically promoted as drivers of sustainable development[8] despite ample documentation in the UN system of adverse consequences, abuses, and disparate negative impact on vulnerable groups?

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[5] Address of Special Rapporteur James Anaya to General Assembly Third Committee, UN Doc. GA/SHC/4013 (October 17, 2011).
[6] An Open Letter from Special Procedures mandate-holders of the Human Rights Council to States negotiating the Outcome Document of the Rio+20 Summit, "If Rio+20 is to Deliver, Accountability Must Be at its Heart".
[7] OHCHR & Center for Economic, Social, and Cultural Rights, Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda (2013), p. 70.
[8] The Rio+20 outcome document began its section on mining asserting that "minerals and metals make a major contribution to the world economy and modern societies;" that "mining industries are important to all countries with mineral resources, in particular developing countries." ("The Future We Want," para. 227) The connection made to sustainable development and poverty eradication is the: "mining offers the opportunity to catalyse broad-based economic development, reduce poverty and assist countries in meeting internationally agreed development goals, including the Millennium Development Goals, when managed effectively and properly." (Id.)