

**Responses to Request by UN Working Group for Business and Human Rights for Input on
'UNGPs 10+/Next Decade BHR' Project**

30 November 2020

Minority Rights Group International (MRG), an international non-governmental organization working to secure the rights of minorities and indigenous peoples, and Lex Justi, a law firm with a business and human rights specialty, would like to respond to the request by the United Nations Working Group for Business and Human Rights (UNWG) for input in connection with its new global project: 'UNGPs 10+/Next Decade BHR.'

We would like to express our appreciation for the UNWG's solicitation of input through a transparent and inclusive approach. We would also like to convey our support for the work that the UNWG carries out to further the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). Please find our responses to the five questions posed by the UNWG below.

Question (1) Where has progress taken place in UNGPs implementation over the course of the last decade? What are the promising developments and practices (by governments, businesses, international organizations, civil society organizations, etc.) that can be built on?

We welcome that a number of UN Member-States were relatively quick to respond to the UNGPs by developing their own National Action Plans. We are also pleased that a further number of States have committed themselves to do so.

Generally, we note that a number of countries address the topic of indigenous peoples in their National Action Plans and that businesses are increasingly recognizing that they need to consider their human rights impacts on indigenous peoples. Additionally, we welcome the guidance provided to businesses on respect for indigenous peoples' rights by the UN Global Compact in 'The Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples' (2013).

Concerning indigenous peoples' right to free, prior and informed consent (FPIC), we believe that a number of guides have provided helpful advice on the content of the right and its implementation by States and businesses, including 'The Business Reference Guide to the UN

Declaration on the Right of Indigenous Peoples’ by the UN Global Compact, the UN REDD Programme’s ‘Legal Companion to the UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC): International Law and Jurisprudence Affirming the Requirement of FPIC’ (January 2013);¹ the ‘Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya’ of 2012² and the 2014 ‘Outcome Document of the World Conference on Indigenous Peoples.’³

Question (2) Where do gaps and challenges remain? What has not worked to date?

A. Obligations of States and Responsibilities of Businesses

i. An Overview

We note that infringements of the rights of minorities and indigenous peoples continue throughout the world and that most often, the businesses perpetrating such abuses are not held accountable and the affected persons are left without a remedy.

We consider that governments set an important precedent and strongly influence the actions of businesses with their policies, legislation and guidance concerning businesses’ respect for human rights, but to date, these measures have been insufficient to address businesses’ violations of the human rights of minorities and indigenous peoples. In this vein, we note that not all of the National Action Plans by States cover the topic of indigenous peoples. Many of the National Action Plans that do reference indigenous peoples, contain only general statements and do not express a commitment to fully respect indigenous peoples’ right to free, prior and informed consent (FPIC). Also, while some National Action Plans mention the rights of national or ethnic, religious and linguistic minorities, there are few specifics on the policies and actions taken by governments to ensure respect for their rights by businesses. Moreover, many countries with minority and indigenous populations, including most countries in the Middle East, Africa, South America and Asia, have not yet submitted National Action Plans or carried out the preliminary National Baseline Assessment.

ii. Minorities

MRG and Lex Justi are particularly concerned that States and the business community have not yet accorded the necessary attention to negative impacts of businesses on minorities. While we note that: i) the UNGPs provide that businesses may need to consider human rights standards contained in the United Nations instruments on ‘national or ethnic, religious and linguistic minorities’ and refer to the need to consider the specific concerns of these minorities in connection with the due diligence process;⁴ and ii) the Committee on Economic, Social and Cultural Rights, in General Comment No. 23 stated that ‘ethnic or religious

¹ UN REDD Programme’s ‘Legal Companion to the UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC): International Law and Jurisprudence Affirming the Requirement of FPIC’ (January 2013) <https://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf>.

² UN General Assembly, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya](#), A/HRC/21/47, para. 85 (July 2012).

³ UN General Assembly, Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, A/RES/69/2, para. 3 (September 2014) <http://www.refworld.org/docid/543f7a114.html>.

⁴ See Commentary to UNGPs 3 and 12.

minorities where these minorities are politically disempowered' 'are often disproportionately affected by the adverse impact of business activities,'⁵ minorities have not yet been sufficiently addressed in documentation by governments, businesses, business associations and civil society organizations, including guidelines and benchmarks. We observe, in particular, the failure to reference minorities in the most recent draft of the proposed UN treaty on business and human rights.⁶

Thus, we would highlight the lack of attention by governments, businesses and others and the significant lacunae in understanding and guidance regarding respect for the rights of minorities.

B. Responsibilities of Lending Institutions – International, Regional and National Financial Institutions and Private Banks

Financial and investment institutions do not sufficiently set forth the condition, in contractual documents, that businesses must respect the human rights of minorities and indigenous peoples, including the obligation to respect indigenous peoples' FPIC. These institutions are also not assessing the past and ongoing performance of businesses in respecting the rights of minorities and indigenous peoples in determining whether to provide financing.

C. Protection of Human Rights Defenders

The continued and increasing number of threats to the lives and welfare of human rights defenders attest to the lack of adequate measures by States to ensure the protection of human rights defenders in general, and minorities and indigenous human rights defenders specifically. In addition to the failure to ensure human rights defenders' physical well-being there is also a failure by States to guarantee their freedom of expression.

A significant proportion of human rights defenders are targeted because they are specifically working on land, indigenous peoples' and environmental rights. According to Frontline Defenders, 40 per cent of the 304 Human Rights Defenders who were killed in 2019 worked on these issues.⁷ Given these topics, there will almost invariably be some form of business link to the killing, even if the act of violence itself was carried out by State or non-state armed actors. This interlinkage between business and State interests is particularly concerning as this means that human rights defenders at risk are unable to seek State protection, and they and the families of those who are killed lack any means of redress.

⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, para. 8, U.N. Doc. E/C.12/GC/24 (10 Aug. 2017).

⁶ [Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises](#), (Second Revised draft, 6 August 2020).

⁷ Frontline Defenders, *Global Analysis 2019* (January 2020).

https://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf.

D. Due Diligence Process

i. Generally

Due diligence is also not consistently carried out throughout all phases of the project relative to minorities and indigenous peoples. In particular, we note the dearth of human rights due diligence with respect to minorities and that this must be done so in a manner that effectively considers issues of gender, vulnerability and/or marginalization given the ‘specific challenges that may be faced by ... national or ethnic minorities, religious and linguistic minorities,’ according to the commentary to Guiding Principle 3 in the UNGPs.

Meaningful consultation by businesses, with minority and indigenous communities, should be instituted beginning in the planning stages of a project and continue through the development, construction and operation phases of the project, and should also include the winding up of a project, which may leave infrastructure, land scarred and irreparably damaged, and local persons without employment. The right to participation by minorities and indigenous peoples is not respected since consultation is often carried out in a perfunctory and superficial manner, which results in the process being undermined and also engenders distrust and frustration among communities.

MRG and Lex Justi also have been urging social media and other tech sector companies to address issues concerning their due diligence obligations, including the need to conduct human rights impact assessments and meaningfully consult with affected minority, indigenous and other marginalized communities. When they devise content moderation protocols, they are not consulting in a meaningful way with affected marginalized communities that ensures that these protocols reflect the cultural nuances of any given context.

Businesses are not implementing consultation processes with communities that include discussion of: when consultations will occur; the topics that will be subject to consultation; how the business will engage with the community; how the community will be adequately kept informed in ways relevant to the context; what will constitute consent (or lack of consent) by the community; and the manner in which the decision of the community will be communicated to the business entity. In particular, businesses need to ensure that women and other marginalized groups belonging to minority and indigenous communities have a significant voice within the community during the consultation process. Consultation will also need to address the establishment of complaints mechanisms in order to ensure that these are accessible to all community members and will provide an adequate means of redress.

Businesses’ due diligence processes in connection with their projects and operations also tend to overlook the economic consequences, and cultural and social impacts on minority communities. As with indigenous communities, the adverse human rights impacts of businesses can result in loss of livelihoods and thus, poverty, impact social cohesion, and foster a loss of human dignity.

ii. Environmental Effects

One area that requires increasing attention is the interplay between the effects of a project on the environment, particularly since minorities and indigenous communities often have a close relationship to the natural environment for their livelihoods, but also their cultural and

religious practices. A wholistic approach to impacts requires evaluating the impacts on resources, flora and fauna and the ecosystem and thus, the water, land, natural resources and air, and the repercussions for the human rights of the communities. The impacts of deforestation, the transport, use and disposal of chemicals, and water use should be regularly incorporated into due diligence processes.

Due diligence too often fails to consider environmental impacts from the earliest stages of a project, the planning phase, and to consider not only plans for the construction of the facilities for the project but also the infrastructure, including roads, housing, power, and water facilities that will support and facilitate the operation of the facilities and project.

iii. Other Effects of a Project

There is also a failure by governments and businesses to consider past human rights violations that have affected minority or indigenous communities and ongoing violations that should be remedied. Moreover, human rights due diligence frequently omits a number of aspects related to minority and indigenous communities that may not be immediately apparent. These include:

- the impacts on livelihoods;
- the impacts on roles of community members;
- the impacts on their freedom of movement, which affect their ability to access vital resources and cultural and religious sites on the land;
- the heightened risk of exploitation, such as trafficking, prostitution and sexual violence for women and girls; and
- the consequences of displacement.

Due diligence processes often generally overlook that these problems may be compounded by discrimination faced by communities.

iv. Effects outside the Project Area

The scope of due diligence does not generally take into account that persons outside the project area may also have their human rights impacted by a project. For example, persons who live outside the project area may use lands in the project area or may be affected by a project downstream, such as effluents and emissions. Also, persons who reside outside the project area but who have a collective attachment to the area or who were displaced or had to migrate, but still remain strongly attached to their ancestral lands, are not generally considered when due diligence of a business's human rights impacts are evaluated.

E. Land Issues

As land is an essential component of indigenous peoples' livelihoods and an integral part of their identity and culture, the deprivation of their lands, without their consent, often threatens their very existence. It also contravenes the exercise of their right to FPIC. Governments' failure to record community ownership of land by indigenous peoples, their continued appropriation of the lands of indigenous peoples, and measures to force indigenous peoples to sell their land continue to violate their rights. Also, businesses' failure, as part of their own due diligence, to verify the status of use and ownership of land by indigenous peoples too often results in the violation of their rights.

States and businesses also fail to consider minorities' land rights. The UN Human Rights Committee in interpreting Article 27 of the International Covenant on Civil and Political Rights - which provides that States with 'ethnic, religious or linguistic minorities' 'shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language' - has found that this 'may consist in a way of life which is closely associated with territory and use of its resources.'⁸

When minorities and indigenous peoples convey land to the government or businesses for business projects, a fair and impartial valuation of the land is generally not undertaken, which results in minorities and indigenous peoples receiving inadequate compensation for their lands. There are multiple issues at stake. One is that many minority and indigenous communities, usually in centuries-long sustainable relationships with their lands, may not necessarily 'improve' (i.e. build permanent structures) their property in the sense that is required to ensure recognition of their title under property laws inherited from or influenced by previous colonial regimes. Rather, their use of their lands and resources may often be in intangible ways, including imbuing features of their lands with sacred values. This makes the communities' displacement from their lands even more fraught, while also meaning that any compensation received does not adequately address their loss.

F. Free, Prior and Informed Consent and Meaningful Participation

i. Generally

Governments have still not adopted legislation and taken measures to guarantee indigenous peoples' FPIC rights. In addition, businesses are still not applying FPIC in a manner that fully respects indigenous peoples' rights, and in particular, with respect to their right to consent or withhold their consent to a project. The provision of information to indigenous peoples about the project and its projected impacts is an essential component to indigenous peoples right of FPIC.

ii. Minorities

There is a lack of recognition by States and businesses to the claim by minority groups that they also have a right, in at least certain cases, to FPIC because they, like indigenous communities, own land communally, have religious and cultural links to land and natural resources, and suffer from marginalization and a lack of political power within the country.⁹

⁸ Human Rights Committee, *General Comment No. 23: Article 27 (Rights of Minorities)*, para. 3.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (8 April 1994). The Committee specifically references, in a subsequent paragraph that 'culture manifests itself in many forms, including a particular way of life associated with the use of land resources.' *Ibid.*, para. 7.

⁹ The Inter-American Court of Human Rights in the Case of the Saramaka People v. Suriname, involving logging and mining concessions, also found that the Saramaka community, descendants of self-liberated African slaves, while not indigenous, had developed analogous spiritual and cultural relations to their traditional lands. Considered as a tribal community, therefore, the Inter-American Court concluded that they enjoy the same rights. These rights include that the Saramaka should be consulted in connection with the development or investment project planned within territories which the community traditionally occupied. [Case of the Saramaka People v. Suriname, Preliminary

While the right to FPIC does not extend at this time to all minority communities, their right to meaningful participation is not in doubt, but is not understood by businesses. Consultation is in some cases not being carried out with minority communities and in other cases, where it is implemented, is not performed in a manner that provides the community with sufficient information to effectively participate in the consultations. Specifically, consultations are not inclusive of women and other marginalized groups within the communities and is not undertaken in a manner that meaningfully engages the community members in order to allow them to have input into decisions about a project that will affect them.

MRG and Lex Justi observe that minority communities have a fundamental right to meaningful participation in decisions concerning them, as aptly expressed in article 2(2) of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Further, Guiding Principle 18(b) of the UNGPs recognizes the importance of ‘meaningful consultation with potentially affected groups’ and the commentary to this Principle notes the importance of paying attention to ‘individuals from groups or populations that may be at heightened risk of vulnerability or marginalization,’ and thus, to minority groups. However, the lack of guidance on participation and consultation of minority groups results in the nonfulfillment of these rights for minorities in connection with businesses’ due diligence processes.

G. Protection of the Traditional Knowledge of Indigenous Peoples

States and businesses continue to expropriate and fail to accord recognition to the rights of minorities and indigenous peoples as custodians of their traditions. In particular, we note that while growing interest in traditional knowledge and its application to climate adaptation strategies is welcome, this must be in line with the right of minorities to meaningful participation and the right of indigenous peoples to FPIC with respect to their right to maintain their lands, resources and intellectual property.

H. Technology

With the vast panopticon of surveillance, which includes spanning DNA tests, virtual checkpoints, and online monitoring, among others, governments are utilizing and businesses are facilitating violation of human rights.

In addition, businesses in the technology field are failing to consider the exclusionary human rights impact of their technological developments on minorities and indigenous peoples. As

Objections, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights (ser. C) No. 172, paras. 129, 133 (28 Nov. 2007).] Going further, the Inter-American Court stated that:

‘[I]n addition to the consultation that is always required when planning development or investment projects within traditional Saramaka territory, the safeguard of effective participation that is necessary when dealing with major development or investment plans that may have a profound impact on the property rights of the members of the Saramaka people to a large part of their territory must be understood to additionally require the free, prior, and informed consent of the Saramakas, in accordance with their traditions and customs.’ (para. 137)

minorities and indigenous peoples are disproportionately represented among the world's poor, it is not surprising that poverty is itself a major barrier to these groups accessing mobile phones, computers and other technologies. In addition to the issue of affordability, constraints on the ability of minorities and indigenous peoples, particularly in rural or remote locations, to access information provided through internet services is not sufficiently considered by governments and businesses.

Developments in the use of big data, information and communication technologies (ICTs), artificial intelligence, and automation reflect a focus on furthering innovation, efficiency, and speed, but minorities and indigenous peoples are often left out of the planning and design process, which only results in replication of existing patterns of exclusion in new forms. Additionally, the lack of information in minority or indigenous languages and scripts can compound their lack of access. Moreover, for marginalized groups within minority and indigenous communities, such as persons with disabilities, further significant issues arise – for instance, whether websites are accessible and compatible with assistive technologies.

We also observe that new and unforeseen negative impacts on the rights of minorities continue to occur. For example, in the technology sector, events in recent years have highlighted how hate speech and incitement to violence published and disseminated via corporate social media platforms, such as Facebook and WhatsApp, can result in direct harm to minorities and indigenous peoples, as well as other marginalized groups including women, migrants and refugees. The use of Facebook to incite mass atrocities against the Rohingya community in Myanmar, and the use of WhatsApp to foment mob violence against religious minorities and Dalits in India are just two recent and well-documented cases.

While for instance Facebook has taken some steps to address the situation, by establishing protocols, hiring content reviewers and setting up an Oversight Board, as far as we know neither it nor any of the other major social media companies have expressly stated that they adopt or will report against the UNGPs.

Thus, MRG and Lex Justi consider that the failure of information and technology (ICT) businesses to provide special heightened attention to minorities and indigenous peoples results in a failure to identify and address new types of violations of minority and indigenous rights in a timely manner. We would urge the UNWG to prioritise this sector in its promotion of the UNGPs, if it has not done so already.

I. Discrimination in Hiring and Employment

Indigenous peoples and minorities are particularly vulnerable to exploitative hiring practices and employment contracts as well as exposed to poor working conditions. Discriminatory policies and practices by businesses concerning hiring and employment are still prevalent in business. In particular, we note that discrimination against minorities is widespread despite extensive provisions in international human rights instruments prohibiting such discrimination,

J. Employment of Local Community Members by Businesses

In some cases companies have promised local employment as a positive result of a company setting up a project in the area, but often the hopes of people are unrealized when jobs are fewer than promised or expected, are mainly low paid unskilled positions or are only short term.

K. Destabilization of Communities

Businesses that are undertaking projects are not considering the full effects of their decisions. Specifically, they are not evaluating their human rights impacts on: the distribution of jobs; the inflow of labor; the sharing, if any, of profits and benefits from the project; and construction of roads and schools, relative to the local community.

They also are not considering the destabilization created. This destabilization can be magnified when there is a perception by communities in the area of an unequal distribution of benefits among local groups or when companies provide benefits to some members of the community that support the project but not to others. The unequal distribution of benefits can lead not only to conflict among communities but may also foster destabilization between different segments of a community, for example, when younger people obtain jobs thereby creating the risk that older members of the community will lose their traditional roles and risk marginalisation. Moreover, projects attract persons from outside communities and create new businesses, including unwanted ones, such as prostitution, alcohol supply and drug trafficking that affect the social fabric.

L. Provision of Health Services

The Covid-19 pandemic has highlighted the disparities in access to health care, the provision of treatment, and health outcomes of minorities and indigenous peoples. These are only compounded by the lack of health professionals and facilities in areas where minorities and indigenous peoples reside. A key issue has been where States have partially or wholly relied on the private sector in procurement of necessary protective gear and/or offering emergency health care provision. This has led to issues of lack of transparent procurement procedures, and patchy or nonexistent access to protective equipment and health care services for minority and indigenous communities.

M. Remedies

i. Generally

The lack of accountability for violations of the human rights of minorities and indigenous peoples in connection with businesses' projects, and their activities in general, remain crucially insufficient. From a legal standpoint the 'corporate veil' continues to serve as a key obstacle. Additionally, significant practical challenges impede the ability of minorities and indigenous peoples to obtain justice. These include: access to legal procedures; legal procedures are costly, time-consuming, psychologically daunting and require expert legal assistance; and long travel distances and language challenges. In addition, when a legal claim is brought in a country that is not the home country of such persons, then these challenges

become even more daunting. Yet, inoperative or ineffective judicial systems, weak governance or internal conflict can also stymie the ability of claimants to seek justice in their home country for violations of their rights.

While an increasing number of businesses are creating grievance mechanisms for their employees, the lack of grievance mechanisms for affected communities continues. Even when the latter have been created, they are frequently done so with insufficient involvement of communities in the design of the mechanism. The lack of feedback from communities on the design, working and outcomes of the mechanism is required by businesses in order to ensure that the grievance mechanism is effective, consistent with Guiding Principle 31.

National Contact Points under the OECD Guidelines for Multinational Enterprises while an important resource in OECD member States, lack enforcement powers thereby resulting in decisions that cannot be implemented on behalf of persons who have been adversely affected by businesses. Moreover, there is a lack of consistency, in terms of integrity and commitment, among the individual National Contact Points, and thus, in their decisions.

ii. Minorities

Also, we would note from MRG's and Lex Justi's experience, that minority groups, similarly to indigenous peoples, have difficulty accessing effective remedies in the case of business-related human rights abuses. These difficulties can arise, for example, when countries have inoperative or ineffective judicial systems, weak governance or internal conflict. In countries where a fair local judiciary system exists, legal procedures can be costly, time-consuming, psychologically daunting and require expert legal assistance. In response to a request from the Council of the European Union, the European Union Agency for Fundamental Rights issued an Opinion in 2017 that expressly recommends that:

'particular attention should be given to ensuring effective access to remedy in cases of business-related human rights abuse for persons in situations of heightened vulnerability and marginalization, such as children, migrants, *minority ethnic groups such as Roma and Travellers*, indigenous people and persons with disabilities.'¹⁰

Question (3) What are key obstacles (both visible and hidden), drivers, and priorities that need to be addressed to achieve fuller realization of the UNGPs?

Key obstacles that need to be addressed to achieve fuller realization of the UNGPs relative to minorities and indigenous peoples include:

- systemic discrimination against minorities and indigenous peoples;
- failure to include minorities and indigenous peoples in governmental processes for determining development priorities and land use regulations; and
- lack of inclusion of minorities and indigenous peoples and lack of appreciation for their rights.

¹⁰ European Union Agency for Fundamental Rights, 'Improving access to remedy in the area of business and human rights at the EU level: Opinion of the European Union Agency for Fundamental Rights,' p. 8 (10 April 2017) <https://fra.europa.eu/en/opinion/2017/business-human-rights>.

Question (4) What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?

- Need for greater public, governmental and business awareness of the human rights impacts of projects on the rights of minorities and indigenous peoples, particularly on minority and indigenous women;
- Need to address the insufficient awareness of the international human rights of minorities and indigenous communities, based on international human rights standards;
- Need to address failure to include minorities and indigenous peoples in processes such as the creation of legislative standards, industry principles, reporting indicators and judicial and non-judicial mechanisms related to corporate responsibility to respect human rights.

Question (5) In concrete terms, what will be needed in order to achieve meaningful progress with regard to those obstacles and priority areas? What are actionable and measurable targets for key actors in terms of meeting the UNGPs' expectations over the coming years?

[Please note that we respond to each of the two questions in Question 5 separately below.]

A. Generally

Steps to achieve meaningful progress

States should:

- Adopt National Action Plans if they have not done so already
- Promote their own National Action Plans, once adopted, through dialogue with business leaders
- Review and revise National Action Plans, if necessary
- Adopt procurement requirements that require businesses to respect the human rights of minorities and indigenous peoples, through meeting their due diligence requirements, which include conducting human rights impact assessments on their activities
- Require States to consider businesses' impacts on the human rights of minorities and indigenous peoples in their evaluation of whether to provide financing, loan guarantees and export credits to businesses
- Recognize the intersectionality of minority or indigenous status with other types of marginalized status
- Acknowledge that discrimination by businesses does not require a demonstration of discriminatory intent. The phrase 'purpose or effect' in Article 1 of CERD refers to actions or policies that may be textually neutral but are interpreted in a manner that results in discrimination

Businesses should:

- Adopt the UNGPs and report publicly, using them as a framework, if they have not done so already
- Promote an understanding within their business and their value chains of the rights of minorities and indigenous peoples, including women and other marginalized groups in these populations
- Incorporate commitments into their policy statements to respect the rights of minorities and indigenous peoples and include references in their agreements with suppliers
- Explain the steps taken to respect the rights of minorities and indigenous peoples in their corporate reports and in reports on their actions regarding respect for stakeholders' human rights, including the specific measures they have taken to ensure respect for minorities' and indigenous peoples' rights
- Conduct training of management and staff on the rights of minority and indigenous peoples, and the requirements of the UNGPs in reference to their rights

UNWG should:

- Promote adoption of National Action Plans by those States that have not done so already
- Provide guidance to States on how they can encourage businesses to meaningfully consider their human rights impacts on minorities
- Encourage States to address the rights of minorities and indigenous peoples in their National Action Plans
- Produce guidance to businesses on respecting the rights of minorities and indigenous peoples
- Address the rights of minorities and indigenous peoples in annual and thematic reports
- Promote greater awareness by small and medium-sized enterprises (SMEs) of minorities and indigenous peoples
- Develop and disseminate accessible, user-friendly guides on sectors and themes, inter alia based on for instance (but not limited to) UN Docs A/HRC/41/43 on gender and A/71/291 on agri-businesses and indigenous and local communities
- Encourage further research in this area
- Coordinate with the UN Special Rapporteurs on minority issues and the rights of indigenous peoples
- Encourage the UN intergovernmental working group on a draft UN Treaty on Business and Human Rights to specifically mention minorities (along with already inserted mentions of indigenous peoples) in the draft treaty
- Request the Office of the High Commissioner for Human Rights to build upon its Accountability and Access to Remedy research, analysis and reports by examining the particular challenges faced by indigenous peoples and minorities

Educational Institutions:

- Business schools and law schools that are increasingly incorporating courses on business and human rights should include the rights of minorities and indigenous peoples in these courses.

Actionable and measurable targets for key actors to meet the UNGPs' expectations

For States:

- Number of National Action Plans that have been adopted
- More systematic mention of indigenous peoples and minorities in National Action Plans
- Mention of 'minorities' and 'indigenous peoples' whenever other protected characteristics and/or marginalized groups that require particular attention are mentioned
- Increase in procurement requirements of references to businesses' obligations to respect the rights of minorities and indigenous peoples and to consider the impacts of businesses on the rights of minorities and indigenous peoples
- Increase in references to obligations of businesses to respect the rights of minorities and indigenous peoples and to consider the impacts of businesses on the rights of minorities and indigenous peoples in contractual documents between States and businesses concerning financing, loan guarantees and export credits to such businesses

For Businesses:

- Adopt the UNGPs and expressly state intention to uphold them in corporate governance documents
- References to minorities and indigenous peoples whenever listing groups requiring particular attention in policy statements of businesses and in supplier agreements
- Increased references to minorities and indigenous peoples in businesses' corporate reports, which include the specific measures they have taken to ensure respect for minorities' and indigenous peoples' rights

Others:

- Increased references to minorities' and indigenous peoples' rights in corporate indicators and benchmarks
- Increased inclusion of minorities and indigenous peoples in courses in business and law schools related to business and human rights

B. Responsibilities of Lending Institutions – International, Regional and National Financial Institutions and Private Banks

Steps to achieve meaningful progress

- Include provisions in investment loan and guarantee agreements as well as in connection with export credits that oblige businesses to respect the human rights of minorities and indigenous peoples, which obligation should not only be an initial condition to obtaining financing but also an ongoing obligation
- Specifically provide that businesses respect and implement the FPIC of indigenous peoples
- Create stronger mechanisms for monitoring companies' impacts on indigenous peoples and minorities
- Terminate funding and support for such projects where companies fail to rectify human rights violations, despite warnings and advice, and commit serious breaches of human rights

Actionable and measurable targets for key actors to meet the UNGPs' expectations

- Increased number of investment loan and guarantee agreements as well as export credit arrangements that reference the obligation of businesses to respect the human rights of minorities and indigenous peoples throughout the lending period
- Increased number of investment loan and guarantee agreements as well as export credit arrangements that reference the obligation of businesses to respect the FPIC of indigenous peoples
- Termination of funding and support of businesses that have committed serious breaches of human rights

C. Protection of Human Rights Defenders

Steps to achieve meaningful progress

- States should adopt legislation, regulations and policies that protect human rights defenders, including their rights to participation, association and freedom of expression
- States should investigate, prosecute and ensure the fair trials of persons, including governmental officials who violate the rights of human rights defenders

Actionable and measurable targets for key actors to meet the UNGPs' expectations

- Decrease in number of minority and indigenous human rights defenders that are killed, physically harmed and/or denied their right to freedom of expression

D. Due Diligence Process

Steps to achieve meaningful progress

- States should provide guidance to businesses on carrying out human rights due diligence with respect to the rights of minorities and indigenous peoples that covers all phases of a project, including the winding up phase and residual impacts
- The UNWG could provide principles for businesses' implementation of human rights due diligence for disadvantaged and marginalized groups of persons, which would address minorities and indigenous peoples' rights
- Businesses' human rights due diligence should include the intersection of a project's impact on the environment with the impacts on the human rights of minorities and indigenous peoples
- Businesses' human rights due diligence should include:
 - the impacts on livelihoods;
 - the impacts on roles of community members;
 - the impacts on their freedom of movement, which affect their ability to access vital resources and cultural and religious sites on the land;
 - the heightened risk of exploitation, such as trafficking, prostitution and sexual violence for women and girls;
 - the consequences of displacement; and
 - the impacts on persons residing outside the project area

Actionable and measurable targets for key actors to meet the UNGPs' expectations

- Increase in reports by minorities and indigenous peoples of meaningful engagement and participation in human rights due diligence processes

E. Land Issues

Steps to achieve meaningful progress

- Adoption of legislation recognizing customary land rights of minorities and indigenous peoples and adoption of enabling legislation
- Documentation by States of collective land rights
- As part of their human rights due diligence processes, businesses must thoroughly research the titling of any land they seek to lease or procure in order to verify whether minority and/or indigenous communities already hold title, including any customary titles
- If such customary titles are found to relate to the lands in question, businesses must institute all necessary meaningful and effective consultation and participation processes with the communities
- States and businesses need to ensure that they consider the relationship of minorities, along with indigenous peoples, to their lands and the impacts that the deprivations of these lands would have on the communities

Actionable and measurable targets for key actors to meet the UNGPs' expectations

- Increase in national legislation recognizing customary land rights of minorities and indigenous peoples and adoption of enabling legislation
- Increased documentation by States of collective land rights
- Increase in number of examples of recognition of minorities' land rights, along with those of indigenous peoples, in businesses' human rights due diligence processes

F. Free, Prior and Informed Consent and Meaningful Participation

Steps to achieve meaningful progress

For States:

- Acknowledge that FPIC of indigenous peoples applies whenever there are impacts on any of indigenous peoples' rights
- Require companies to respect indigenous peoples' right to FPIC in connection with their procurement processes as well as for any loans, guarantees or export credits provided by the State to the business
- States need to more widely adopt legislation that provides for FPIC regarding development projects that will have an impact on them
- States need to acknowledge the right of minorities to meaningful participation, as well as FPIC in certain circumstances

For Businesses:

- Where businesses are awarded government procurement contracts or receive governmental financing, loan guarantees or export credits, they should carry out and actually report to the government on FPIC processes
- Incorporate statements in policies on FPIC and meaningful participation

Actionable and measurable targets for key actors to meet the UNGPs' expectations

For States:

- Increased number of references to FPIC in National Action Plans
- Increased number of references to FPIC in procurement, financing and loan agreements
- Increased number of examples where States have intervened to uphold the outcome of FPIC processes involving indigenous communities

For Businesses:

- Increased number of references to FPIC in policies
- Increased number of references to FPIC in company reports
- Increased number of examples where businesses have adapted their project proposals in line with the outcome of FPIC processes involving indigenous communities, including curtailing projects if that is the decision of the communities

G. Protection of the Traditional Knowledge of Indigenous Peoples

Steps to achieve meaningful progress

For States:

- Protect the rights of minorities and indigenous peoples to their traditional knowledge and intellectual property rights in legislation and policies

For Businesses:

- Respect the rights of minorities and indigenous peoples to their traditional knowledge and intellectual property rights in policies and reports

H. Technology

Steps to achieve meaningful progress

For UNWG:

- Research and write a Report focusing on business and human rights in the ICT sector
- Conduct outreach to the ICT sector in order to promote adoption of the UNGPs
- Encourage the drafting and promotion of clear and transparent protocols for content posted on social media platforms, especially concerning hate speech
 - The protocols should be formulated in close consultation with representatives of minority and indigenous communities
 - The protocols should be specific and predictable, clearly informing users in advance, as well as assessed against the legality, necessity and proportionality principles set out in international standards concerning freedom of expression

For States:

- Encourage businesses to pursue a more holistic approach to technology with an emphasis not only on affordable pricing and accessible delivery, but also culturally appropriate and inclusive design

- Importantly, an inclusive approach to technology should translate not only to equitable access as users, but also meaningful participation in technology and software development

For ICT Businesses:

- Adopt the UNGPs and expressly state intention to uphold them in corporate governance documents
- Carry out human rights impact assessments at all stages, beginning at the conceptualization, design and testing stages of new technologies, including the algorithms and data sets that will be incorporated in them
- Focus on improving minority and indigenous inclusion, not only as end users of technologies, but also upstream in their design and production. Inclusion should encompass members of minorities, indigenous peoples and other marginalized groups, including women and people with disabilities. Among other measures, this means ensuring products are available in minority languages, including sign languages, and are culturally appropriate for different communities
- Identify potentially discriminatory impacts as much as possible in advance, with all necessary steps taken to prevent and mitigate them
- Undertake human rights impact assessments at all stages, beginning at the conceptualization, design and testing stages of new technologies, including the algorithms and data sets that will be incorporated in them. Potentially discriminatory outcomes should be identified as much as possible in advance, with all necessary steps taken to prevent and mitigate them
- Clear and transparent protocols for content posted on social media platforms, especially concerning hate speech, should be drawn up in close consultation with representatives of minority and indigenous communities
 - These protocols should also be specific and predictable, clearly informing users in advance, as well as assessed against the legality, necessity and proportionality principles set out in international standards concerning freedom of expression
- Content moderation must take into account local contexts, including cultural and linguistic nuances, while remaining coherent and foreseeable
- External complaints mechanisms should be established whereby users and others can draw attention to posts that contain hate speech, incite violence or are otherwise in breach of these protocols