

Water Protector Legal Collective

On-the-ground legal support for the Dakota Access Pipeline resistance at Standing Rock



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ING Bank N.V. (ING Bank)

Head Office

Amsterdamse Poort
Bijlmerplein 888
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The Netherlands

Re: Divestment from the Dakota Access Pipeline

Dear Board of Directors:

We write on behalf of the Water Protector Legal Collective (formerly the Red Owl Legal Collective), which is the on-the-ground legal support team for the past and current encampments that have formed in opposition to the construction of the Dakota Access Pipeline (DAPL).¹

We request that ING immediately withdraw its lending commitments to the Dakota Access Pipeline, as the Pipeline's construction and use violates fundamental human rights, violates treaty-based customary "good faith" international law, policy, and the rights of indigenous peoples as expressed by the United Nations, violates the 1851 and 1868 Fort Laramie Treaties between the government of the United States and the Great Sioux Nation (the Oceti Sakowin), and conflicts with numerous international human rights standards, norms, and principles.

¹ See Solitary Statement: Commitment of Legal Support for All Water Protectors (Sept. 27, 2016), available at <https://d3n8a8pro7vhmx.cloudfront.net/honorearth/pages/2293/attachments/original/1476923648/SolidarityStatementLegalSupport.pdf?1476923648>.

BACKGROUND

The current route of the Dakota Access Pipeline cuts across much of North Dakota including, notably, land recognized as belonging to the Great Sioux Nation—of which the Standing Rock Sioux Tribe is a part—in the 1851 and 1868 Treaties of Fort Laramie. Although the Dakota Access Pipeline was originally slated to cross the Missouri River north of the City of Bismarck, ND, strong opposition from mostly non-Native American Bismarck citizens worried about the Pipeline's threat to their drinking water caused the Pipeline to be re-routed through unceded treaty territories one mile north of the current Standing Rock Reservation (Reservation) border. *See* fig. 1. The area through which the Dakota Access Pipeline has and will be constructed includes numerous documented sacred sites and burial grounds, and serves as the source of subsistence, food, water, medicine, culture, religion, and life for tens of thousands of indigenous people.

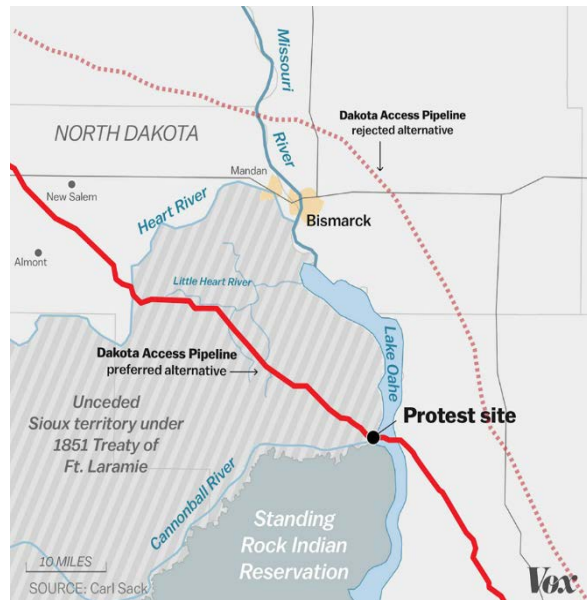


Figure 1

Contrary to U.S. and international law, construction of the Dakota Access Pipeline has proceeded without genuine consultation and without the free, prior and informed consent (FPIC) of any Tribes of the Oceti Sakowin, including the Standing Rock Sioux Tribe. Litigation relating to the adequacy of the consultation process under U.S. law remains pending in federal court in Washington, D.C.

As a result, tens of thousands of individuals for a period of almost a year, known as Water Protectors, have gathered at the current northern border of the Reservation in opposition to the construction of the Dakota Access Pipeline. As the movement has grown, so too has law enforcement hostility to Water Protectors. From August through the present, local law enforcement and DAPL security have attempted to suppress lawful Water Protector speech, prayer, assembly, and travel using a wide range of violent and improper means.

Notably, on September 3, 2016, DAPL security workers set attack dogs on Water Protectors who had gathered nearby for prayer at identified sacred and ceremonial sites that the Dakota Access Pipeline Company was attempting to bulldoze.² Numerous Water Protectors were bitten by dogs, with several seriously injured—including one woman who was bitten on her breast.³ This, sadly, was only the first of many uses of violence against peaceful Water Protectors by local law enforcement and DAPL security. In October, law enforcement officers conducted several mass arrests without giving warnings or dispersal notices, arresting over 200 Water Protectors. Over the course of these arrests, numerous peaceful Water Protectors were beaten, maced, tear-gassed,

² <http://www.truth-out.org/opinion/item/37795-lawyer-s-view-recent-days-at-standing-rock>.

³ <http://bsnorrell.blogspot.com/2016/09/ocheti-sakowin-camp-human-rights.html>.

tased, harmed with Specialty Impact Munitions (SIM) and otherwise arrested with excessive force (resulting in numerous injuries, including the broken arm of a member of the Indigenous Youth Council). On November 20-21, 2016, this violence increased, as law enforcement sprayed peacefully assembled Water Protectors with water hoses in sub-freezing temperature, firing numerous “less lethal” munitions into the crowd (resulting in dozens of cases of hypothermia and numerous serious injuries). On November 28, 2016, a civil rights class action was filed in the United States District Court for the District of North Dakota regarding the November 20-21 use of excessive force by law enforcement on peaceful and prayerful Water Protectors. Plaintiffs requested a temporary restraining order, preliminary injunction and damages.⁴ The Court denied the request for a temporary restraining order and later denied the request for a preliminary injunction without a hearing. Recently, an interlocutory appeal has been filed in the United States Court of Appeals for the Eight Circuit challenging the denial of the request for a preliminary injunction.⁵ The North Dakota District Court proceedings have been stayed pending resolution of the Eight Circuit appeal.

Law enforcement and DAPL security have used other tactics as well to suppress the lawful conduct of the largely indigenous resistance to the construction of the Dakota Access Pipeline. Hundreds of Water Protectors have been overcharged and subjected to inhumane conditions of confinement. (Hundreds of criminal charges have already been dismissed by the overseeing judges based on the local prosecutor’s failure to meet the bare minimal prosecutorial requirements.) Moreover, since late-October, law enforcement has closed Highway 1806—the principal public right-of-way between the Standing Rock Sioux Reservation and Bismarck and Mandan, the nearest major cities. This road closure has resulted in substantial delays in ambulance service to the Reservation and to the gathered Water Protectors, and has imposed a stiff financial cost on Reservation businesses.

Many of these human and civil rights violations occurred as part of DAPL’s efforts to construct the Dakota Access Pipeline against the express wishes of the U.S. government: the Army Corps of Engineers had repeatedly asked DAPL to voluntarily cease construction within 20 miles of Lake Oahe prior to the granting of the easement in early-February 2017.

At the peak of the encampments, the Water Protectors, many of whom are youth, women, and elders, were living under intense and ongoing military conditions and surveillance. This includes the nighttime shining of industrial floodlights onto the encampments, as well as the flying of helicopters and planes overhead at all hours of the night, causing increased and lasting unnecessary trauma.

Altogether, the construction of the Dakota Access Pipeline has resulted in the desecration of numerous sacred and ceremonial sites, significant violence against North Dakota’s indigenous population, and countless civil and human rights violations.

ING is currently providing approximately \$248 million in funding for the Dakota Access Pipeline.⁶ Without this funding, and other funding like it, the Dakota Access Pipeline could not be built.

⁴ *Vanessa Dundon, et al. v. Kyle Kirchmeier, et al.*, (D. N.D.), 1:16-cv-00406.

⁵ *Vanessa Dundon, et al. v. Kyle Kirchmeier, et al.*, (8th Cir.), Case No. 17-1306.

⁶ <http://www.nationofchange.org/2016/09/07/meet-banks-financing-attacks-standing-rock-sioux-protectors/>.

1. The Construction of DAPL Violates Numerous Principles of International and U.S. Law

A standard provision of loan contracts—including, almost certainly, ING’s contracts that help fund construction of DAPL—requires that the execution of the contracts not violate any national or international laws. The numerous violations of international and domestic laws and policies associated with the construction of the Dakota Access Pipeline justify ING’s withdrawal from its loan agreements.

A. *The Construction of DAPL has led to Human and Civil Rights Violations*

The United States has signed and ratified the International Covenant on Civil and Political Rights (ICCPR)⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁸, and supports the United Nation’s Declaration on the Rights of Indigenous Peoples (UN Declaration).⁹ It is a signatory to the Universal Declaration of Human Rights (1948)¹⁰ and the American Declaration on the Rights and Duties of Man (1948).¹¹

The United Nations Declaration on the Rights of Indigenous Peoples was supported by President Obama for the United States on December 16, 2010. It incorporates widely accepted human rights principles and treaties, which secure the collective human rights of indigenous peoples, including the Standing Rock Sioux Tribe. These include:

(1) The Universal Declaration of Human Rights (UDHR) (1948) (approved by the United States in 1948) which recognizes the “inalienable” collective human rights to a nationality (Article 15), property (Article 17), equality (Article 1) and equal protection (Articles 7 and 10) regardless of status (Article 2), life (Article 3), religion, thought, speech, and assembly (Articles 18, 19, 20), against cruel, inhuman, or degrading treatment (Article 5), against arbitrary arrest (Articles 1, 3, 9), and to an effective remedy for violations of these rights (Article 8);

(2) The International Covenant on Civil and Political Rights (ICCPR) (1977) (ratified by the United States in 1992) which, in addition to those rights set forth in the Universal Declaration, secures the right to self-determination, by which indigenous peoples like all other peoples have the right “to freely determine their political status and freely pursue their economic social and cultural development (Article 1, Section 1). Signatory states, like the United States, are obligated to respect and promote the realization of the right to self-determination in indigenous peoples (Article 1, Section 3); and

⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en.

⁸ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en.

⁹ <https://www.justice.gov/otj/native-american-policies>.

¹⁰ <http://unbisnet.un.org:8080/ipac20/ipac.jsp?&profile=voting&uri=full=3100023~%21909326~%210&ri=1&aspect=power&menu=search&source=~%21horizon>.

¹¹ <http://www.oas.org/en/iachr/mandate/Basics/declaration.asp>.

(3) The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1966) (ratified by the United States in 1994), which condemns colonialism and all practices and all practices of discrimination associated therewith and declares “the necessity to bring them to a speedy and unconditional end” and “solemnly affirms” the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations.” Preamble, paragraphs 4 and 5; Article 2, Section 1. The ICERD then secures the rights set forth in the Universal Declaration free of any racial inequality. Article 5.

Finally, the 1906 Geneva Convention and the 1948 Genocide Convention set forth customary international human rights norms, including the prohibition against targeting, violent arrests of, and harm to medics in wartime. Though not explicitly applicable in the conflicts present at Standing Rock, the Geneva Convention’s principles related to the treatment of medics may be utilized as a guide and framework in the determination of the accepted treatment of medics during conflicts.

There are numerous corroborated first-hand reports of human and civil rights abuses, in violation of the UDHR, ICCPR, UN Declaration, ICERD, and the customary norms, standards, and guiding principles found in the Geneva and Genocide Conventions, perpetrated against Water Protectors, including against women, youth, and elders, by police, National Guard, and private hired military personnel. This list includes but is not limited to:

- Use of water on unarmed Water Protectors for hours in sub-freezing conditions;
- Use of Long Range Acoustic Devices (LRAD) as a sound weapon;
- Numerous reports of the reckless deployment of less-lethal firearms, such as:
 - Multiple officers discharging weapons indiscriminately into crowds that included many elderly and otherwise vulnerable people and at horses, resulting in multiple injuries;
 - Multiple officers aiming tear gas launchers at individuals’ heads, at close range or otherwise launching tear gas canisters in a reckless manner;
 - Officers using explosive grenades improperly leading to one woman losing most of the use of her arm from being directly hit by one such canister; and
 - The reckless and indiscriminate use of Specialty Impact Munitions in a crowd, resulting in two people each losing sight in one eye.
- Numerous reports of police and security pushing, shoving, clubbing, and knocking people down;
- Numerous reports of the unsafe use of trucks and ATVs, resulting in, among other things, several people being hit by trucks and ATVs;
- Numerous reports of the unsafe and excessive deployment of pepper spray and tear gas, including against pipe-carrying elders assembled in prayer;
- The targeted use of excessive force against prominent figures and medics, including police grabbing and re-injuring the recently broken wrist (by the police on October 22) of a member of the International Indigenous Youth Council;
- The unnecessarily rough apprehension of numerous prayerful and peaceful people, including several prostrate praying women;

- The improper use of zip ties, resulting in reports of loss of feeling and motion, numbness, and hands turning blue that, in some cases, that continued to persist after they were removed;
- Multiple reports of peaceful, surrendering individuals being tackled to the ground by groups of law enforcement officers; and
- The disruption of prayer and spiritual ceremonies by Tribal members and other indigenous peoples.

As a result of these and other unacceptable police practices, dozens of Water Protectors sustained serious injuries, including numerous injuries requiring treatment by ambulances and the volunteer Camp medics and doctors who have repeatedly responded to the police and DAPL security violence. In fact, numerous fatalities would have likely resulted had the Camp volunteer medics and doctors not acted quickly on numerous occasions. On the other hand, there have been few reports of medical services provided by Morton County or the State of North Dakota other than the minimal, and often insufficient, care offered at the correctional facilities to which Morton County sent arrestees.

On behalf of the Tribe, the Standing Rock Sioux Tribe Chairman, David Archambault, II, sent a letter to Attorney General Lynch on October 24, 2016, requesting an investigation into the militarization of law enforcement efforts (and requesting federal protection, stating:

Perhaps most significantly, we have seen the overall militarization of law enforcement response. The Governor called out the National Guard in September, and military vehicles are being used at roadblocks and checkpoints. Peaceful protests are being met with military vehicles and heavily armed law enforcement personnel in riot gear. Rather than seeking to keep the peace, law enforcement personnel are clearly working in tandem with private security of Dakota Access. To many people, the military tactics being used in North Dakota are reminiscent of the tactics used against protesters during the civil rights movement some 50 years ago. And I believe that there are similarities there. But to us, there is an additional collective memory that comes to mind. This country has a long and sad history of using military force against indigenous people – including the Sioux Nation. I would like to think that those days are past – and that today Tribal rights cannot be ignored and military force cannot be used to suppress Indian people. But when I see the militarization taking place in North Dakota against Indian people, I am genuinely concerned.¹²

There have also been an alarming number of corroborated reports of unnecessary, inhumane, and unconstitutional treatment of individuals after arrest, including:

- The use of dehumanizing tactics including marking arrestees' arms with holocaust-reminiscent numbers, cavity and strip searches, cutting piercings off with bolt cutters, and failing to provide food and water to inmates for long periods of time, containment in dog kennels in makeshift conditions *en masse*; and

¹² <https://assets.documentcloud.org/documents/3189653/Lltr-to-AG-Lynch-Re-Dakota-Access-10-24-16-Pdf-1.pdf>.

- The inadequate medical care provided, including withholding medicines, that resulted in severe discomfort and/or life-threatening health problems.

These human and civil rights violations have been observed and documented by numerous WPLC legal observers, by credible national and international NGOs—including but not limited to Amnesty International USA¹³ and the American Civil Liberties Union of North Dakota^{14,15}—and by the U.N. itself.^{16,17,18}

This is only a small sample of the multitude of ways in which the State of North Dakota and DAPL security have treated the predominantly indigenous Water Protectors without regard to their safety or their constitutional, international and/or indigenous peoples' rights. There are numerous additional documented illegal mistreatments and abuses associated with police actions. If left unchecked, such actions are destined to result in even greater tragedy.

B. Construction of DAPL has led to Violations of Treaties and of International Principles Requiring Meaningful Consultation with Indigenous Peoples

Moreover, construction of the Dakota Access Pipeline would violate the Fort Laramie Treaties of 1851 and 1868. These treaties secure to the Oceti Sakowin the lands through which the Dakota Access Pipeline travels. The Oceti Sakowin, including the Standing Rock Sioux Tribe, has never ceded its claim to the territory and ancestral lands reserved from cession to the United States in both treaties. By Articles II and XVI of the Treaty of 1868, the United States “solemnly” agreed that “no persons,” without the prior consent of the Tribe, “shall ever be permitted to pass over, settle upon, or reside in the territory described in this article.” Neither treaty provided for any right of abrogation in any party to the treaty. The Tribe continues to reject the illegal occupation of this Tribal territory by the United States and its attempts to buy it off. *See, e.g., Hearing Before the Select Committee on Indian Affairs, United States Senate, 99TH Cong., 2d Sess., S. 1453 (Sioux Nation Black Hills Act); Oglala Sioux Tribe of the Pine Ridge Indian Reservation v. U.S. Army Corps. of Eng’rs, 570 F.3d 327 (D.C. Cir. 2009); Lazarus, Edward. Black Hills/White Justice: The Sioux Nation versus the United States, 1775 to the Present (1991).*

¹³ <http://www.amnestyusa.org/sites/default/files/ND-Letter-to-Authorities.pdf>.

¹⁴ <https://www.aclund.org/en/news/aclu-north-dakota-statement-first-amendment-violations-dakota-access-pipeline-protests>.

¹⁵ <https://www.aclu.org/blog/speak-freely/surveillance-state-descends-dakota-access-pipeline-spirit-camp>.

¹⁶ <http://cdn5.iitc.org/wp-content/uploads/IITC-Press-Release-Standing-Rock-October-28-2016-Final.pdf> the major signatories.

¹⁷ *See* 23 September 2016 UN news and statement ‘North Dakota: “Indigenous peoples must be consulted prior to oil pipeline construction” – UN expert’, at <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/162-north-dakota-pipeline>.

¹⁸ *See*, for example, Amnesty International on 28 October 2016, ‘Amnesty International USA to Monitor to North Dakota Pipeline Protests’, <http://www.amnestyusa.org/news/press-releases/amnesty-international-usa-to-monitor-to-north-dakota-pipeline-protests> and ‘October 28 letter to Morton County Sheriff’, http://www.amnestyusa.org/sites/default/files/pdfs/Letter_OctoberIssues.pdf

The illegality of the United States' occupation of treaty land has been considered by international courts, which have consistently ruled against the United States. In *Dann v. United States*, Report No. 75/02, Case 11.140 (2002), the Inter-American Commission on Human Rights held that the attempt by the United States to buy off an indigenous nation rather than return territory and lands occupied by settler colonialists, violated the indigenous nation's collective human rights to property and to an effective remedy. In 2006, the United Nations Committee on the Elimination of Racial Discrimination, the U.N. body tasked with enforcing the ICERD (which as a ratified treaty is binding on the United States and is part of U.S. domestic law), affirmed the *Dann* ruling, condemned this money-only policy as racially discriminatory, and issued an urgent request that the United State bring its laws regarding Native peoples and nations into compliance with international human rights law. The Standing Rock Sioux Tribe asserts a just and legitimate claim under international law to both the enforcement of the Fort Laramie Treaties of 1851 and 1868 and to its territory and lands that have been unlawfully taken and occupied by the United States since the 1870s.

Yet the Dakota Access Pipeline was redirected across lands given to the Standing Rock Sioux Tribe in its treaties from its original route north of the City of Bismarck, ND, in part to avoid non-indigenous lands and communities. The current Dakota Access Pipeline route crosses the Missouri River, the sole source of drinking water for the Tribe, immediately upriver of the Tribe's water intakes. As a consequence, a spill could leave the Tribe with no access to potable water. This places the people of the Standing Rock Sioux Tribe at disparate risk of harm and therefore violated their collective human rights as secured by the U.N. Convention on the Elimination of All Forms of Racial Discrimination as well as the Executive Order on Environmental Justice, EO 12898.

Unsurprisingly, on September 2, 2016, the U.N. Permanent Forum on Indigenous Issues concluded that the Dakota Access Pipeline was approved in violation of international principles requiring states to involve native people in decisions about development affecting their territory.

Standing Rock's Chairman went to Geneva to testify before the U.N. Human Rights Council September 21, 2016.¹⁹ On September 22, 2016, Victoria Tauli-Corpuz, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, issued a statement calling on the United States to immediately halt construction of the Dakota Access Pipeline, in recognition of the dire and direct threats to the drinking water, burial grounds, and sacred sites of the Standing Rock Sioux Tribe.²⁰ Ms. Tauli-Corpuz's call for the United States government to take action to halt the Dakota Access Pipeline was endorsed by other United Nations Experts, including the Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst; the Special Rapporteur on the human right to safe drinking water and sanitation, Mr. Léo Heller; the Special Rapporteur on human rights and the environment, Mr. John H. Knox; the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai; the Special Rapporteur on cultural rights, Ms. Karima Bennoune; the UN Special Rapporteur on human rights and hazardous substances and wastes, Mr. Baskut Tuncak; and the Current Chairperson of the Working Group on business and human rights, Mr. Pavel Sulyandziga.

2. Construction of the Dakota Access Pipeline Violates ING's Corporate Values

¹⁹ <http://indiancountrytodaymedianetwork.com/2016/08/20/dakota-access-pipeline-standing-rock-sioux-issue-urgent-appeal-united-nations-human>.

²⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20570&LangID=E> .

Moreover, the actions of the Dakota Access Pipeline are contrary to ING's own stated human rights values. For example, ING states that its values include the following,

From the projects we finance to the lighting in our offices, we are mindful that every aspect of our business has social and environmental impact. We respect human rights and care for the environment, avoiding or managing impact.²¹

As this letter has discussed at length, the social and environmental impacts of DAPL are severe, and fall disproportionately on North Dakota's indigenous population. ING cannot "respect human rights and care for the environment" while funding the perpetrator of America's latest great human rights crisis.

The Dutch Government, whose land, laws and policies house ING headquarters, which are based in Amsterdam, has its own history-making in progress regarding accountability-based standing in divestment/trade as well as Netherlands-based companies and related human rights violations abroad.²² Given ING's commitment to its good-standing in the public eye, for example in its acclaimed 2014 'Oscar' for customer service,²³ ING holds a heightened responsibility to divest on account of these ongoing human rights violations.

3. The Construction of DAPL is Only the Latest Black Mark in the History of Extractive Industries and Indigenous Peoples

Finally, extractive industries, and the institutions that provide the financial backing for their activities, have a long and disturbing relationship with indigenous peoples and nations. ING has a moral duty, widely recognized in the international community, to withdraw its funding from DAPL so as to avoid being complicit in the further exploitation of indigenous peoples.

The international community has recently engaged in a discussion of the social responsibility of extractive corporations to the communities they impact, including in relation to corporate human rights violations. In 2009, the United Nations Expert Group on Extractive Industries, Indigenous Peoples' Rights and Corporate Social Responsibility issued their report to address this corporate obligation.²⁴ In its report, the Chairperson of the International Expert Group remarked:

Indigenous Peoples around the world have continued to suffer violations of their human rights on a regular basis. This is especially the case in the context of extractive industries, such as mineral, oil and gas extraction, which disproportionately impact Indigenous Peoples. Human rights violations range from

²¹ <https://www.ing.com/About-us/ING-Values-1.htm>

²² Peter R. Baehr, Monique C. Castermans-Holleman and Fred Grünfeld, Human Rights in the Foreign Policy of the Netherlands, IntersentiaNV, Belgium: 2002, pg. 71 (in Chapter 3, 'A Showpiece of Human Rights Policy: Chile'). Akpan v. Royal Dutch Shell PLC, Arrondissementsrechtbank Den Haag [District Court of The Hague], Jan. 30, 2013, Case No. C/09/337050/HA ZA09-1580 (ECLI:NL:RBDHA:2013:BY9854)

²³ See ING website at <https://www.ing.com/Newsroom/All-news/NW/ING-wins-the-Oscar-of-Customer-Service-in-the-Netherlands.htm>

²⁴ E/C.19/2009/CRP.8 (May 4, 2009).

violations of Indigenous Peoples' right to self-determination, rights to lands, territories and resources, health and culture, food and water, as well as displacement and violations of the most basic civil and political rights, such as arbitrary arrests and detention, torture, enforced disappearances and killings.²⁵

On the Role of Corporations, the Expert Group stated:

According to the provisions of the UNDRIP, extractive industries must not operate on indigenous lands or territories without obtaining the free, prior and informed consent (FPIC) of the relevant communities and Indigenous Peoples. This includes the right to say no to extraction or exploration. FPIC is a right and not an obligation and it is therefore for Indigenous Peoples to determine whether they will engage in discussions or not. FPIC is not a single decision but rather a process that occurs in stages and which can be revoked.²⁶

Specifically, as to international financial institutions (IFIs), the Expert Group remarked:

While international financial institutions (IFIs) tend to have policies on Indigenous Peoples that can safeguard their rights and interests, particularly in countries that do not have good laws, these policies are not always implemented. Moreover, it is extremely problematic that IFIs have not adopted the requirement for free, prior and informed consent (FPIC). Indeed, IFIs have confused the issue by instead calling for free, prior and informed "consultation," which has no clear meaning and has had problematic results. For example, in some cases, governments have used this as grounds to simply notify indigenous communities of extractive industries projects that would impact them, rather than asking for their consent.²⁷

The Expert Group concluded that "IFIs could play an important role in setting international environmental and human rights standards concerning extractive industries."²⁸ It made the following recommendations that extractive industries corporations:

Adopt the UN Declaration on the Rights of Indigenous Peoples as a minimum standard;

Respect the rights enshrined in the UN Declaration regardless of a host government's acknowledgment of the human rights of Indigenous Peoples or failure to protect these through national law;

Fully integrate considerations of human rights and environmental standards in all areas of their work, including staff assessments based on staff records;

Recognize the rights of Indigenous Peoples over their lands as the basis for negotiations over proposed extractive industries, as well as the organization of

²⁵ Id. at 4.

²⁶ Id. at 5.

²⁷ Id. at 12.

²⁸ Id. at 13.

engagement, partnership and sharing of financial benefits. In instances where Indigenous Peoples consent to extractive activities on indigenous land, payments or benefit sharing arrangements should be based on annual reviews throughout the life of the activity. Incomes from any extractive activity must cover all costs associated with closure and restoration and include sufficient funds to provide for potential future liabilities;

...

Develop and enforce policies on human rights;

...

Be accountable to Indigenous Peoples for damages resulting from past extractive activities that affected indigenous lands and livelihoods and provide compensation and restitution for damages inflicted upon the lands, territories and resources of Indigenous Peoples, and the rehabilitation of degraded environments caused by extractive industry projects that did not obtain FPIC;

Submit themselves to the jurisdiction of indigenous courts and judicial systems in whose territories they operate;

Ensure respect of FPIC including full transparency in all aspects of their operations and stop dividing communities to obtain FPIC.

Always regard indigenous communities as having control and ownership of the land and territory, regardless of whether these rights are recognized by the relevant governments or not.²⁹

Energy Transfer Partners, the Texas company behind the Dakota Access Pipeline, and its affiliated entities, have a long history of violations of environmental laws, often in ways that implicate indigenous populations, including as described in pending lawsuits by the states of New Jersey, Vermont, Pennsylvania, and the Commonwealth of Puerto Rico and the City of Breaux Bridge in Louisiana over MTBE contamination of groundwater. These companies have been repeatedly cited for releases of hazardous materials from pipelines and facilities in Ohio, Oklahoma, Louisiana, Missouri, Texas, Pennsylvania, and Hawaii.

²⁹ Id. at 13-14.

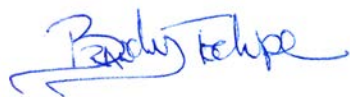
CONCLUSION

Legally and morally, ING should divest from, and revoke its loans in support of, the construction of the Dakota Access Pipeline. ING cannot continue to ignore the consequences and ramifications of continuing to support the ‘wrong team’ in what will be remembered as one of the most profound acts of American Indian resistance to occur in the United States in this century. ING has a choice to stand on the right side of history, with the Standing Rock Sioux Tribe and the world in saying “No to the Dakota Access Pipeline.” In doing so, ING will adhere to international and national laws and best promote human and civil rights.

Without divestment, ING risks being documented and remembered as a supporter of human rights violations against the Standing Rock Sioux Tribe and its supporters. ING has the ability to set a positive example: that banks and investors can uphold the laws, human rights, and ethics to which they and their partners must be accountable.

If you desire further information, evidence, or communication please do not hesitate to contact us immediately.

Very truly yours,
WATER PROTECTOR LEGAL COLLECTIVE



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