

Declaration of the Caucus of Indigenous Peoples

United Nations Forum on Business and Human Rights 26-28 November 2018

The Indigenous Caucus met in Geneva, from November 25-28, 2018, within the framework of the United Nations Forum on Business and Human Rights. The Caucus consisted of a diverse representation of indigenous peoples from different parts of the world. Based on our experiences we concluded that states are still not complying with basic principles of international law, such as self-determination, respect for the exercise of self-government, fulfilment of the fundamental right to consultation and free, prior and informed consent, respect for the ancestral territories inhabited by our communities, the right to our own forms of economic, social and cultural development, and the right to pursue our struggle for a decent quality of life.

In addition, it was evident that, relying on the apathy and indifference of state bodies whose duty it is to guarantee our rights, companies continue to violate the basic right to consultation and free, prior and informed consent.

This Indigenous Caucus pays tribute to all the leaders of our peoples who are being systematically criminalized, threatened, persecuted and even murdered, because of their defense of our territories and their exercise of the right to self-government in a context in which extractive, energy and agribusiness projects have been imposed upon us.

For these reasons and many others, the Indigenous Caucus calls for the following:

States should:

- a. comply with their obligations to recognize the existence and rights of all indigenous people living in their territories. They should guarantee and enforce international human rights standards pertaining to the collective rights of indigenous peoples, including those recognized in ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples, such as the right to self-determination, the right to lands, territories and natural resources; the right to culture and spiritual beliefs, the right to self-government and respect for customary law, and the right to their own frameworks, practices and protocols to implement consultation and free, prior and informed consent;
- b. promote the full participation of indigenous peoples in all the phases of design, realization, validation and verification of human rights impact assessments. These assessments should address the economic, social, environmental and cultural rights of indigenous peoples;
- c. pay special attention to the cumulative and irreversible impacts of macro-regional infrastructure projects on the human rights of indigenous peoples in many countries;
- d. guarantee that businesses respect indigenous peoples' rights as a part of their human rights due diligence. State should also fully address the concerns of the indigenous peoples in developing and implementing national action plans. This implies:

- strengthening capacity of administrative and legal mechanisms in relation to the rights of indigenous peoples, including through training of judges and policy makers;
- effective follow-up and implementation of the recommendations of OECD national contact points (NCPs) and other remedial mechanisms, including the recommendations of the Working Group on Business and Human Rights;
- establishing a remedial mechanism for violations that take place both within state borders and those committed extraterritorially by companies registered in their jurisdictions.

Companies along the entire supply chain, including private investors, should:

- a. respect the rights of indigenous peoples, whether or not those peoples are officially recognized by the states in which they reside;
- b. assume their human rights responsibilities, and consistently implement rigorous, transparent and effective individual and collective human rights due diligence processes with respect to indigenous peoples, including their territorial and cultural rights, their right to self-government and to free, prior and informed consent.

International financial institutions and national and multilateral banks,

through their social and environmental safeguards, these banks should require that companies fully comply with the Guiding Principles on Business and Human Rights and the minimum standards enshrined in the United Nations Declaration on the Rights of the Indigenous Peoples before financing projects that could affect ancestral territories and during the implementation of such projects.

All the above-mentioned actors with interests that might affect ancestral territories, should

- a. protect and respect the rights of indigenous women and prevent impacts of business activities on them as indigenous women guarantee the continuity of our peoples;
- b. refrain from implementing projects in conflict zones that might put the physical or cultural survival of indigenous people, or the integrity of their territories, at risk;
- c. refrain from implementing projects that might affect indigenous peoples in initial contact or voluntary isolation;
- d. adopt zero tolerance policies for acts of violence, militarization, criminalization against indigenous communities and indigenous human rights defenders, and completely reject their being tagged as terrorists.

Finally, we call upon the UN, including the Working Group on Business and Human Rights, to disseminate and promote these recommendations in all its operations and dealings with these actors. We further call upon the UN to continue to guarantee and broaden the spaces for participation of indigenous groups at the Forum.

We cannot talk of peace if we are violating Mother Earth, the giver of life. We declare from the heart of our territories that we will continue in the defense of Mother Earth, because our survival is that of humanity itself.

Thank you.

ANNEX A. Contribution from Asia to the Declaration of the Caucus of Indigenous Peoples

1. Recognising that a significant number of Indigenous Peoples lack acknowledgement from their respective national States, and they refer to them with different terms such as mountain tribes, ethnic minorities or other local terms.

a) We call upon States to recognise the status of Indigenous Peoples who live in their territories and to apply the international standards of human rights on free, prior and informed consent in the context of due diligence in terms of human rights with those groups of people; and to respect them as indigenous peoples who hold special collective rights embodied in the international standard framework.

b) We call upon companies, including investors, from all the supply chain to:

- Respect the rights of Indigenous Peoples, no matter whether they have been (or not) officially recognised and no matter the term by which they have been named by the State;
- Implement process of due diligence in terms of human rights that are rigorous, transparent and effective, ensuring that the individual and collective rights of indigenous peoples are respected.
- Adopt zero tolerance policies for violence acts, militarization and state terrorism, threats and pointing at indigenous communities and defenders for human rights.

2. Given the lack of due acknowledgement and implementation of free, prior and informed consent, the basis of which is the self-determination right of the peoples, within the framework of process of due diligence in terms of human rights related to indigenous peoples, it is recommended that:

a) Any project or activity that affects indigenous peoples or their lands, territories and natural resources must be object of a due diligence in terms of human rights that addresses collective rights of indigenous peoples, thus, they would be fulfilling duties and obligations both of States and Companies.

b) As part of the due diligence in terms of human rights to fulfil the duty of obtaining free, prior and informed consent from indigenous peoples, they must guarantee that the rights of indigenous peoples to their lands, territories and resources, to their culture and spiritual beliefs and their standard frameworks, protocols and rules to implement free, prior and informed consent, are fully respected. This process must be defined by the indigenous peoples themselves and their participations in all levels must be guaranteed.

c) Indigenous peoples have the right to fully participate in all the stages of design, implementation, validity and verification of impact assessments on human rights. These assessments must take into account social, economic and cultural rights of indigenous peoples.

3. In recognition of the fact that indigenous peoples suffer serious violations of their human rights in the context of activities of companies which operate in or near

their territories, and the fact that there aren't any effective and appropriate redress mechanisms to remedy those violations, States must fully address indigenous peoples' concerns when they develop and implement National Action Plans to implement Guiding Principles on Business and Human Rights. These violations come from contexts that include appropriation of lands for massive expansions of agribusinesses, territory destruction and relocation caused by projects of the extractive industry and other "development megaprojects" or infrastructures, militarization of territories, murders, criminalization of human rights defenders and lack of justice access projects. National Action Plans must address:

a) Enhancement of legal and administrative mechanisms, even through judge training and policy makers on indigenous peoples training;

b) Effective follow-up and implementation of the recommendations of OECD national contact points (NCPs) and other remedial mechanisms, including the recommendations of the Working Group on Business and Human Rights;

c) Establishing a remedial mechanism for violations that take place both within state borders and those committed by companies registered in their jurisdictions, no matter if the act has been committed in or outside its territorial jurisdiction.

d) Encouraging effective coherence and coordination between ministers and governmental departments in order to achieve consistency in rights of indigenous peoples acknowledgement and protection.

e) Protection of people who defend human and indigenous rights, and indigenous peoples and communities, from any form of attack, intimidation, pointing and threats.

f) Revision, setting or derogation of existing laws and policies in order to ensure that they are conformed and aligned with the international standards on human rights.

4. Observing the formulation of an internationally binding treaty to regulate activities from transnational companies and other business activities is in progress. Considering that indigenous peoples are usually the most affected peoples by business activities, the participation of the States in this process must be done with the promotion of both the UNDRIP and the Guiding Principles of Business and Human Rights, as a complementary action to full protection and promotion of the human rights of indigenous peoples in the framework of business activities.

5. On the basis of the previous work from the United Nations Working Group on Businesses and Human rights, which addresses indigenous peoples issues and the need of bigger efforts in this respect, it is urgently recommended that the Working Group:

a. Sets a specific report about free, prior and informed consent of indigenous peoples in the context of due diligence in terms of human rights;

b. Increase the support to the participation of indigenous peoples in the forum, and in other similar programs/activities;

c. Expand spaces for discussion and establishments of rights and issues related to indigenous peoples.

d. Remember and follow up their report from 2016 about supply chains and when required by indigenous people, facilitate dialogues between them and the main actors in this supply change (possibly including primary commodities producers, merchants and feedstock producing companies) in order to ensure that actors within supply change of agribusiness respect the rights of indigenous peoples.

ANNEX B. Contribution of Mesoamerica to the Declaration of the Caucus of Indigenous Peoples

The indigenous peoples suffer from political violence. This happens in different forms, such as persecution, criminalization, threats and offenses against our lives and the physical and psychological integrity of individuals and communities that defend our rights.

The States and companies stigmatize and defame those of us who defend indigenous rights, in such a way as to justify our criminalization and even our death.

Non-compliance of obligations by the States

The States have the obligation to respect, protect and enforce our human rights and they must respect the legitimacy and self-government of the indigenous peoples in our territories. Instead of respecting our right to self-determination, which includes the right to consultation and collective decision making through consensus, they impose development models which are alien to us and a series of activities which harm our communal behavior and possibilities to live in harmony with nature. Examples of this are the extractive industries, which enter our territories by violent means.

The States don't comply with their obligation to protect Mother Earth and indigenous peoples against the interests of companies because they are involved in schemes of corruption and impunity to serve economic groups. This is why, when companies harm our peoples through their activities, the States are also responsible, since they haven't complied with their obligation of protection and thus they must be held accountable. States must protect the rights of indigenous women in a differentiated manner because women suffer the most from the negative impact of business activities in indigenous territories.

The States must warn companies that all the region belongs to its native people. Therefore, States must take all measures necessary to exercise the rights of indigenous people, in agreement with Convention 169 of the ILO, the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples. This means that States must not put forward development plans without the participation of indigenous peoples, review that policies and legal frameworks are consistent with indigenous rights, stop any concessions made to companies without the free, prior and informed consent of peoples and recognize the binding effect of our consultations.

The responsibility of companies to respect the rights of indigenous peoples

The greed of companies is leading them to increasingly interfere with indigenous people. The companies which harm Mesoamerican peoples the most are those involved in activities such as the monocultures of sugarcane, palm, banana trees and pineapple, mining companies, oil companies and hydroelectric companies.

Companies must exercise due diligence, which means they must meet the highest environmental and human rights standards. They must also meet their standards when these companies or their subsidiaries are based in foreign countries, even in countries with lax national law.

Due diligence also implies that companies must fulfill their obligation to pay taxes and not to co-opt legal systems and authorities to maintain certain privileges.

Access to effective redress

In Mesoamerica, companies and States have failed to meet their obligation to compensate when they have damaged indigenous territory. The processes of search for justice undertaken by indigenous people take a long time in internal law systems and many have had to turn to the Inter-American Human Rights System. In the case of rulings in favor of indigenous people in the Regional System, these have not been enforced adequately.

Compensation measures shall respond to the material and spiritual needs of our peoples. We would rather never find ourselves in a situation where compensations are needed. Damage must be prevented and avoided. Part of this damage is irreversible, for instance when it has affected water sources, the health and the lives of the people in our communities. In these cases, the States must take all necessary measures to ensure the criminal prosecution of those who are responsible. Apart from compensatory measures, guaranties of non-repetition must be established.

Education and access to information

Indigenous peoples have the right to access the necessary means to implement information and awareness-raising workshops about our communities. These would include information about the processes to report the violation of our rights. We also demand access to resources to allow us to file lawsuits against the companies which have caused damage or the activities of which pose a risk to our people.

Indigenous people demand to have a suitable environment and means to exercise the freedom of speech and freedom of assembly, so that we find ourselves in more favorable conditions to build networks for cooperation and defense of our rights.

The role of the UN and international institutions

The UN should create better conditions to supervise the States in their exercise of their obligation to respect, protect and enforce human rights. A binding treaty regarding companies and human rights is crucial for the UN to strengthen their role.

The UN should pay more attention to those National Human Rights Institutions who haven't carried out their role in agreement with the Paris principles.

Further efforts should be made of the part of the United Nations to call for financial support to institutions, individuals and groups defending the human rights of indigenous peoples.

The representatives of Mesoamerica draw attention to the situation of indigenous peoples in **Nicaragua** where defenders of human rights are murdered, forced to relocate and deprived of their territories. We call for the granting of these peoples' territories and the invasion of third parties to stop.

ANNEX C. Contribution from South America to the Declaration of the Caucus of Indigenous Peoples

Nowadays, States are losing sovereignty since the system that makes it possible for companies and investors to file a lawsuit against arbitrary courts, also allows them to have to compensate them by lawful acts in the frame of their regulatory faculty.

On the other hand, we have seen a weakening of environmental standards frameworks in our countries as well as political persecution and criminalization of the environmental and human rights defenders, particularly of those indigenous peoples who defend the integrity of their territories and their environment before the completion of different, extractive, energetic and infrastructure projects; they are not consulted about this or part of the information is hidden from them.

In this context, we urge the United Nations Working Group on Businesses and Human Rights to demand the following specific actions to companies, States, multilateral banks and national development banks, in the framework of due diligence for the implementation of the Guiding Principles on Business and Human Rights.

- Banks must effectively strengthen and implement their framework of social and environmental safeguards before funding projects carried out in indigenous territories.
 - Asian banks, particularly, must establish social and environmental safeguards with high standards in the projects they fund, and implement them.
 - Redress of social and environmental damage, caused by projects carried out in indigenous territories, must be guaranteed by companies, investors and States.
 - Safeguards related to acknowledgement and indigenous territories protection must be enhanced, as a basis to guarantee their basic rights and to avoid being deprived of their territories and forced relocations.
 - Pay a special attention, through the suitable safeguards, of Indigenous Peoples in Voluntary Isolation and Initial Contact.
 - Self-determination and Previous Consultation must be recognized as fundamental indigenous rights. In the case of Previous Consultation, this process must be undertaken from the respect towards the traditional customs of each population.
 - The States must not only demand companies, investors and banks to abide by national law but also to meet the highest social and environmental standards which are internationally recognized, including international conventions approved by countries.
 - The States must push for the development of a baseline about the enforcement of Guiding Principles of Companies and Human Rights. This baseline must enable a National Action Plan to be implemented, which must include the suggestions of indigenous peoples.
 - We call for a public commitment from mining company Cerrejon, to stop damaging the indigenous Wayúu people of the Colombian Guajira with the expansion of their extractive activities.

- We request Convention 169 of the ILO to be taken into account, namely the requirement to consult with Indigenous People, for the projects included in the Initiative for the Integration of the Regional Infrastructure of South America (IIRSA).
- The government must respect and guarantee indigenous fundamental rights and never to forget its role in this regards.
- We call for the free, prior and informed consent to be obtained through consultation proceedings that are adapted culturally to Indigenous Peoples. The use of sacred plants such as coca leaf, tobacco and ayahuasca should be part of such consultation proceedings, if the Indigenous Peoples consulted use these plants.
- We urge the Working Group on Businesses and Human Rights to come into play on Nicaragua and to protect with due diligence, respect and redress the violations in terms of human rights of indigenous peoples.
- We request the language of Convention 169 of the ILO to be taken into account, about reasonable decision-making, with no authoritarianism, in case of not achieving an agreement with indigenous peoples during previous consultation.