Intervention on Article 9 of the Zero Draft

16 October 2018

Mary Ann Manja Bayang

Thank you Mr. Chairperson. I speak as an indigenous person - one of the 370 Million that make up the Indigenous Peoples of the world, most of whom continue to suffer from corporate and business activities. Extractive and other large scale corporate activates constitute today 'one of the most important sources of abuse of the rights of indigenous peoples' in virtually all parts of the world.'[[1]](#footnote-1)

We welcome the inclusion of Article 9 on “Prevention” in the zero draft. Preventive measures will reduce the adverse impacts of corporate activities on the existence and rights of indigenous peoples.

**However,** For indigenous peoples, mere consultation as provided in Article 9, **sub para 2 g** is inadequate. **We therefore recommend that a provision on Free Prior and Informed Consent be added to the treaty.**

FPIC is a “manifestation of indigenous peoples’ right to self-determine their political, social, economic and cultural priorities. It constitutes three interrelated and cumulative rights of indigenous peoples: the right to be consulted; the right to participate; and the right to their lands, territories and resources.”[[2]](#footnote-2) FPIC cannot be achieved if one of these components is missing.

FPIC for indigenous peoples is protected in international law, including International Labour Organization Convention (ILO) 169 and the UN Declaration on the Rights of Indigenous Peoples (Articles 10,11,19,28, 29). International law requires that consultation with Indigenous Peoples must be carried out through institutions that are representative of Indigenous communities, and Indigenous peoples should control the process by which representatives are determined.

We also refer members of this Honorable Working Group to the study made by the Expert Mechanism on the Rights of Indigenous Peoples submitted to the Human Rights Council in September 2018 (A/HRC/39/62), to further support this recommendation.

Thank you.

This Statement is a joint submission of the following:

1. Indigenous Peoples International Centre for Policy Research and Education – Tebtebba Foundation

2. Mainyoito Pastoralists Integrated Development Organization (MPIDO)

3. International Indian Treaty Council

1. James Anaya, former UN Special Rapporteur on the Rights of Indigenous Peoples. [↑](#footnote-ref-1)
2. “Free Prior and Informed Consent: A human rights based approach”, Study of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, 10-28 September 2018. [↑](#footnote-ref-2)