15 October 2019

**Intervention for Tuesday afternoon, Item 4, Article 5. Prevention**

**Type of Organization –** NGO

**Name of the organization:** Indigenous Peoples International Centre for Policy Research and Education – Tebtebba Foundation

**Name of the speaker:** Mary Ann Manja Bayang

This intervention reflects the voices of ESCR-Net comprised of over 280 social movements, NGOs and advocates across 75 countries.

The current language of Article 5, number 3 paragraph b to ensure protection of indigenous peoples against human rights violations and abuses by business activity through consultation undermines their ability to prevent such violations or abuses against their people and land. The current text requires that these communities only be **consulted** on projects that could harm them. In this case, if an indigenous community opposes a business project following **consultations**, there is no requirement for companies to ensure their **consent**. This strips indigenous peoples of their inherent right to self-determination and to decide what happens to their lands and natural resources. The language on **consultation** as it currently stands in the revised Draft undercuts the business and human rights project, it also defies pre-established language adopted by UN member States in the UN Declaration on the Rights of Indigenous Peoples which stipulates under Article 5 (3)(b) of the Declaration that indigenous peoples have a right to “**Free, Prior and Informed Consent**”.

To further strengthen the protection of indigenous communities, the text of the Treaty must also reflect that this **consent** must be periodic. Essentially, business entities must inform communities of detailed activities that might occur on their land and seek the consent of these communities, without any form of capture by the company of their decision-making processes, must precede any activity to take place on that land. More-ever, if at any point in a consensual business project, plans for operations change – those must also be consented. At all times, indigenous peoples have the right to say no to any project that impacts on their lives, lands, territories and natural resources.

Current text – Article 5.3(b): Carrying out meaningful consultations with groups whose human rights can potentially be affected by the business activities, and with other relevant stakeholders, through appropriate procedures including through their representative institutions, while giving special attention to those facing heightened risks of violations of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas. Consultations with indigenous peoples will be undertaken in accordance with the internationally agreed standards of free, prior and informed consultations, as applicable.

**Proposed text for amendment**: Carrying out meaningful consultations with groups whose human rights and environmental rights can potentially be affected by the business activities, and with other relevant stakeholders, through appropriate procedures including through their representative institutions, while giving special attention to those facing heightened risks of violations of human rights within the context of business activities and business relations, such as women, children, members of the LGBTQ+ community, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas. **Consultations with indigenous peoples will be undertaken to obtain their free, prior and informed consent in accordance with the international human rights standards, particularly the UN Declaration on the Rights of Indigenous Peoples.** **Business activities must not go forward without the continuous consent of affected indigenous communities. Consent must be continuously attained at every stage of business activity and in correspondence to change in business plans.**