

**Statement of the Indigenous Peoples Caucus held November 26, 2017 in  
Geneva, Switzerland**

**United Nations Forum on Business and Human Rights  
November 27-29, 2017**

Representatives of the Indigenous Peoples of Abya Yala, North America, Asia, Africa and Europe gathered in caucus on November 26, 2017. We saluted the efforts of the Working Group on Business and Human Rights.

Whereas the focus of the Forum that brings us together has as a specific theme the third pillar of the Guiding Principles, known as the mechanisms for effective remedy for victims of human rights violations by companies, we bring you the following considerations:

There exists an intrinsic relationship of indigenous peoples with Mother Earth, territory, water and other natural resources, in a holistic interaction that permits the permanence of all forms of life. We, the children of Mother Earth, depend on her providing us with sustenance, native foods, and medicinal plants to maintain our traditional systems of life; and we maintain a spiritual connection through sacred places such as mountains, rivers, lakes and all the other elements that make up our territory as the source of good living.

Our peoples have suffered from historical and systematic violation since the invasions conducted for the purpose of conquest, which was then perpetuated with the newly independent States, who continued the policy of abuse of power, discrimination, theft, looting and occupation of our territories by way of military and police forces. In order to extract our natural resources, our peoples were impoverished and enslaved, originally by the conquerors, later by States and today by companies.

The negative impacts of economic activities imposed on our territories have had various negative consequences, among them, the fracture of our social cohesion. We have experienced health effects due to water contamination of rivers, lakes and other water sources; our ways of life have been violated; our right to life has been infringed due to assassinations; freedom has been denied us through incarcerations and criminalization; and our sacred places have been destroyed. The right to not suffer cruel and inhuman treatment has been violated as, for example, in the case of indigenous women who have suffered rape and torture by agents sent by the companies for the purpose of subjugation and to force the population to accept their economic extractive projects and domination.

International law has made significant progress for the protection of the collective rights of indigenous peoples, including their right to self-determination, which is recognized in the Universal Declaration on the Rights of Indigenous Peoples and by existing international treaties such as ILO Convention 169. This right to self-determination, together with the right to binding prior consultation for free and informed consent, are

unavoidable collective rights to be considered when proposing economic activities on our territories, where the prior consent of the community constitutes a fundamental and indispensable element that States must guarantee and companies must respect as part of due diligence.

Despite the existence of these international instruments, binding prior consultation for free and informed consent has not been respected by States and companies, and the Guiding Principles on Business and Human Rights resulted from a long-time effort by the United Nations and the international community to achieve protection by States and respect by companies; it is essential that companies be held responsible for remedy of the damage that is caused in the exercise of economic activities.

For the above reasons, as Indigenous Peoples that have been present at the annual United Nations Forum on Business and Human Rights, we express our concern due to the existing barriers to access to justice and to remedy for indigenous peoples and indigenous women within the national judicial systems, as well as the lack of binding mechanisms in the international system, while the extrajudicial remedy mechanisms are easily circumvented by businesses, and therefore:

- 1) We ask the Working Group to recommend alignment of the Guiding Principles with ILO Convention 169 and with the UN Declaration on the Rights of Indigenous Peoples, recognizing us as subjects of collective rights in all phases of business activities to avoid the impact on human rights in our territories and on our systems of ancestral life.
- 2) We recommend, in consideration of the irreparability of the right to life and liberty, which are fundamental human rights, that actions be taken to issue resolutions to ensure that States and companies do not repeat violations. Also, they should consider environmental damage to sacred sites and the impossibility of remedying these violations.
- 3) We request and reiterate that the importance of compliance with the right to free, prior, and informed consultation be insisted upon, in order to obtain—or not—the consent of indigenous peoples, for the purpose of preventing irreparable harm, as referred to in Article 6 of ILO Convention 169 and in the UN Declaration on the Rights of Indigenous Peoples.
- 4) We recommend that the territories of indigenous peoples in voluntary isolation and in initial contact be respected.
- 5) We ask that it be recommended that States, in implementing the Guiding Principles, oblige companies to explicitly respect the diverse character of indigenous peoples and their distinct needs in accordance with our particular worldviews. In accordance with the foregoing, we ask that different remedy mechanisms be considered that also have cultural relevance for our peoples,

in accordance with our indigenous justice systems, including the restitution of lands in conformance with Article 28 of the UNDRIP.

- 6) We urge the States and the Working Group to urgently implement adequate individual and collective mechanisms of protection for human rights defenders and indigenous leaders who are under imminent threat due to demonstrating against extractive activities.
- 7) We ask that it be recommended that States take into consideration the pending remedy for indigenous women who are victims of human rights violations, with a holistic and comprehensive approach, taking into account the link between indigenous women and their culture, and the fact that the impact of violations on them is greater, in addition to the great difficulties they face in pursuit of Justice. For this we suggest the inclusion of indigenous women as a special group.
- 8) We ask that it be recommended that the States include in the National Action Plans the full and effective participation of indigenous peoples in the formulation, implementation and evaluation of these plans. In addition, preparatory stages to the National Action Plans should be included to regain confidence among the actors, as, for example, in the cases of States affected by armed conflict.
- 9) We recommend strengthening mechanisms for participation of indigenous peoples in upcoming United Nations Forums on Business and Human Rights, while also taking into account the language barrier that exists, especially due to having no translators available for any sessions of the Forum, in consideration of the great harm that companies have caused our peoples and the importance of our active participation in the Forum. We also suggest having specialized sessions for addressing human rights violations by companies towards indigenous peoples, while also including representatives of indigenous peoples on the panels. In addition, the topic of indigenous peoples should be included in the reports.
- 10) We recommend that special attention be paid to stopping the tendency of the States towards the promulgation of retrogressive laws on human rights recognized by binding international instruments.
- 11) We recommend placing emphasis on monitoring compliance with the adequate implementation of the Guiding Principles in extrajudicial mechanisms for remedying the harm to human rights caused by companies; such mechanisms are currently carried out in an irregular manner by financial organizations and certification. In addition to influencing the establishment of these extrajudicial mechanisms by companies from the outset of their operations, as with judicial mechanisms before national and international bodies, we recommend that ancient languages be considered, by means of contractual clauses.

- 12) We recommend considering the establishment of a publicly-accessible register of companies that are systematically violating human rights, taking into account actions such as the corruption of the judicial system and the manipulation of the means of communication to achieve the criminalization of indigenous peoples. This includes even extrajudicial executions and the forced disappearance of human rights defenders.
- 13) We recommend that States be urged to strengthen laws that allow for the lifting of the corporate veil and the transparency of business owners, in order to avoid impunity for their acts by means of restructuring the configuration of their entities.
- 14) We recommend considering making efforts to influence the expansion of extraterritorial international criminal responsibility to companies.
- 15) And, finally, we recommend taking actions towards accelerating and strengthening the implementation of the three pillars of the Guiding Principles: to protect, respect, and remedy. For this purpose we suggest continuing the efforts of the Working Group to finally achieve the execution of a binding international treaty that will guarantee respect for human rights on the part of companies.

Geneva, Switzerland, Palais des Nations, November 29, 2017