

**United Nations Third Annual Forum on Business and Human Rights  
2-3 December 2014**

**Statement of the Indigenous Peoples Caucus conducted on 30 November  
in Geneva, Switzerland**

**Presented by Bettina Cruz**

Thank you, Mr. Chairman. The representatives of indigenous peoples from various regions of the planet, meeting in caucus on 30 November 2014, hereby make the following statements:

1. We urge the United Nations Working Group on Business and Human Rights, as well as the States, to act in consistency with all international conventions, treaties and standards relating to indigenous peoples' rights when formulating the National Action Plans.

2. We reaffirm, as a minimum standard, the United Nations Declaration on the Rights of Indigenous Peoples and the outcome document of the World Conference on Indigenous Peoples, adopted by the General Assembly on 22 September 2014,<sup>1</sup> and particularly paragraphs 3, 4, 16, 20, 21 and 24, as well as the studies and recommendations of the Expert Mechanism on Indigenous Peoples relating to the Guiding Principles.

3. We present to the Working Group and to this Forum the following recommendations with regard to the duty of States to protect, the responsibility of businesses to respect, and the urgent need to ensure effective access to comprehensive remedy:

**A. On the Duty of the State to Protect:**

4. With respect to the right to free, prior and informed consent of indigenous peoples, States must commit themselves to refrain from issuing regulations and laws that restrict it. They must also adapt their domestic legislation consistent with international standards and commitments currently in effect concerning the rights of indigenous peoples.

5. States must safeguard the life of indigenous peoples and protect them from all kinds of threats. It is urgent that they suspend the production and export of toxic agrochemicals and pesticides, as well as prohibiting their use in the lands, territories and water sources of indigenous peoples. In this regard, we reaffirm the recommendation of the Permanent Forum on Indigenous Issues of May 2014 to conduct a legal review of the Rotterdam Convention. Likewise, we urge States to prevent the expansion of monoculture plantations and the use of genetically-modified

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<sup>1</sup> A/RES/69/2

organisms when there is a risk of impacting lands, territories and waters of indigenous peoples, as well as to prohibit open-pit metal mining, the use of mercury, “hydraulic fracturing”<sup>2</sup> techniques and the drying of water systems to support extractive activities.

6. States should ensure the carrying out of independent studies on the environmental, social, cultural, spiritual and human rights impacts of projects that may affect the lives or ways of life of indigenous peoples.

7. We express our concern about the increase in criminalization of those defending the rights of indigenous peoples around the world. States must take all necessary measures to protect the rights of indigenous peoples, including our right to defend our rights; they must also pressure businesses to respect this right.

8. States must respect and protect the economic activities of indigenous peoples within and outside of their territories, without criminalizing them and without imposing burdensome discriminatory taxes. Indigenous peoples have the right to develop their own businesses, and indigenous entrepreneurs should have a strong presence in future discussion forums and activities of the Working Group. We also recommend to them the realization of a Global Summit of Indigenous Businesses.

## **B. On the Responsibility of Businesses to Respect:**

9. When indigenous peoples have given their free, prior and informed consent, businesses must ensure prior and adequate payment of compensation guarantees to indigenous peoples before initiating their activities. Businesses must explain clearly the extent of the benefits expected in order to ensure that these are equitably shared with those peoples. Businesses that do not contribute to improving the quality of life and living conditions of indigenous peoples should not be authorized to operate in their territories; and if they are found operating there, their licenses should be revoked.

10. The United Nations Working Group on Business and Human Rights should further elaborate the analysis of compliance with due diligence on the part of businesses, particularly with respect to the rights of indigenous peoples and international standards for their protection.

11. Businesses should refrain from making use of their economic and political power to co-opt local indigenous leadership, cause ruptures in the communities’ social fabric, or foster confrontations among brothers of the communities themselves or with neighboring communities.

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<sup>2</sup> Fracking

12. Businesses should contribute to ensuring the independence of the judiciary as well as access to justice on the part of victims of human rights violations. In the case of indigenous peoples in post-conflict regions, businesses must respect jurisprudence, submit to the judicial system and avoid use of media strategies that encourage violence in the communities.

### **C. On Access to Remedy:**

13. States should ensure access to justice for victims of human rights violations. Promoting access to justice requires strengthening the independence of the judiciary and providing the necessary resources for supporting the victims. We express our profound concern about acts of reproductive and sexual violence, and excessive use of force against members of indigenous communities committed by state and non-state agents in support of the businesses. Sexual violence and reproductive violence includes assault, forced sterilizations and exposures to toxic agrochemicals and mining wastes known to cause birth defects and reproductive system cancers.

14. National action plans should include the legal responsibility of parent companies for the participation of their affiliates or subsidiaries in rights violations of indigenous peoples. They should also include the implementation of extraterritorial jurisdiction when victims do not attain justice in their own countries.

15. Businesses should implement mechanisms for comprehensive remedy involving public recognition and the sincere request for forgiveness for all the damage caused to indigenous peoples.

16. In addressing remedy in the national plans, the traditional judicial institutions of indigenous peoples should be taken into account, considering that these can contribute positively to resolving disputes, attaining appropriate remedy and promoting reconciliation.

17. The Working Group should ensure the full and effective participation of indigenous peoples in the formulation of measures to guarantee access to remedy, including national action plans. The next Annual Forum on Business and Human Rights should include a specific item on access to remedy for indigenous peoples.

18. The Working Group should oversee a follow-up study on the report produced by the Secretary General's Special Representative John Ruggie, submitted to the General Assembly on 25 May 2011, on principles for responsible contracts. The study should focus on the importance of due diligence in contracts in order to avoid perverse situations whereby indigenous peoples, in the legitimate protection of their rights, decide to withhold their consent and businesses, in retaliation, demand compensation from the States in investment arbitration tribunals.

#### **D. On the Role of Other Actors:**

19. Multilateral, governmental and non-governmental international organizations should act in consistency with, and contribute to the fulfillment of, the obligations legally in effect of the States with regard to indigenous peoples, including the recommendations of the United Nations Expert Committees, Regional Human Rights Systems and the Universal Periodic Review.

20. Any process for the elaboration of a legally binding instrument on transnational corporations and other business enterprises and human rights (resolution A/HRC/26/9) must ensure the participation of indigenous peoples.

#### **E. Concluding Comments:**

21. The Indigenous peoples caucus urges the Working Group to ensure that in future United Nations Forums on Business and Human Rights actively promote and support opportunities for our participation in the official proceedings. We ask the Working Group to include the indigenous peoples as a permanent item on the agenda of all future forums. In addition, we request that Indigenous Peoples Caucus have an opportunity to provide an opening and closing statement at each of the future Forums.

22. Finally, the indigenous peoples caucus expresses its solidarity with the Mexican people and adopts as its own their demand for the safe return of the forty-three students of Ayotzinapa who were kidnapped by members of the Mexican police. The caucus asks that the case be investigated, pursued and prosecuted, and that those responsible be punished. ***They were taken away alive; we want them returned alive.***