

United Nations Permanent Forum on Indigenous Issues, 21st Session 26 April 2022:
Agenda Item 3: Discussion on the theme “Indigenous peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent”

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Thank you Madame/Mr. Chair. (Introduction in Keres language.)

We express our appreciation for the report of the Expert Group meeting on “Indigenous peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent” held from December 6 to 10, 2021, presented at this session. We support and concur with the report’s conclusion of a demonstrated need for an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises in accordance with international human rights standards.

Indigenous representatives have consistently attended the Forum on Business and Human Rights since its inception, in hopes that the Guiding Principles of Protect, Respect, and Provide Remedies would result in meaningful change. However, as the Expert Group report clearly demonstrates, ten years of the Guiding Principles has not shifted the disproportionate violations of the rights of Indigenous Peoples by TNCs. While a few examples of good practices exist, businesses continue to insist on purely voluntary actions. The term “due diligence” has in practice not been defined as requiring compliance with international human rights standards including the UN Declaration on the Rights of Indigenous Peoples.

In fact, during the pandemic we received reports that in a number of cases, extractive industries were granted status as “critical activities” and therefore continued to operate and expand at great cost to Indigenous Peoples around the world.

One purpose of the Expert Group Meeting was to “Examine access to effective remedy, or lack thereof, for indigenous peoples negatively affected by business activities.” However, meaningful safeguards and remedies for human rights violations remain only aspirations while our Peoples continue to lose their lands and lives. Additionally, there is little to no participation of Indigenous Peoples in formulating national action plans for implementation.

We therefore stress the need for a legally binding international instrument on transnationals and human rights that affirms Indigenous Peoples’ recognized rights, including to FPIC. We strongly support the recommendations contained in paragraph 57 of the Expert Group meeting report that the Permanent Forum endorse the process of elaborating this instrument in accordance with international human rights standards, that member States actively participate in this process, and that due diligence by businesses require meaningful engagement with Indigenous Peoples, not only as stakeholders but as rights-holders.

Thank you