

## STATEMENT OF INDIGENOUS CAUCUS

*Open-ended intergovernmental working group for the elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights*

19 October 2018, Geneva, Switzerland

Thank you Mr. Chair. This statement is made on behalf of the Indigenous Peoples caucus, which includes Indigenous representatives from Africa, Asia, and the Americas. This is the first session for many of us, but as Indigenous peoples we have common issues and concerns regarding this process. We have come from various continents, to ensure that the concerns of millions of Indigenous peoples, whose lives are impacted by transnational corporations and other business enterprises, are taken into consideration. Since the first session of the UN Forum on Business and Human Rights, there has been consensus that Indigenous peoples worldwide suffer the greatest human rights abuses by transnational corporations and business enterprises.

Collectively we have raised issues of abuses of human rights by TNCs including, but not limited to, impacts of extractive industries, toxic chemicals, pesticides, and the sale and auction of sacred items for years. [add other issues?]

We join with all the voices who this week have said the heart of this treaty should be the prevention of human rights abuses. To that end, we strongly recommend that this Working Group consult human rights instruments on the rights of Indigenous peoples; these include the UN Declaration on the Rights of Indigenous Peoples, the American Declaration on the Rights of Indigenous Peoples, and ILO 169. We are grateful to those member states who have highlighted provisions of these instruments in their interventions this week. These instruments and others provide the minimum standards for the survival, dignity and well-being of Indigenous Peoples of the world.

In these few minutes we wish to highlight 3 key rights of Indigenous peoples which are interrelated and interdependent. First, Indigenous peoples have the right to self-determination. (Libre determinacion), and by this right we are to freely determine **our** political status and pursue our economic, social and cultural development. UNDRIP Art.3)

Second and fundamental to the right of self-determination is the right to free, prior and informed consent. **Articles 10, 11, 28, and 29 of the UNDRIP provide clear language on states' obligation to consult and cooperate in good faith with Indigenous peoples through their own representative institutions, "in order to obtain their free, prior and informed consent" in various situations.** Free prior and informed consent for Indigenous peoples is key to prevention of human rights abuses and we thus request the inclusion of this language in reference to self-determining Indigenous Peoples.

Third, any conversations about choice of law should include consideration of Indigenous Peoples' laws and justice systems. Articles 11 and 27 of the UNDRIP require consideration of Indigenous peoples' laws, traditions and customs in considering redress for harm. Articles 8 and 23 in the American Declaration elaborate the same rights.

We look forward to continued and effective participation in this process. Thank you.