



Andean Coordinator of Indigenous Organizations (CAOI)

**LETTER FROM CIVIL SOCIETY OF THE AMERICAS
TO THE UN WORKING GROUP ON BUSINESS AND HUMAN RIGHTS**

Geneva, United Nations Forum on Business and Human Rights, November 2015

As large-scale oil, gas, fracking and mining projects move to increasingly remote areas, they threaten to generate adverse impacts on the land and natural resources of the local communities and indigenous peoples who inhabit these areas. In Latin America, too often we have seen extractive industry projects contribute to violations of human rights, such as the right to water, to

a healthy environment, to peaceful protest, and to participation in environmental decision-making (including indigenous peoples' right to give or withhold their free, prior and informed consent with regard to projects that will affect them).

On the occasion of the 2015 Forum on Business and Human Rights, the undersigned organizations would like to call the attention of the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises to four issues of particular relevance to extractive industry projects: community consultation, states' extraterritorial obligations and companies' international responsibilities, the criminalization of social protest, and transparency related to the extractive industry.

PRIOR CONSULTATION

In recent years, awareness has increased among governments, companies, and civil society organizations in Latin America regarding the need to obtain the consent of indigenous and tribal peoples, prior to any State's decision that could affect their rights. When companies and states fail to seek community consent, they heighten the risk of fomenting social conflict and thereby facing project delays and stoppages. Unlike years ago, there is no question about the need to implement mechanisms to ensure the obligation of prior consent. Rather, the principal debate now revolves around how to fulfill this obligation. However, in some environments the economic dependence on the extraction of natural resources tends to favor corporate interests that run counter to the rights of communities and indigenous peoples. The growing capacity of national and foreign corporations to influence political processes is especially evident in the adoption of laws, policies and other States' measures contrary to the international standards on free, prior and informed consent in the region.

We ask that the Working Group advise states and companies with regard to their obligation to conduct meaningful consultation with project-affected communities, in accordance with international best practices and relevant national and international jurisprudence, including the requirement to obtain free, prior, and informed consent from indigenous peoples when projects will affect them.

EXTRATERRITORIALITY

We have also identified a pattern in relation to transnational companies' activities in Latin America. Often, their operations result in human rights violations for which there is complete impunity when the home states of these companies do not comply with their extraterritorial obligations. This is particularly true with respect to extractive industries, where defenders advocating around foreign-owned extractive projects have been subject to harassment, forced displacement, and even assassinations. Under international law, States must adopt and enforce measures to protect civil, political, economic, social, and cultural rights with respect to a corporation's conduct abroad, but these obligations are often undermined by the home State's policies and practices.

We therefore urge the Working Group to encourage states to incorporate extraterritorial obligations into their National Action Plans, building upon the standards already put forth by other UN bodies, making clear to states their responsibilities in the context of transnational corporations and human rights.

CRIMINALIZATION

The undersigned organizations view with concern an alarming increase in the criminalization of protest by defenders of land, territory, natural resources and the environment. We have identified a pattern by which some private extractive companies delegitimize, denounce and stigmatize movements against the exploitation of natural resources, thereby promoting the malicious use of national tribunals and criminal procedures against these legitimate actors.

We therefore urge the Working Group to collaborate with states on the common goal of ending the criminalization of human rights defenders in the context of extractive projects, including by immediately protecting the right to protest and by addressing the phenomenon of criminalization in their National Action Plans.

TRANSPARENCY

As governments strive to achieve admission to and validation through the Extractive Industries Transparency Initiative (EITI), some have begun to rush processes forward, overriding key aspects of EITI such as ensuring the legitimate participation of civil society, respecting their internal selection and organization processes, as well as achieving the necessary balance to build consensus among companies, governments and civil society.

EITI processes in some countries in the region are taking place in a political context of corruption and closing civil society space. The initiative requires a political commitment of all three stakeholders in order to attain the minimum standard for fiscal information. For example, in several countries, recommendations on fiscal reforms made through EITI processes have not been implemented and there are cases where the standard has not been respected by all of the companies in the country. Moreover, the countries of the region are demanding that the EITI standard go further to permit the deepening of transparency and access to information on socio-environmental aspects of extractive projects, including information on their impact on climate change. This is fundamental to assure that the EITI represents a useful tool for the participation of society in decisions on extractive activity and thus that the initiative is truly relevant for the region.

We ask the Working Group to encourage governments and companies to respect human rights and civil society processes, to foster environmental and social transparency, and to comply with international standards like EITI that promote consensus building among companies, governments and civil society.

Respectfully submitted by:

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Ibis – Education for Development
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