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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Association Ma'onah for Human Rights and Immigration, Indian Movement "Tupaj Amaru", International-Lawyers.Org, United Towns Agency for North-South Cooperation, Union of Arab Jurists, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[21 August 2019]

* Issued as received, in the language(s) of submission only.



Promotion and protection of the Rights of Indigenous Peoples

Violence against and criminalization of indigenous peoples

Regrettably, indigenous people are facing a drastic increase of acts of violence, including undue criminal prosecution, killings, threats, intimidation, and harassment. This especially happens when indigenous leaders and community members voice opposition to large projects relating to extractive industries, agribusiness, infrastructure, hydroelectric dams and logging.

The escalation of attacks against indigenous peoples is occurring in the scenario of a tactical power structure whereby private companies exert influence over States and ensure that regulations, policies and investment agreements are adapted and aligned to promote the profitability of their businesses. Consequently, indigenous people are opposing such projects through advocacy including social mobilization and legal avenues.

In retaliation against their actions, indigenous people are accused of being obstacles to development and acting against national interests. They have been killed, forcibly displaced, threatened and exposed to insidious harassment in the form of criminal charges, which are often nebulous, or outrageously fictitious.

The following example helps illustrate the unacceptable situation. On 23 July 2019, Emyra Waiãpi, a 68-year-old indigenous leader, was stabbed to death in Brazil. According to national media reports, witnesses had seen around 50 gold miners, a dozen of whom were heavily armed, entering the remote Waiãpi indigenous reserve in the northern Brazilian state of Amapá, which borders French Guiana, shortly before the killing.

The killing of indigenous leaders, indigenous women, as well as, all indigenous peoples who are bravely defending their rights to their traditional lands is a race-based genocide that is deeply rooted in colonialism and state inaction. We call on the Brazilian Government and authorities to protect the human rights of all indigenous peoples and to allow them to determine their own cultural development and use their centuries-held, traditional land as guaranteed in Brazil's Constitution.

Protecting the rights and dignity of Indigenous Peoples

Protecting and safeguarding the rights of indigenous peoples should be applied and addressed in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international and regional human rights instruments.

It is the State's responsibility to protect the rights to life, liberty and security of person as enshrined in article 3 of the Universal Declaration of Human Rights, in articles 6(1) and 9(1) of the International Covenant on Civil and Political Rights and in article 7 of the UNDRIP. That means that States must both refrain from violating the rights of indigenous peoples and human rights defenders and act with due diligence to prevent and investigate human rights violations including bringing perpetrators to justice. In addition, Article 9 of the ICCPR establishes the guarantees that no one shall be subjected to arbitrary arrest or detention or be deprived of their liberty except on grounds set out by law.

The failure to ensure land rights represents the core underlying cause of violations of indigenous peoples' rights. The UNDRIP states the right of indigenous peoples to own and control their lands and territories in articles 25, 26, 27 and 32, while ILO Convention No. 169 enshrines territorial rights for indigenous peoples in articles 14-19. Furthermore, article 10 of the UNDRIP stipulates that indigenous peoples shall not be forcibly removed from their lands unless they have provided free, prior and informed consent. Should violations occur, victims have the right to fair redress, including restitution and compensation, and, where possible, the option of returning to their lands.

Therefore, we are alarmed by the persistent disregard for the rights of indigenous peoples who are voicing legitimate concerns over the negative impacts of development projects on their lands. It is clear that such projects are frequently undertaken without respecting and

consulting with the indigenous peoples concerned, and without their free, prior and informed consent.

Recognition of Indigenous Peoples' rights

The right to self-determination is a central right for indigenous peoples from which all other rights flow. It affirms their right to freely pursue their economic, social and cultural development. This right is enshrined in article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and in article 3 of the UNDRIP. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms recognizes the legitimacy of defending land rights, acknowledging the “valuable work” of human rights defenders against violations resulting from “the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.”¹

Across the world, recognition of indigenous people's rights exists in several forms. There are symbolic forms that can involve recognition of indigenous peoples' rights and historical injustices, such as a formal apology or recognition of facts related to occupation, dispossession and survival. Other types of recognition consist of treaties, constitutional recognition of treaty rights or aboriginal rights, indigenous parliaments or designated parliamentary seats, or autonomous regions.

However, the recognition of indigenous peoples is still a challenge in many regions. For instance, in Asia, indigenous peoples are often not recognized as “peoples” but referred to as cultural communities, national minorities or tribal groups, which can be interpreted as assimilationist language. Some States in Africa have long denied the existence of indigenous peoples as different peoples.² In the Russian Federation, although indigenous peoples are constitutionally recognized, legislation establishes a numerical barrier: communities with more than 50,000 people in total cannot be enrolled in the list of indigenous small-numbered peoples that entitles them to the corresponding legal protection, despite having otherwise similar characteristics as those enrolled.³

We are deeply concerned about the lack of recognition of indigenous peoples as an ongoing obstacle to the full realization of indigenous peoples' rights. By failing to recognize certain groups as indigenous peoples, States and other actors avoid applying the international standards and protection mechanisms that are most appropriate to address the kinds of human rights concerns that these groups face in common with groups generally identified as indigenous around the world. Adequate recognition of indigenous peoples as such is thus a fundamental first step for the realization of their rights.

We believe that recognition of indigenous peoples is critical in and of itself, but recognition also leads the way for the fulfilment of the entire range of collective and individual rights enshrined in the UNDRIP and other sources of international law, rights such as self-determination, rights to lands, territories and resources, and cultural rights. Recognition of the rights under the UNDRIP should involve constitutional and statutory measures along with effective actions, including reparation for past wrongs.

Recommendations

The many hardships that indigenous people encounter in several regions of the world must be brought to the attention of the international community and acknowledged by governments, which are obligated to guarantee the full rights of indigenous people. Critical issues such as self-determination, land rights, discrimination and criminalization need to be

¹ Preamble of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Resolution 53/144 of 9 December 1998.

² A/HRC/EMRIP/2019/3.

³ A/HRC/15/37/Add.5, para. 8.

addressed with respect to the United Nations Declaration on the Rights of Indigenous Peoples in accordance with international law and international humanitarian law.

The NGO signatories to this statement recommend the following:

- All violent attacks against indigenous peoples and their defenders must be promptly and impartially investigated, and measures taken to provide for effective redress and reparation.
- States should ensure that legislation creates due diligence obligations for companies registered in their jurisdictions and their subsidiaries where there is a risk of human rights violations against indigenous peoples.
- Addressing criminalization through a comprehensive review of national laws, the adoption of laws to ensure due process, and the revocation of laws and criminal procedures that violate the principle of legality and contradict international obligations.
- Implement, in good faith, the right to consultation and to free, prior and informed consent. This requires the involvement of indigenous peoples at all phases of a project or action, including human rights impact assessments, planning, implementation and monitoring.
- Formal recognition of indigenous peoples, ideally through constitutional provisions. Where this is not possible, recognition through other means, including national laws, should be pursued.

Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.