

# Information and Learning Session for Indigenous Peoples on the Legally Binding Instrument to Regulate Transnational Corporations and other Business Enterprises

January 12 and 26, 2021

## Background / Rationale:

The impact and abuses that transnational corporations and business enterprises can have on the full realization and enjoyment of human rights have been a long existing concern of Indigenous Peoples and other people impacted by business activities. For more than 40 years, environmental activists, land rights activists, trade unionists, Indigenous Peoples organizations and communities, and other groups and sectors affected by the abusive behaviour of transnational corporations and business enterprises have been at the forefront of a global effort to push for the adoption of a legally binding instrument that would ensure the respect and protection of human rights and the justiciability of violations of rights at the national, regional and international level.



Due to the tireless efforts of civil society to campaign on and bring to light the issues pertaining to the destruction and abuses caused by transnational corporations and business enterprises and the inability of national governments to regulate them, the United Nations gradually instituted measures that studied the impact of business on human rights and identify the gaps that needs to be addressed. In July 2005, Kofi Annan appointed Professor John G. Ruggie to be the Special Representative of the UN Secretary General on business and human rights. Eventually the Special Representative drafted the UN Guiding Principles on Business and Human Rights which was endorsed and adopted by the UN Human Rights Council in 2011. The UN Guiding Principles prioritize three pillars: the State duty to protect, the corporate responsibility to respect, and the need for victims' access to effective remedies. Respect for human rights by business enterprises means that *"they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."* In practice, this means that business enterprises should have a policy commitment to meet their responsibility to respect human rights, an ongoing due diligence process, and a remediation process for human rights impacts that they cause or to which they contribute. The Guiding Principles are voluntary or non-legally binding.

On June 26, 2014 the United Nations Human Rights Council during its 26<sup>th</sup> session adopted resolution 26/9 which establishes "an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business

enterprises.” Since it was established the open-ended intergovernmental working group (OEIGWG) has had five sessions. The first 3 sessions were essentially discussions around broad issues and elements for a future binding instrument. During the 4th session the OEIGWG came up with the Zero draft. On July 16, 2009 a revised draft was submitted by the Chairperson – rapporteur which includes the comments and proposals received until the end of February 2019. In October 2019 the Fifth Session of the Working Group was held with a focus on direct substantive intergovernmental negotiations based on the revised draft. The 6<sup>th</sup> session of the OEIGWG was recently held (virtually) from October 26 to 28, 2020.

While the OEIGWG work is showing some development in the formulation of the content and intent of the draft instrument, it should be pointed out that there are still substantial issues and key concerns that need to be addressed. Some of these issues include details pertaining to access to justice and protection of affected communities, due diligence and sanctions to be imposed when this is violated, legal liability and burden of proof when there are cases of violation. This is where the importance of the active participation of civil society organizations in lobbying, campaigning, and engaging the process comes into play. On content, social movements and civil society were able to introduce stronger language into the draft instrument, particularly on the protection of Indigenous Peoples’ right to Free Prior and Informed Consent (FPIC) especially in relation to their rights to land, territories and resources. In advocacy efforts this year, a number of social movements and civil society organizations have also begun calling for the inclusion of the right to self-determination in the language of the draft instrument.

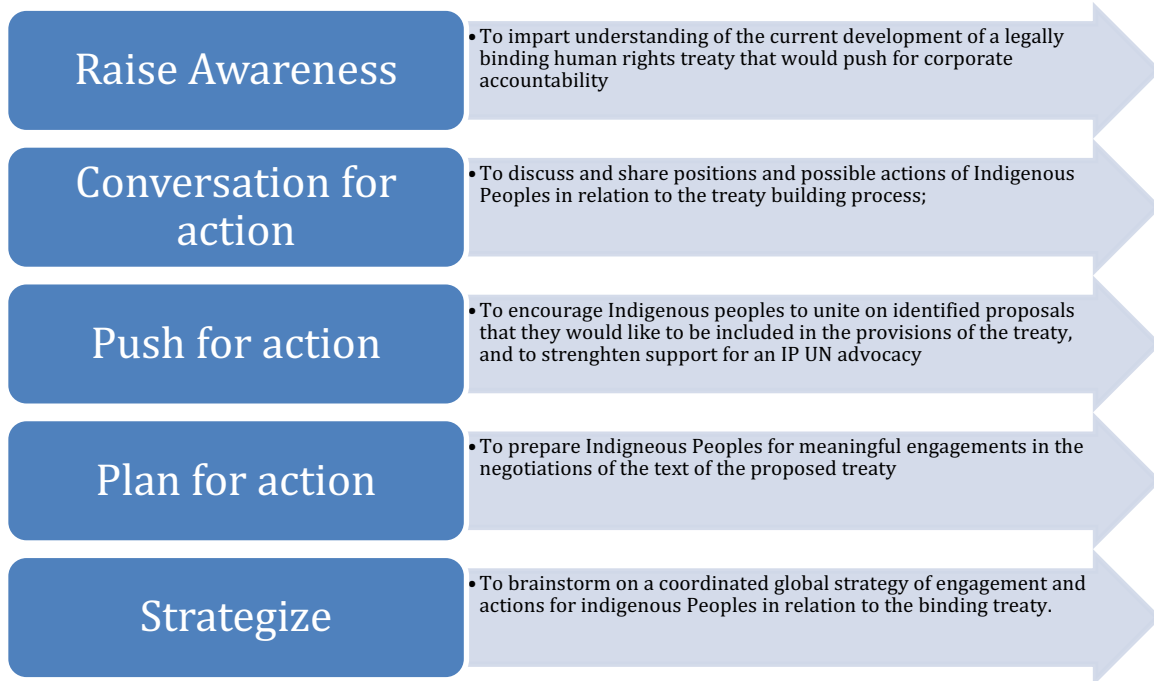
While Indigenous Peoples and their organizations have participated in the process of the treaty negotiations, their participation has been minimal despite the uncontroverted massive impact of business activities on their rights and on their lands, territories and resources. There is yet no globally coordinated voice and position of Indigenous Peoples in the treaty negotiations. It is imperative that Indigenous Peoples raise their awareness and consolidate their forces for a stronger voice in the treaty negotiations. On the other hand, Indigenous Peoples participation in the Forum on Business and Human Rights has been significant, with their issues continually being actively discussed in these Forum’s sessions.

Given this context, a Learning Session on the Legally Binding Instrument on Business and Human Rights came under discussion by Indigenous representatives who have participated in this process.

### **TARGET PARTICIPANTS:**

Participants will be composed of Indigenous Peoples and organizations, legal experts on Indigenous Peoples rights, and support groups who are either engaging in the processes around the negotiations of the legally binding instruments, have plans to engage, have potential or opportunity to engage, and who have the capacity to further the awareness raising and information sharing about the process.

## OBJECTIVES:



## GOALS AND PLANS FORWARD



## DATE AND TIME OF THE ORIENTATION AND LEARNING SESSION

Activity	Date	Time in different Cities
Orientation of participants	January 12, 2021	1 hour;  Geneva – 15:00 – 16:00 Nairobi – 17:00 – 18:00 Manila – 22:00 – 23:00 Sydney – 01:00 – 2:00 (Jan 13) New York – 09:00 – 10:00 Rio de Janeiro – 11:00 – 12:00 Mexico City – 08:00 – 09:00
Learning Session	January 26, 2021	2 hours;  Geneva – 15:00 – 17:00 Nairobi – 17:00 – 19:00 Manila – 22:00 – 24:00 Sydney – 01:00 – 3:00 (Jan 13) New York – 09:00 – 11:00 Rio de Janeiro – 11:00 – 13:00 Mexico City – 08:00 – 10:00

## SPEAKERS AND MODERATOR

### Moderator (Learning Session – January 26)



**Victoria Tauli Corpuz** is a former UN Special Rapporteur on the Rights of Indigenous Peoples, now the Global Co-Director of the Indigenous Peoples Rights International, and a long term Executive Director of Tebtebba Foundation. She also sits in various board of different international organizations.

### Moderators (Orientation – January 12)



**Elisa Canqui** is an indigenous Aymara from Bolivia and a former member of the UN Permanent Forum on Indigenous Issues. She now works with Oxfam as Program Manager for Latin America and the Caribbean. Previously she had worked as a Consultant in several international organizations as IADB, UN-Habitat, UN, FILAC, Danish Cooperation and others.



Mona Sabella currently coordinates global action on corporate accountability at ESCR-Net – a Network that connects over 280 members who are leading in efforts to regulate business activity and corporate capture. Mona previously worked in Geneva and Dublin as an advocate for the rights of communities and human rights defenders in the Middle East and North Africa.

## Speakers:

### OPENING REMARKS



**Francisco Cali Tzay** is the UN Special Rapporteur on the Rights of Indigenous Peoples, a former President of the Committee on the Elimination of Racial Discrimination, former Ambassador of Guatemala to Germany, and has long been engaged in Indigenous Peoples rights advocacy in his country and at the international level. He is a Mayan Cakchiquel from Guatemala

### Historical and Political Overview, and Developments in the Negotiations for a Legally Binding Instrument to Regulate Transnational Corporations



Ana Maria Suarez Franco is a lawyer from Colombia, but has since been living in Europe since 1999. She is the permanent representative of FIAN International to the UN human rights system and has been actively engaged in various negotiations and advocacy in relation to international instruments, including the proposed Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises.

### Indigenous Peoples engagement in the Negotiations



June Lorenzo is lawyer and a member of the Navajo nation in the USA. She works with community organizations and Indigenous NGOs to address uranium mining legacy issues and resistance to new mining, sacred landscape protection, and recently on issues of repatriation of cultural patrimony. She advocates in tribal and domestic courts, as well as before legislative and international human rights bodies. She has been engaged in the negotiations of the UNDRIP and the American DRIP.



Mary Ann Manja Bayang is an indigenous lawyer from the Philippines who has dedicated more than two decades of advocacy for Indigenous Peoples rights. She previously supported the work of the UN Special Rapporteur on the Rights of Indigenous Peoples and is currently the Global Operations Manager of the Indigenous Peoples Rights International.

### A Legally Binding Instrument to Regulate Transnational Corporations: What is it for Indigenous Peoples?



Juana Toledo is part of the leadership of the Consejo de Pueblos Wuxhtaj, Guatemala and currently the coordinator of the Political Movement of Women of the Council of Western Mayan People. With more than a decade of human rights experience, she has worked in different government institutions such as the Academy of Mayan Languages, the Presidential Commission against Discrimination and Racism, the Office for the Defense of Indigenous Women, and the court of first instance for crimes of femicide.



Binota Moy Dhamai is an indigenous Jumma-Tripura from the Chittagong Hill Tracts (CHT), Bangladesh, with almost 20 years of activism in Indigenous peoples rights, a human rights advocate, and follower of issues relating to Indigenous Peoples' empowerment. He is currently affiliated with the Bangladesh Indigenous Peoples (Adivasi) Forum, a Member of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Executive Council Member of the Asia Indigenous Peoples Pact (AIPP) and Member of the Board, International Network for Economic, Social and Cultural Rights (ESCR-Net).



Jackson Shaa, is the Chief Executive Officer of the Narasha Community Development Group in Kenya. His organization that has been pushing for protection of community rights violated by the geothermal corporations that has been exploiting geothermal resources at Olkaria area in Naivasha Sub-County. The organization work to protect community land through nonjudicial mechanisms, judicial process, use of press and encourage consultations.

### Reflections and Closing Remarks



Anne Nuorgam is a member of the UN Permanent Forum on Indigenous Issues. She has been a member of the Saami Parliament of Finland since 2000. She is also the Chair of Veahčanjárga Fishery. She has been working on reconciliation issues and now works as the Head of the Saami Council's Human Rights Unit.

**LANGUAGE** (The orientation and learning session will be provided in five languages):

English, Spanish, Portuguese, Russian and French

## ORGANIZERS:



- Indigenous Peoples Rights International (IPRI)
- International Indian Treaty Council (IITC)
- International Work Group on Indigenous Affairs
- Indigenous Peoples International Centre for Policy Research and Education (Tebtebba Foundation)
- Asia Indigenous Peoples Pact
- ESCR- Net
- Oxfam – Latin America
- Abya Yala
- Narasha Community Development Group

## Organizing Committee:

- June Lorenzo – [junellorenzo@aol.com](mailto:junellorenzo@aol.com)
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