



# PROFIT *vs* RIGHTS: Business Operations in Indigenous Territories



*CASE STUDIES FROM  
RUSSIA, MEXICO, INDIA AND THE PHILIPPINES*

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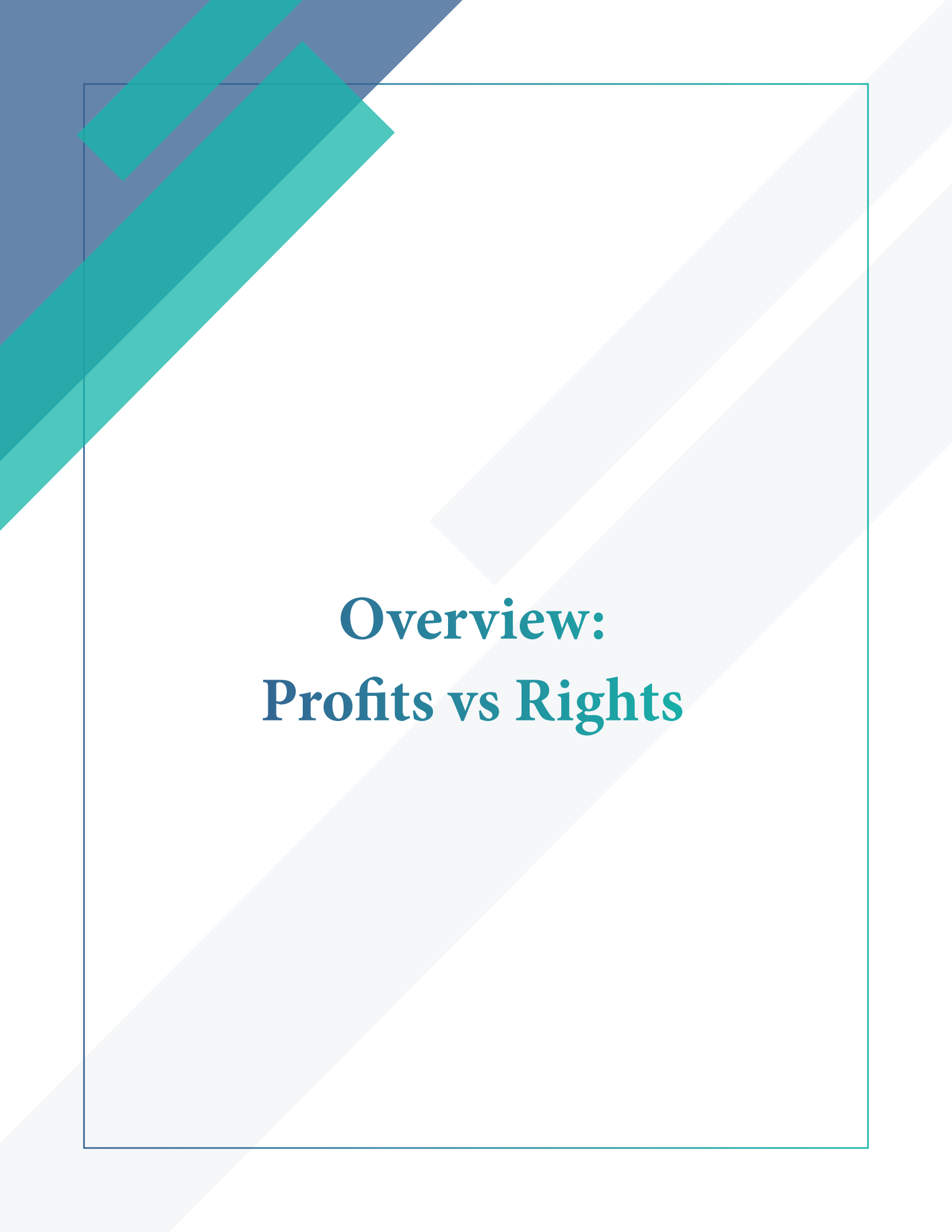
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# Contents

<b>Overview: Profits vs Rights</b>	<b>1</b>
<b>RUSSIAN FEDERATION</b>	<b>24</b>
<b>Indigenous Peoples of Taimyr Dolgan-Nenets District and the UN Guiding Principles on BHR</b>	<b>24</b>
1. Introduction	25
2. NorNickel operations in the Russian North	26
3. Impacts of NorNickel operations on indigenous peoples	28
4. Analysis of the business project in relation to the UNGPs	31
5. Actions taken by affected communities and their allies	33
6. Conclusions and recommendations	34
<b>MEXICO</b>	<b>39</b>
<b>Homún: Mayan Water Guardian People Fighting Against Mega-Farm of 49,000 Pigs</b>	<b>39</b>
1. Introduction	40
2. Background	40
3. Social and environmental impacts caused by mega-farm	43
4. The Mayas of Homún and their actions against installation of the mega-farm	44
5. Analysis of business project within UN Guiding Principles on Business and Human Rights framework	45
6. Measures taken by affected communities and their supporters	48
7. Lessons learned, conclusions and recommendations	49
<b>INDIA</b>	<b>52</b>
<b>Impact of Oil Palm Cultivation in Mizoram State</b>	<b>52</b>
1. Introduction	53
2. Oil palm cultivation in Mizoram	54
3. Impacts on the rights of affected indigenous peoples	55
4. Oil palm plantations in Mizoram and the UN Guiding Principles on Business and Human Rights	60
5. Actions taken by affected communities and their allies	63
6. Lessons learned, conclusions and recommendations	64

<b>THE PHILIPPINES</b>	<b>69</b>
<b>Indigenous Peoples Confront Hydropower Dams in Kabugao, Apayao</b>	<b>69</b>
1. Introduction	70
2. Overview of the project	72
3. The Isnag indigenous peoples	75
4. Lack of FPIC and disrespect for customary lands and culture	76
5. Gened dams project and UN Guiding Principles on Business and Human Rights	78
6. Community actions and challenges	82
7. Lessons learned, conclusions and recommendations	85



# **Overview: Profits vs Rights**

## Overview: Profit vs Rights

Large-scale business operations affecting the traditional territories of indigenous peoples are one of the main sources of violations of their individual and collective human rights. International and regional human rights bodies have repeatedly expressed deep concern about the impacts of these activities. United Nations (UN) Special Rapporteurs on the rights of indigenous peoples (UNSRIP) highlight that most of the reported allegations of violations of indigenous rights occurred in the context of business activities.<sup>1</sup>

Indigenous peoples have a special relationship to their lands, territories and resources, on which they depend not only for their livelihoods but also for the maintenance of their social structures, culture and spirituality. Large-scale and other business operations, whether extractive industries, infrastructure, or agribusiness, for example, may lead to the degradation or destruction of their traditional territories, including sacred sites, and to forced displacement, all of which seriously jeopardizes their survival as distinct peoples. Moreover, indigenous opposition to the proposed developments and complaints about the violation of their human rights often is responded to with violence and criminalization.<sup>2</sup>

[Indigenous Peoples' Rights International](#) (IPRI) decided to support indigenous-led research on cases of business operations impacting indigenous peoples' rights. Authors were requested to analyze situations through the lens of the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#), focusing on state compliance with human rights obligations, businesses' responsibility to respect human rights and provide remedies, including existing complaint mechanisms, and access to justice.<sup>3</sup>

The findings match the observations of UN and other human rights bodies. They make clear that action is urgently required by international and regional human rights systems, governments and companies, to ensure that indigenous peoples' rights to self-determination, over their lands, territories and resources and free, prior and informed consent (FPIC) are fully guaranteed and realized. Therefore, in the roadmap for the next decade, adopted by the UN Working Group on Business and Human Rights (WGBHR), actions focused on the promotion and protection of the rights of indigenous peoples need to be prioritized.<sup>4</sup>

## Human rights standards on indigenous peoples' rights

States' obligations with regard to the protection of human rights are enshrined in international human rights law and, while sometimes deficient, corresponding provisions of national law. When defining the scope of human rights to be respected by businesses, the UNGPs refer to the fundamental human rights treaties (Bill of Rights) and the core labor rights conventions of the International Labor Organization (ILO), at a minimum.

Commenting on Guiding Principle 12, the UNGPs point out that

*Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.*

In the case of indigenous peoples, these “further elaborations” are mainly the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention 169 on indigenous and tribal peoples in independent countries (1989) and the relevant jurisprudence developed by the international and regional human rights systems.

UN Treaty Bodies, in charge of monitoring state compliance with the main human rights conventions, have addressed the human rights impacts business operations continue to have on the enjoyment of indigenous peoples’ human rights. They have adopted substantial decisions, observations and recommendations in this regard.<sup>5</sup> Special procedures of the UN Human Rights Council (HRC) have also elaborated on the issue in thematic reports and addressed specific cases of allegations of human rights violations in the context of business operations.

When the HRC adopted the UNGPs, it also established a special procedure to promote their implementation, the [WGBHR](#).<sup>6</sup> The WGBHR communicates with governments, businesses and other relevant actors about alleged human rights violations, makes country visits, and develops thematic reports.

In 2013, the WGBHR submitted a report to the UN General Assembly focused on business-related impacts on the rights of indigenous peoples. The WGBHR recognizes that indigenous peoples are among the groups most affected by extractive, agro-business and energy operations, which impact in their rights to maintain their traditional way of life, their cultural identity, their access to land and their security of land tenure. Forced displacement, serious violations of their civil and political rights, and to rights to life and physical integrity are among the impacts derived from business operations impacting their lands and territories.<sup>7</sup> The report provides specific recommendations to states and business on measures to be adopted to apply the UNGPs when business operations impact indigenous peoples’ rights.

The WGBHR calls on states, *inter alia*, to consider ratifying ILO Convention 169 and to fully implement the UNDRIP, including by home states of companies operating in indigenous territories in other countries. States should ensure that mechanisms are in place to prevent and address adverse human rights impacts of business and that their human rights obligations are met when pursuing investment treaties or contracts. States should also ensure that indigenous peoples have adequate access to all relevant information and can effectively participate in decisions that affect them.

In this sense, consultations with indigenous peoples should be an essential component of all contracts entered into with international investors where there may be an impact on indigenous peoples. States should also ensure the effective implementation of the requirements for FPIC; reinforce the capacity of the justice system and national human rights institutions to address grievances brought by indigenous peoples relating to business activities; and support indigenous peoples to develop their own representative structures to effectively participate in decision-making, respecting their choices as to who their representatives shall be. States should particularly consider indigenous peoples’ rights in the development of National Action Plans (NAPs). The report also refers to the extraterritorial



obligations of home states with regard to transnational corporations registered in their jurisdictions, who should ensure that indigenous peoples affected by the operations of those enterprises abroad have access to effective remedy.

Business enterprises should pay particular attention to the potential impacts of any operations on the lands and territories of indigenous peoples; commit to respect indigenous peoples' rights as set out in the UNDRIP, in their policy commitments, human rights due diligence, and remediation processes; ensure their grievance mechanisms comply with the criteria of accessibility required in the Guiding Principle, focusing on dialogue as a means to address and solve grievances; and make sure to adequately inform, consult and engage with indigenous peoples.

The WGBHR recommends that indigenous peoples strengthen their own institutions and develop protocols on FPIC processes, consistent with international human rights law, making these available to states and corporations. The report also analyzes the role indigenous customary dispute resolution mechanisms and judicial systems can play in terms of grievance and remedy.

The WGBHR has paid attention to state duties and business responsibilities with regard to the rights of indigenous peoples in its country missions. It has also communicated with governments, private sector and other actors on allegations of human rights violations in the context of business activities, often jointly with the Special Rapporteur on the rights of indigenous peoples and other special procedures. Some of the issues addressed in their communications include: the need to respect indigenous land rights; the need for participation in decision-making, consultation and FPIC; the need for companies to put in place adequate due diligence to ensure respect for indigenous peoples' rights; and the need to generate benefit-sharing agreements with indigenous peoples' full participation. They have also referred to situations of violence, including forced displacement, criminalization, or forced labor, among others, affecting indigenous peoples in business operations.<sup>8</sup>

## **The case studies *vis-à-vis* implementation of the UNGPs and the protection and respect of indigenous peoples' human rights**

The four case studies included in the publication describe business operations' impacts in the agribusiness, extractive and energy sectors in indigenous peoples' traditional lands in India, Mexico, the Philippines and the Russian Federation. They describe the project and the operating company and briefly overview domestic protection of the rights of indigenous peoples in each country. The authors were also requested to assess the situation *vis-à-vis* the three pillars of the UNGPs, and to provide some conclusions and recommendations to states, companies and other relevant actors.

### *State duty to protect*

States have obligations with regard to the protection and fulfilment of human rights. The UNGPs restate they must comply with these obligations in the context of business operations that may affect human rights, and they provide guidance on these issues. Human rights obligations entail protection against violations by third-parties, and providing remedies, including and guarantees of non-repetition where violations have occurred.

The four countries studied have ratified the main human rights conventions, and thus are obligated to respect, protect and fulfil the fundamental human rights in accordance with principles of equality and non-discrimination. All voted in favor of the adoption of UNDRIP, except for the Russian Federation which abstained. Mexico has ratified ILO Convention 169.

## Legal recognition and coherence with international standards

As underlined by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the UNSRRIP, the recognition of indigenous peoples as legal persons is a necessary first step for the protection of their individual and collective human rights.<sup>9</sup> The countries examined herein have adopted domestic laws regarding legal recognition of indigenous peoples and some of their rights, although to different degrees. India recognizes the existence of *adivasi* (first inhabitants) under the term of Scheduled Tribes, although it rejects the identification of Scheduled Tribes as indigenous peoples as recognized in international human rights law.<sup>10</sup> Legislation grants particular rights to the Scheduled Tribes, not only at the Union level but also in some states' laws. The State of Mizoram and Nagaland falls under the Constitution's fifth schedule, with special legislation for Scheduled Tribes areas.

Mexico's Federal Constitution affirms the pluricultural nature of the country and the pre-existence of indigenous peoples, recognizing also their rights to their lands, and to autonomy and self-determination, among others.<sup>11</sup> The State of Yucatán, where the Homún community is located, has also adopted legislation for the protection of the rights of the Mayan people.<sup>12</sup>

The Philippines' 1997 Indigenous Peoples Rights Act (IPRA).<sup>13</sup> recognizes indigenous peoples' rights to ancestral domains, self-governance, social justice, cultural integrity, and to FPIC whenever activities affect their ancestral domains. IPRA also created the National Commission on Indigenous Peoples (NCIP) to implement the law. FPIC is required even where the state asserts a national or public interest.

Article 69 of the Federal Constitution of the Russian Federation provides that the state "shall guarantee the rights of the small indigenous peoples according to universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation." While ownership remains vested in the state, a legal framework has been developed recognizing certain rights to their traditional lands.<sup>14</sup>

The case studies show that states have not complied with either their international human rights obligations or with domestic legislation on the rights of indigenous peoples. In the cases of India, the Philippines and the Russian Federation, indigenous rights have been ignored when prioritizing developments that are considered to be in the national interest, such as the Arctic Development Strategy, hydro-power generation or the promotion of palm oil production. Legislation enacted to promote these initiatives is not consistent with states' obligations on indigenous peoples' human rights. Both UN Treaty Bodies and special procedures have underlined the importance of harmonizing domestic legal frameworks with those standards.<sup>15</sup>

India	Mexico	Philippines	Russian Federation
<b>Recognition</b>			
The sixth schedule of the 1950 Constitution of India provides for the rights of "scheduled tribes" in several States in north-eastern India. Through articles 371A and 371G of the Constitution, indigenous peoples in the States of Nagaland and Mizoram, respectively, are granted constitutional guarantees, including regarding their customary law and traditional justice systems, their cultures and their lands and resources. No acts of Parliament can be made applicable that affect religious and social practices, customary law and ownership and transfer of land and resources without the agreement of the legislative assemblies of those States.	As indigenous peoples in Article 2 of the Federal Constitution.	IPRA: Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs).	As "small-numbered indigenous peoples" in 1993 Constitution, art. 69 (only 40 indigenous peoples are recognized as such). <sup>16</sup>  2020 Decree <i>On the Approval of the Rules for the Maintenance of the List of Persons Belonging to Indigenous Minority Peoples</i> establishes a complex bureaucratic procedure to be included in the list.

Self-determination/self-government/autonomy			
<p>Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 applicable in the Fifth Schedule Areas.</p> <p>Autonomous district and regional councils in Nagaland and Mizoram may legislate on a number of subjects and have jurisdiction over the administration of justice and land.</p> <p>The fifth schedule provides for the establishment of tribal advisory councils composed of indigenous members of the federal and state legislative assemblies in declared scheduled areas.</p>	<p>Federal Constitution Article 2: right to self-determination and autonomy.</p>	<p>Chapter III IPRA: Right to Self-governance and Empowerment.</p>	<p>Autonomous territories</p>
Rights on lands and resources			
<p>Rights to self-management and others in Scheduled Tribes and Other Traditional Forest Dwellers Act (Forest Rights Act) of 2006.</p>	<p>Prior rights (Art.27 Constitution) but regulated under agrarian law, as communities.<sup>17</sup></p>	<p>Recognition of prior rights: ancestral domain</p> <p>IPRA: The rights of ownership and possession of Indigenous Cultural Communities/IPs to their ancestral domains shall include: (a) the right of ownership; (b) the right to develop, control and use lands and natural resources; (c) the right to stay in the territories and not to be removed therefrom; (d) the right of resettlement in suitable sites in case of displacement; (e) the right to regulate the entry of immigrants; (f) the right to safe and clean air and water; (g) the right to claim parts of reservations; (h) the right to resolve land conflicts in accordance with customary laws of the area concerned (only in default thereof the complaints shall be submitted to amicable settlement and to the Courts of Justice).</p>	<p>2001 Federal Law on Territories of Traditional Nature Use provides for the establishment of "Territories of Traditional Nature Use." None has been established since then with federal status.</p>
Consultation and FPIC			
<p>Special provisions for fifth scheduled areas.</p>	<p>Consultation obliged by ILO 169. Inadequate processes.</p>	<p>FPIC (IPRA) Responsibility of the NCIP.</p>	<p>According to 1999 law "On Guarantees of the Rights of the Indigenous Minority Peoples of the Russian Federation" indigenous peoples have rights to participation and consultation in certain instances.</p>

## *Obligation to protect rights to lands, territories and resources*

International standards on the rights of indigenous peoples, UN and regional human rights jurisprudence, as well as various national court decisions, stress the fundamental importance of protecting the rights of indigenous peoples to their lands, territories and natural resources. Violation of these rights is the root cause of a panoply of human rights violations. Their lands and territories are where indigenous peoples exercise their collective rights to self-determination and self-government, and their economic, social and cultural rights. The Committee on the Elimination of Racial Discrimination (CERD) has repeatedly affirmed that non-recognition of indigenous territorial rights is discriminatory, while the UN Human Rights Committee has concluded that the duty to protect life implies States to take measures to address general conditions that may result in direct threats to life or prevent the enjoyment of the right to life, and these general conditions include the “deprivation of indigenous peoples’ land, territories and resources...”<sup>18</sup>

The case studies report huge environmental impacts caused in the indigenous territories. In the case of the Isnag people in the Philippines, their customary lands and forests will be submerged by proposed hydroelectric dams. The indigenous peoples of the North in Russia have been suffering from forced displacement and loss of their traditional ways of life for decades due to nickel mining operations in their lands. Many of the affected indigenous peoples had to cease their nomadic way of life and became sedentary. Pollution of their traditional lands has resulted in cessations of subsistence practices within 100 km of industrial activity, a measure ordered by public health authorities and which Sami reindeer-herding communities find very difficult to abide by.

In Mizoram, forests are owned either by the State (different kinds of protected areas) or by the communities. Community forest land under shifting cultivation (*jhum*) is owned by village councils. Village councils are recognized by law. They have the right to manage community land and allocate plots to community members for shifting cultivation.<sup>19</sup> Tribal communities in Mizoram used to produce both food and commercial crops under the traditional *jhum* system. But under the national priority to achieve self-reliance on oil palm and other products, the Mizoram government has provided assistance to the communities to change to oil palm production, intending that this activity will provide them with a good income. Turning the community lands into oil palm plantations has totally changed the *jhum* system and communal land tenure. Indigenous families became permanent owners of the plots, and the traditional village councils are losing their power to regulate the use of community lands. Moreover, as the farmers are required by law to sell their produce to the companies assigned by the State to each district, companies are in the end the ones making the decisions on land use, further undermining the indigenous authorities and land management systems.<sup>20</sup>

Indigenous peoples’ cultural rights are very much linked to their lands, territories and resources. The loss of their lands, either by forced displacement or environmental destruction, may result in the loss of their culture and identity. Lack of respect for and protection of cultural rights are described in the cases of Mexico and the Philippines. The Mayan community of Homún considers their *cenotes* (deep sinkholes with underground freshwater pools) as sacred, and home to spirits. They have a prominent role in their rituals and traditions. Pollution of the *cenotes* due to mega pig farms may have an enormous cultural impact on the community, apart from depriving them of their alternative community tourism activities.

Construction of a series of dams on the Apayao-Abulug River in the Philippines will submerge several *barangays* (a local government area), including the municipality of Kabugao. The burial grounds of the Isnag’s ancestors will also disappear. According to Isnag culture, disturbing the dead, will bring misfortune to the living. In the Russian Federation and the Philippines, forced displacement has resulted or will result from extractive and dam-building operations. The impacts of forced displacement are particularly severe for indigenous peoples. UNDRIP establishes that forced displacement of indigenous peoples can only take place with their FPIC.<sup>21</sup>

## Consultation and FPIC

In international human rights law, states have the obligation to adequately consult indigenous peoples and obtain their FPIC before adopting legal, administrative or policy measures that may affect their rights. More broadly, indigenous peoples have a right to participate in decision-making on issues that affect them and their territories. The Human Rights Committee, for instance, considers that “participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community.”<sup>22</sup> This is particularly important when the impacts of the measure are as big as described, and especially when displacement may be involved.

In the Philippines, the right to FPIC is recognized in the IPRA. The NCIP is in charge on conducting FPIC processes by law. NCIP states that FPIC has to be applied as a protection for the benefit of indigenous peoples.<sup>23</sup> According to the authors of the case, the FPIC process on Gened 1 hydro-electric dam was used to the contrary. NCIP, the very institution that is in charge of ensuring a fair FPIC process, was involved in its manipulation. Written rejections of the community to the project were ignored, and the NCIP created a group of “authorized elders” to decide for the communities. In spite of the irregularities denounced by the communities, NCIP has issued a certification precondition for Gened 1.

States have not undertaken any process of consultation and have not obtained the free, prior and informed consent of affected indigenous peoples before licensing the operations in the cases of India, Mexico and the Russian Federation. Moreover, not even adequate information on the activities was provided and there was no participation in decision-making. In India, policies and laws to extend oil palm cultivation including in Scheduled Tribes areas, were adopted without any consultation or participation of indigenous communities. Oil palm legislation does not incorporate any consultation or participation mechanism.

In Mexico, the Mayan community of Homún did only learn about the building of the mega pig farm in their community lands when the building of the road started. Making use of their recognized rights, they held a consultation according to their “uses and customs” which resulted in the rejection of the project. The authorities ignored the result of the consultation process.<sup>24</sup> Nickel mining in the Russian North started back in the 1930s, when operations were run by the Soviet State. No consultation ever took place, and mining took primacy over any other form of economic development, such as reindeer herding, fishing and other traditional livelihood systems.

## Violence and criminalization

The states studied have not only failed to ensure protection of human rights in the context of business activities, they have enabled and taken an active part in the alleged violations. Opposition to the activities has been met with violence and criminalization and state institutions have been involved. The Philippines study illustrates the targeting of those who denounce irregularities in the FPIC process. The NCIP, a body that is supposed to uphold indigenous rights, has responded to complaints by communities with public statements equating indigenous human defenders with armed rebel groups. In Mexico, the police, by order of the *Procuraduría Federal de Protección al Ambiente* (PROFEPA), closed down the cenotes in retaliation for the opposition to the pig farm. Maya Members of the *Kanan Ts'onòot* (Guardians of the Cenotes) organization were falsely accused of having committed federal crimes as well, a practice repeatedly observed in Mexico.<sup>25</sup>

In Russia, the persecution of indigenous representative organizations and setting up of alternative, pro-government organizations has been ongoing for several years. According to the report, harassment of indigenous representatives in the area is increasing. The report narrates the detention of a well-known Sami activist and director of the Sami Heritage and Development Fund, Andrey Danilov, in 2021.<sup>26</sup> Another prominent indigenous activist from Taimyr, Gennady Schukin, a chair of the Association of the Indigenous Peoples in Taimyr and a leader of the local Dolgan community was convicted in December 2017 for organizing illegal hunting of wild reindeer in Taimyr and fined of 120,000 rubles. In August 2018, he was enjoined from participation in the Taimyr regional election campaign.<sup>27</sup>

## Other aspects

As noted, the operations studied have severe, negative environmental impacts. The dams on the Apayao River will impact on one of the remaining key biodiversity areas in the Philippines. Nickel mining has been damaging the fragile Arctic environment for decades. Mega farms may lead to pollution of subsoil waters in Mexico, plus airborne pollution and health-related impacts. Oil palm monoculture plantations have had a destructive effect on biodiversity and traditional, sustainable land management systems. According to the authors, existing environmental regulations at the domestic level have been ignored or inadequately implemented. Environmental Impact Assessments (EIAs) mentioned in the report are considered inadequate (Philippines) or defective (Mexico).<sup>28</sup> Human rights impacts studies were not required as part of the assessments before starting operations. None of the countries studied has developed a full National Action Plan (NAP) on Business and Human Rights, to implement the UNGPs.

### NAPs in the countries under study

In February 2019, India published a Zero Draft NAP. A working group constituted by government representatives, including the National Human Rights Commission and the Securities Exchange Board of India (SEBI), has been established to consult with “stakeholders” (including “marginalized groups”). India has adopted National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, updated in 2018 to National Guidelines of Responsible Business Conduct. In addition to these voluntary measures, SEBI, which regulates stock markets in the country, has required mandatory environmental, social and governance (ESG) disclosures for the top 100 companies listed on Indian stock exchanges since 2012.<sup>29</sup> The mandatory ESG disclosures have gradually been expanded to now cover the [top 1,000](#) companies. However, the Zero Draft NAP does not incorporate indigenous peoples’ rights.<sup>30</sup>

The elaboration of a NAP is ongoing in Mexico. In December 2020, Mexico launched a National Human Rights Program 2020-2024 with a chapter on business and human rights. A process to develop a NAP was initiated in 2015 and a draft was written, but the process has not resulted in its adoption.<sup>31</sup>

While the Commission of Human Rights of the Philippines has been encouraging the development of a NAP since 2013 as part of a broader effort to enhance respect for human rights by business, the Philippine government has not committed to developing a NAP. In November 2016, the Presidential Human Rights Committee held a government consultation on a NAP. In March 2017, the undersecretary for the Presidential Human Rights Committee announced that the Executive Branch of the Philippine Government will embark on developing the Third National Human Rights Action Plan for 2018-2022. It is not known yet whether this plan will address business and human rights or if a separate NAP could be developed.<sup>32</sup>

The Russian Federation has neither adopted a NAP nor announced its intention to do so.

## Companies’ responsibility to respect

In 2010, the UNSRRIP, Professor James Anaya, provided specific guidance on corporate responsibilities to respect indigenous peoples’ rights. According to the UNSRRIP, to comply with their human rights due diligence responsibilities, companies should:

- identify indigenous peoples potentially affected by their operations, even in contexts where there is no state recognition;
- identify and respect indigenous ownership and use of land, regardless of legal title;
- ensure adequate consultations with indigenous peoples and that state has met its obligations in this regard;
- develop impact studies fully incorporating a human rights-based approach;
- compensate for adverse impacts, considering the social, cultural and spiritual aspects of indigenous peoples’ lives that may have been affected; and

- develop benefit-sharing agreements that support indigenous development priorities and strengthen their decision-making mechanisms and institutions.<sup>33</sup>

These responsibilities should be complied with regardless of domestic law. The companies involved in the case studies do not seem to have fully met this requirement. Indeed, the authors and the communities have had great difficulty ascertaining if the companies have complied with their due diligence responsibilities to respect indigenous peoples' rights, or even the very existence of due diligence processes or complaint mechanisms because of a lack of public information. This indicates that such procedures are not easily accessible to those affected, and that these fail to meet the standards recommended in the UNGPs.

## Policy commitments

According to the case studies and on-line information, most of the companies have adopted some kind of policy or commitments regarding respect for human rights:

India	<p><a href="#">Godrej Agrovet Ltd</a><sup>34</sup></p> <p>Part of the "Godrej" Group, one of the largest private sector groups in India.</p> <p>Nationality: Indian</p>	<ul style="list-style-type: none"> <li>• <a href="#">Human Rights Policy issued in June 2017 indicating respect for Bill of Human Rights and ILO Fundamental Principles</a>.<sup>35</sup></li> <li>• FPIC of local communities.</li> <li>• <a href="#">Annual reporting</a>, including on Business Responsibility.<sup>36</sup></li> </ul>
	<p><a href="#">Ruchi Soya Industries Ltd</a><sup>37</sup> (now Patanjali Foods Ltd).</p> <p>Nationality: Indian</p>	<ul style="list-style-type: none"> <li>• Business Responsibility Policies: respect for rights of individuals.</li> <li>• <a href="#">Corporate Social Responsibility (CSR) Policy</a>.<sup>38</sup></li> </ul>
Mexico	<p>Grupo Kuo (part of the Grupo DESC), a grouping of companies working in 3 sectors: food (mainly pork meat); chemicals and industrial motors, and with presence in 5 countries.</p> <p>Under the trademark Kekén they produce, <a href="#">process and distribute pork products</a>.<sup>39</sup></p> <p>Pig raising is done under the model of <i>aparcería</i>: the contractor (PAPO) is in charge of raising the animals in their farms.</p> <p>Nationality: Mexican</p>	<ul style="list-style-type: none"> <li>• Grupo Kuo has adopted a code of conduct and an Integrity Policy, and pursues a CSR policy providing different services to communities. It states <a href="#">respect for human rights and alignment with Global Compact and Sustainable Development Goals (SDGs)</a>.<sup>40</sup> Provides information on compliance with its policies in its <a href="#">annual reports</a>.<sup>41</sup></li> <li>• Kekén adheres to the sustainability strategy of Grupo DESC, and claims sustainable production and a focus on human rights. It has adopted a policy of Zero waste by 2025. The company states its commitment to the SDGs and has undertaken <a href="#">CSR activities</a>.<sup>42</sup></li> <li>• PAPO: as contractor, voluntarily adheres to parent company standards.</li> </ul>
Philippines	<p>Pan Pacific Renewable Power Philippines Corporation (PPRPPC)</p> <p>Nationality: Philippines</p>	<ul style="list-style-type: none"> <li>• No information found about the company's policies.</li> </ul>
Russian Federation	<p>MMC Norilsk Nickel (NorNickel)</p> <p>Nationality: Russian</p>	<ul style="list-style-type: none"> <li>• Human Rights Policy adopted in 2017</li> <li>• Indigenous Peoples Policy adopted in 2021.</li> <li>• Department dedicated to the interaction with indigenous communities.</li> </ul>

Extension of oil palm plantations in Mizoram is undertaken under the figure of Public Private Partnerships. The case study explains that the companies follow the legislation developed by the state and do not adequately engage with affected communities. The two companies now operating in Mizoram have issued public commitments to respect human rights, but neither mentions indigenous peoples.

Godrej Agrovet Ltd “Human Rights Policy” was issued in June 2017. It affirms respect for the highest standards of human rights, guided by international covenants such as the International Bill of Human Rights and the ILO’s Declaration on Fundamental Principles and Rights at Work. The company states that it is committed to identifying, preventing and mitigating adverse human rights impacts, and to engage with stakeholders and respect the principle of free, prior and informed consent of the local communities.

Ruchi Soya Industries Ltd (now Patanjali Foods Ltd) has also adopted “Business Responsibility Policies” (effective from 10 November 2020) stating that the company “is committed to respect the economic, social, cultural, political and civil rights of individuals in and impacted by its operations.”

Group DESC/Kuo in Mexico has adopted a Code of Conduct, an Integrity Policy, and a CSR policy, providing services to communities. These affirm respect for human rights and alignment with the UN Global Compact and the SDGs. The Code of Conduct considers sustainability and relations with communities but does not take into account issues such as consultation, FPIC, due diligence or human rights defenders. Kekén adheres to the sustainability strategy of the Group and claims sustainable production and a focus on human rights. It has adopted a policy of Zero Waste by 2025. The company states a commitment to the SDGs and has undertaken CSR activities.

Grupo DESC states that it has a process to select providers and contractors that ensures that the supply chain operates with the best environmental, social, anti-corruption and labour practices. Candidates have to sign a letter of adherence to the Group’s Code of Conduct and an Environmental Social and Governance (ESG) Compliance letter.

In the case of the Philippines, the authors could not find out any information related to PPRPPC’s policies or partners. All available information seems to be only the address of the company in Manila.

NorNickel has adopted a Human Rights Policy and recently updated its [Indigenous Peoples’ Rights Policy](#).<sup>43</sup> The Policy expresses the company’s commitment to: “respect indigenous lands; support traditional use of natural resources by indigenous peoples; assist in preserving intangible cultural heritage of indigenous peoples; promote indigenous trade; and provide social support with a view to achieving modern living standards and the highest possible level of physical and mental health.”<sup>44</sup> The policy adheres to relevant domestic law while taking into account UNDRIP and ILO Convention 169, together with the SDGs, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability, the UNGPs, the GRI reporting standards as well as the Voluntary Principles on Security and Human Rights (VPSHR). A process to monitor and assess implementation is also described. The International Council on Mining and Metals (ICMM) standards are also referenced as guidance.

Thus, most of the companies analyzed have complied with the adoption of public policies at the highest level committing to respect human rights, as recommended by the UNGPs, although their scope seems to be very limited. Only NorNickel has developed a specific policy on indigenous peoples, while Godrej Agrovet Ltd does have a commitment to FPIC, and Kekén has undertaken CSR actions (health services) with Maya communities where it operates.

### *Human rights due diligence*

Even if written public policies exist, these do not seem to be known at the community level. Potential due diligence measures and processes are equally unknown, as is the existence of a complaint and redress mechanisms.

According to the case studies, most of the companies involved in the projects studied have not carried out human rights due diligence to identify, prevent, mitigate and account for the adverse human rights impacts of their operations. In none of the cases were social impact or human rights impact assessments identified.<sup>45</sup> In the case of the Philippines, the EIAs did not even include the total number of households in the impacted area, nor was there any mention of social and cultural impacts.<sup>46</sup>



Irregularities in the EIA to establish the mega pig farm in Homún were identified. As noted above, Grupo DESC's policy requires compliance with certain standards for their contractors (in this case, PAPO). By the signing of the ESG letter, they commit to (voluntarily): operate according to national law; take care of their workers' health; ensure protection of human rights (prohibition of child labour, no discrimination), comply with environmental legislation, and operate without corruption, extortion or bribery. But performance is not assessed, and compliance by contractors is not enforced.<sup>47</sup>

A failure to engage with indigenous peoples' representative bodies is also a common feature. In the Philippines, the company did not disclose accurate information on the impacts of the hydropower dams, disrespected indigenous culture and even bribed some local elites to break the unity of the communities.<sup>48</sup> The Indian case study reports no interaction between the companies and the communities at all. In Mexico, the company has challenged the self-identification of Homún community members as Mayan and falsely describes their supporters as "fallacious groups that control the complainants." The case study reports allegations of intimidation and interference by Kekén (partly through CSR activities) during self-consultation processes held by three communities in eastern Yucatán, and records testimony denouncing surveillance, intimidation and manipulation by the company and local authorities during the self-consultations.

While NorNickel's Indigenous Peoples' Policy affirms its readiness to ensure implementation of FPIC, it unduly controls the process.<sup>49</sup> Recently, it piloted a FPIC procedure with an indigenous community that was due to be resettled. According to local activists, it imposed its own protocols on the community rather than allowing the indigenous peoples to develop their own. The company has recently participated in talks with a coalition of indigenous peoples and support organizations denouncing unfair compensation after a 2020 fuel spill and has announced its intention to join the IRMA (Initiative for Responsible Mining). Activists say that the situation on the ground has not changed and that the company has created its own "indigenous council" in Taimyr to pursue a policy of divide and rule.<sup>50</sup>

No adequate benefit-sharing arrangements are described in the case studies. In India, the Government of Mizoram promotes oil palm plantations in community lands, and communities are left to struggle with the draconian regulations. In Mexico, Kekén is allegedly using CSR programs (such as health care services) to influence and manipulate community decisions.

In the case of NorNickel, the company decides the percentage of benefits allotted to indigenous peoples in the area. At the end of 2020, the company announced the creation of a five-year program for the development of indigenous communities on the Taimyr Peninsula. The program was not discussed with the affected indigenous peoples and it will be implemented by the Russian Association of Indigenous Peoples of the North (RAIPON), an organization that has been heavily criticized for not being representative of Russian indigenous peoples. The program does not address substantive issues identified by affected indigenous peoples, such as land, resources and adequate compensation mechanisms. Compensation offered by the company in the case of the Gened 1 dam is not deemed appropriate by the Isnag people, who will lose their traditional lands that are submerged by the hydroelectric dams.

## Justice and Remedy

The case studies do not identify adequate, or any, complaints and redress mechanisms in Mexico, India and the Philippines, and they report a lack of information on the same among affected communities.<sup>51</sup>

In the case of India, the Mizoram Oil Palm legislation actually prevents filing claims against the companies and the State, while indigenous producers are fined if they do not comply with the strict regulations.<sup>52</sup> The only redress mechanism provided under the relevant law are "Zonal Committees," which have the powers and functions, among other things, to "consider complaints of the grower regarding transportation, purchase of Oil Palm Fresh Fruit Bunches (FFBs) and payment of price by the factory to the Oil Palm Cultivators". This mechanism is considered both

inadequate and ineffective. No grievance mechanism has been identified in the case of Grojev Agrovet Ltd., while Ruchi Soja claims to have mechanisms for the redressal of concerns and provides an email address where complaints can be submitted. However, communities interviewed in the case study had no knowledge of any complaints mechanism.

A lack of adequate complaints mechanisms have forced some indigenous communities into the courts, a daunting prospect considering the obstacles they face to access the ordinary justice system.<sup>53</sup> Experience with the courts in Mexico has been varied. The lower courts especially tend to protect investors. The community of Homún has filed several writs of amparo against violations of their rights, including rights of the child, and against irregularities in the licensing process. The company has also taken actions that hinder access to justice. For instance, in 2018, the company filed a recusal motion to try to remove the judge who had ruled in favor of the community's rights in the case filed by the children of Homún. Allegedly, PAPO has submitted dubious reports in the (ongoing) litigation process.

Isnag people have sought remedies in administrative and judicial bodies, filing administrative and criminal cases against officials of the NCIP. Despite their letters to different government agencies and to the Commission on Human Rights, their issues are not being addressed. Representation from lawyers with expertise on indigenous peoples' rights is not available, and they lack the resources required for the long and expensive legal processes.

According to NorNickel, information on alleged human rights violations is collected via the Corporate Trust Line (CTL), "established to process reports from all internal and external stakeholders, including human rights complaints, regular employee questionnaires and sentiment surveys among the local population and indigenous northern minorities." The Internal Control Department handles complaints/queries filed through the CTL. It verifies, analyses and processes submitted information, monitors control measures and provides CTL report statistics, including those in the field of human rights protection, to company management.<sup>54</sup>

NorNickel's Indigenous Peoples Policy purports to provide indigenous peoples with access to complaints mechanisms that enable redress. Applications may be submitted anonymously. The Policy states that the company and its Russian business units "do not tolerate any punishment, disciplinary action or retaliation against anyone who reports concerns and assists in investigating misconduct."<sup>55</sup> The case study, however, asserts that complaints by members of communities or organizations that are not working with the company are ignored, and those who complain are harassed.

Concerning remedies, compensation after the 2020 oil spills have been described as unfair, both in terms of the impacts produced and in the identification of those impacted, a process entirely decided by the company. The "compensation payment" for the spill impacts (250,000 rubles/person or US\$3,000) was not paid to all those affected. Indigenous representatives also denounce the bureaucratic obstacles to accessing compensation, which is paid via organizations and groups loyal to the company.

## Conclusions and recommendations

The United Nations human rights system, including specialized bodies created to monitor compliance with human rights in business operations, have addressed the particular impacts of these operations on the rights of indigenous peoples. They have repeatedly stressed the need to protect and respect international human rights standards pertaining to the rights of these peoples, even when they are not reflected in national legislation. The case studies exemplify the problems human rights bodies have identified in their observations, thematic reports, missions and recommendations. They describe business operations, supported by the respective states, where indigenous peoples' human rights have not been protected or respected. Indigenous peoples have been denied the right to participate in decision-making about these activities, which have huge impacts on their lands, territories and resources. Their rights to self-determination and to decide on their own models of development have been ignored. Most of the

states analyzed have unilaterally determined what national interests or priorities are and affected indigenous peoples have only learned about the proposed activities when they were already agreed between national authorities and the private sector.

The protection role of the state, including via its legislative power, seems to be primarily directed to the protection of the operations of business activities. Legislation and policies have been adopted to foster these activities that are not consistent with the states' human rights obligations. States do not seem to have regulated or monitored the human rights impacts of business operations and no preventive measures have been adopted. When indigenous peoples have complained about the impacts, they have suffered violence and criminalization, sometimes from the very institutions that are charged with protecting their rights.

While the companies have all adopted different kinds of policy commitments to respect human rights, none seem to have developed adequate human rights due diligence measures, identifying affected indigenous peoples and the rights at stake, and adopting measures to ensure respect for those rights. Only one of the companies has adopted an indigenous peoples' rights policy, but it seems to be applied at its own discretion.

No appropriate benefit-sharing arrangements have been identified. When compensation or remedies have been provided, they have been considered unilaterally determined, unfair and inadequate by the affected communities. Some of the companies have undertaken CSR actions. But CSR is not a substitute for compliance with the companies' human rights responsibilities, nor can they be considered adequate benefit-sharing arrangements. In some cases, CSR has been allegedly used to manipulate communities. Case studies report on the difficulties the communities have to access information on the proposed developments and on the companies themselves. They claim that no effective complaint and redress mechanisms, in the terms suggested by the UNGPs and the WGBHR, has been established.

The case studies show that indigenous peoples are taking action to confront these human rights violations and responding to the lack of adequate remedies. They have resorted to the national justice systems, in spite of the obstacles they face in this regard, and have also addressed their concerns to national and international human rights bodies and solidarity networks.

Considering the problems exposed, it is clear that 10 years after their adoption, the recommendations contained in the UNGPs on states' duties to protect human rights, companies' responsibilities, and the need to provide for adequate remedy when violations occur have not been adequately adopted by either states or the private sector. Due to the extreme impacts and threats to the very survival of indigenous peoples, urgent action is needed to address non-compliance.

## Recommendations

The case studies provide both general and case-specific recommendations to address the violations described. These include:

### *States*

To comply with the duty to protect indigenous peoples' human rights, states must:

- Ratify and implement relevant human rights instruments.
- Develop and enforce a legal and policy framework that adequately recognizes indigenous peoples and their human rights, including their right to their lands, territories and resources, FPIC, and ensure the protection

of indigenous lands and resources from third parties, whether state-owned companies, joint ventures or private companies.

- Ensure legal coherence by developing legal and policy frameworks with regard to national strategies and priorities that uphold the rights of indigenous peoples as enshrined in UNDRIP and related international law and jurisprudence.
- Ensure effective participation by indigenous peoples in the development of policies and regulations related to development and business activities that may affect them.
- Implement the numerous recommendations of UN treaty bodies and special procedures regarding the protection of the rights of indigenous peoples in the context of business activities, especially in relation to FPIC and protection of human rights defenders.
- Carry out human rights impact assessments together with indigenous peoples before adopting any decision on development activities affecting them. In this process, provide all the relevant information to the affected communities/peoples in a culturally-appropriate manner.
- Provide immediate and adequate remedies for the violations of the human rights of indigenous peoples that have taken place in the context of business operations and adopt necessary measures to ensure indigenous peoples' access to justice.
- Stop criminalization and repression of indigenous peoples' human rights defenders and their supporters, and provide effective access to justice to victims of human rights violations.
- Ensure accountability of public servants involved in corruption and connivance with businesses.
- Elaborate and adopt NAPs, with the full and effective participation of indigenous peoples, to ensure protection for their individual and collective rights.
- Sanction the companies that violate indigenous peoples' rights and stop activities and operations until such time as violations are adequately addressed.

## *Companies*

In order to meet their responsibilities to fully respect indigenous peoples' human rights, companies must:

- Be informed about their responsibilities to respect indigenous peoples' rights.
- Adopt and implement a policy on indigenous peoples in line with the relevant international human rights standards on the rights of indigenous peoples.
- Develop, issue and implement detailed operational guidelines for the conduct of human rights due diligence, including with regards to indigenous peoples' individual and collective rights, and ensure that these are accessible to indigenous peoples in forms and languages they understand.
- Initiate transparent dialogues, good faith consultations and cooperation with indigenous communities affected by their business operations.
- As part of their due diligence, and together with indigenous peoples, develop adequate environmental and human rights impact assessments, including on the impacts on the internationally recognized rights of indigenous peoples.
- Report publicly, regularly and transparently on the actions taken to identify, prevent, mitigate and address the adverse human rights impacts of their operations.
- Establish adequate complaint mechanisms and remedies in accordance with the WGBHR recommendations and the international standards on the rights of indigenous peoples. The complaints system should be accessible to indigenous peoples, fair, transparent and impartial. It should have an appeals procedure.

## Partners/investors

To meet their duties and responsibilities to fully respect indigenous peoples' human rights, partners and investors in activities that have an impact on their human rights must:

- Adopt a policy fully aligned with international environmental and human rights standards in investment activities with the business companies.
- Identify, assess, and understand the risks of the projects in terms of the rights of affected indigenous peoples and their communities.
- Undertake regular reviews of the implementation of their own policies and of the environmental and human rights policies and due diligence processes of the companies.
- Implement financial sanctions, including termination of business relationships in case of failure to comply with international standards on the rights of indigenous peoples, and other environmental and human rights standards.

## To States, private sector and partners/investors:

Support indigenous own models of development, including indigenous peoples' social entrepreneurs and cooperatives based on their self-determined development.

## ANNEXES

### ANNEX I

Thematic and mission reports and communications of the UNWGHRB and references to the rights of indigenous peoples

Thematic Report	
A/68/279 2013	Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Business-related impacts on the rights of indigenous peoples
Mission report	Issues/ Paragraphs <sup>56</sup>
Visit to Honduras A/HRC/44/43/ Add.2, 15 May 2020	Need for a clear institutional and regulatory framework on participation (20) Lack of framework to ensure right to FPI consultation and consent (23) in line with UNDRIP and ILO C169; need for a fully inclusive process with IPs to develop any instrument on the matter (24-29; 101; 109b) Land rights 109 (f) Labour conditions in Mosquitia (58-59; 109 (j) (i)) Indigenous women (61) Violence and criminalization (66-67; 78-79 109 (g) (i))
Visit to Thailand A/HRC/41/43/Add.1, 21 may 2019	Recognition and socioeconomic situation (69-71) Lack of consultation/FPIC, respect for land rights/conservation and criminalization (72-74; 95h) Statelessness (75) Inclusion in NAP (102 d)

Visit to Kenya A/HRC/41/43/Add.2, 21 May 2019	Lack of protection for land rights and African HR system decisions (25; 86 (j)) Participation/information on mining projects (56; 58-59) Consultation and FPIC (86 (i)) Resettlement and eviction (86 (g))
Visit to Canada A/HRC/38/48/Add.1, 23 April 2018	Socio economic disparities (7) Impacts (17-18; 49-50) Criminalization of peaceful protest (47) Consultation and FPIC (50; 51-55; 76; 79(q); 82)) Benefit-sharing (60); Mount Polley breach and EIAs (61-62; 79(j)) Participation in advisory body on responsible business conduct (79 (b)) Disappearances of indigenous women (79(o)) Respect for indigenous relations with lands (82) Inclusion in NAP (85 (c))
Visit to Peru A/HRC/38/48/Add.2 9 May 2018	Disproportionate impacts (62) Consultation and FPIC (25; 63-68; 46;49; 82; 90(d); 90(e)) Land rights (26; 47; 48; 91(e)) Forced labour (60) Self-identification (69; 90(t)) Gaps in protection (90(b)) NAP (90(c))
Visit to Mexico A/HRC/35/32/Add.2 27 April 2017	Inadequate HR due diligence of state and companies (7) Case of windmills companies in Oaxaca, failed consultation (24-28) GM soybeans in Maya lands in Campeche and Yucatán, consultation and impacts (29-30) Toluca-Naucalpan highway consultation, harassment and violence (31-35) Aqueduct in Sonora consultations, repression, forced disappearances, incarceration (36-37) Consultation 40-43 and FPIC (108(c)) Defenders (83) NAP (108 (g))
Visit to the USA A/HRC/26/25/Add.4 6 May 2014	Impacts of business activities (77-80) and need for the state to address them (102 (n))
Visit to Mongolia A/HRC/23/32/Add.1 2 April 2013	Lack of effective remedies (36) Lack of consultation (49) Impacts of mining (59-60) Way of life and children (92(b))
<b>Communications sent</b>	<b>Case</b>
Botswana BWA 3/2021	BOTSWANA Impacts of oil and gas exploration and extraction on the lands of the San indigenous peoples of Botswana and Namibia
Canada CAN 7/2021	
Namibia NAM 2/2021	
National Petroleum Corporation of Namibia OTH 255/2021	
ReconAfrica OTH 252/2021	

Chile CHL 6/2021	COLOMBIA On alliance signed by UNDP and oil company GeoPark based in Chile. The operations of the company had had negatives impacts on the human rights of Siona indigenous peoples in Putumayo, Colombia	
Colombia COL 7/2021		
GeoPark OTH 213/2021		
UNDP Colombia and Head quarters OTH 215/2021 OTH 214/2021		
Kenya KEN 2/2021	KENYA Criminalization of Maasai HRDs and ongoing land dispute between Maasai peoples and Kedong Ranch Limited	
Kendong Ranch Ltd. OTH 200/2021		
Guatemala GTM 5/2021	GUATEMALA Criminalization, detention, violation of due process against Q'eqchi' HRD Bernardo Caal Xól	
Australia AUS 2/2021	GREENLAND Human rights violations and environmental damage of the uranium mining project Kuannersuit or Kvanefjeld in Southern Greenland by Greenland Minerals A/S	
Denmark SNK 2/2021		
Greenland minerals Ltd OTH 189/2021		
Chhaya Devi Complex Pvt. Ltd OTH 183/2021		
Marriot International OTH 184/2021	NEPAL Violations of the rights of indigenous Newar peoples over their lands, resources, spiritual and cultural sites for construction of business complex in Kathmandu	
NEPAL NPL 1/2021		
USA 16/2021		
Accord OTH 177/2021		
Club Med OTH 178/2021	INDONESIA Business and investment in the development of the Mandalika region, Indonesia, resulting in human rights violations of indigenous peoples and communities	
Dorna Sports OTH 181/2021		
France FRA 3/2021		
Paragon OTH 179/2021		
Spain ESP 2/2021		
USA USA 15/2021		
Vinci OTH 180/2021		
Asian Infrastructure Investment Bank OTH 24/2021		
Indonesia IDN 5/2021		
Indonesia Tourism Development Corporation ITDC OTH 49/2021		
EMSA S.A. OTH 1/2021		NICARAGUA Murder of indigenous defender Nacilio Macario, Mayangna, RACC Nicaragua
Nicaragua NIC 1/2021		
Bangladesh BGD 8/2020		BANGLADESH - CHT Threat of eviction of Mro families for the construction of luxury tourism resort, Bandarban District, CHT, lack of consultation and intimidation
Marriot International OTH 85/2020		
R&R Holdings Limited OTH 84/2020		
USA USA 32/2020		

Guatemala GTM 3/2020	GUATEMALA Violation of labor rights (forced labor) of workers, mainly indigenous, in the palm oil plantations in Petén, Guatemala
Cauchos y Palmas Sociedad Anónima OTH 25/2020	
Industrias Chiquibul Sociedad Anónima OTH 26/2020	
Nacional Agroindustrial Sociedad Anónima OTH 27/2020	
Reforestadora de Palmas del Petén Sociedad Anónima (REPSA) OTH 28/2020	
Tikindustrias Sociedad Anónima OTH 30/2020	
Cerrejon OTH 65/2020	COLOMBIA Negative impacts of the operations of mining company Cerrejón in Wayuu people in the Guajira, Colombia
Colombia COL 7/2020	
Australia AUS 2/2020	PAPUA NEW GUINEA Concerns on serious human rights risks on the proposed Frieda River gold and copper mine and associated tailings dam, Papua New Guinea
Canada CAN 5/2020	
China CHN 15/2020	
Frieda River Limited OTH 53/2020	
Highlands Frieda Limited OTH 54/2020	
Papua New Guinea PNG 1/2020	
Bank of Ayuhaya OTH 15/2020	LAO PDR Human rights impacts of the collapse of an auxiliary dam in Attapeu Province, Lao PDR.
Export-Import Bank of Thailand OTH 17/2020	
Korea Western Power Company OTH 4/2020	
Krung Thai Bank OTH 14/2020	
Lao Holding State Enterprise OTH 5/2020	
Lao People's Democratic Republic LAO 1/2020	
Ratchaburi Electricity Generating Holding OTH 6/2020	
Republic of Korea KOR 3/2020	
SK Engineering Construction OTH 7/2020	
Thailand THA 2/2020	
Thanachart Bank OTH 16/2020	
The Export and Import Bank of Korea (Korea Eximbank) OTH 8/2020	
Xe-Pian Xe-Namnoy Power Company OTH 9/2020	



## ANNEX II

Reports of the Special Rapporteurs on the rights of indigenous peoples: selected references on the rights of indigenous peoples and the human rights impacts of extractive activities and development projects on or affecting their lands, territories and natural resources.<sup>57</sup>

(2002) E/CN.4/2003/90/Add.3 Mission to the Philippines
(2003) E/CN.4/2003/90 Impact of big development projects on the rights of indigenous peoples
(2003) E/CN.4/2004/80/Add.2 Mission to Mexico
(2007) A/HRC/6/15 Human rights based approach to development
(2007) A/HRC/6/15/Add.3 Situation of indigenous peoples in Asia
(2009) A/HRC/12/34/Add.5 1-74 Indigenous communities affected by hydroelectric Project Chan 75, Panama
(2010) A/HRC/15/37 Business responsibilities with regards to the rights of indigenous peoples
(2010) A/HRC/12/34/Add.8 Consultations in the case of the Marlin mine, Guatemala p. 1-36
(2010) A/HRC/15/37/Add.5, paras. 30–40,41-51, 85-87, 83–84 Mission to the Russian Federation
(2011) Extractive industries operating in and around indigenous territories
(2011) A/HRC/18/35/Add.8 Indigenous peoples affected by the El Diquis hydroelectric Project, Costa Rica
(2011) A/HRC/18/35/Add.3, Indigenous peoples of Guatemala and extractive and other projects in their traditional lands and territories
(2012) A/HRC/21/47/Add.3 Communications to China and Ethiopia: hydroelectric dam Gibe III, Ethiopia p. 31-32; 40-43
(2012) A/HRC/21/47 Progress report on extractive industries
(2013) A/HRC/24/41 Extractive industries and indigenous peoples
(2013) A/HRC/24/41/Add.3 Consultation on the situation of indigenous peoples in Asia
(2014) A/HRC/27/52 Obstacles for the recognition and implementation of the rights of indigenous peoples
(2014) A/HRC/27/52/Add.3 Indigenous Peoples in Peru and extractive industries
(2015) A/70/301; (2016) A/HRC/33/42 Impacts of international investment agreements on the rights of indigenous peoples
(2018) A/HRC/39/17 Violence and criminalization against indigenous human rights defenders
(2018) A/HRC/39/17/Add.2 Mission to México
(2019) A/HRC/42/37 Access to justice and indigenous justice systems
(2020) A/HRC/45/34/Add.3 Regional consultation on the rights of indigenous peoples in Asia

## Endnotes

<sup>1</sup> See Annex II.

<sup>2</sup> (2018) A/HRC/39/17.

<sup>3</sup> Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework. [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>4</sup> Raising the Ambition - Increasing the Pace. UNGP 10+. A roadmap for the next decade on business and human rights. Available at: <https://www.ohchr.org/Documents/Issues/Business/WG/ungps10plusroadmap.pdf>. See also AYLWIN, Jose; ROHR, Johannes, (2021) The UN Guiding Principles on Business & Human Rights and Indigenous Peoples. Progress achieved, the implementation gap and challenges for the next decade. IPRI/IWGIA. Copenhagen. Available at <https://www.iprights.org/resources/publications/the-un-guiding-principles-on-business-human-rights-and-indigenous-peoples>.

<sup>5</sup> See, for instance, CERD, Lars-Anders Ågren et al. vs. Sweden, on mining operations violating Sami rights. CERD/C/102/D/54/2013 (2020); CERD, Urgent Action Procedure, Decision 1(100) Canada (13 December 2019) on dam and pipeline projects; CERD, Urgent Action procedure, Guyana, (17 May 2018) requesting that the State “provide information on steps taken to: 1. Refrain from approving projects and granting mining concessions that affect the lands, territories or resources of Indigenous Peoples without obtaining their free, prior and informed consent, and revoke such projects in Tas-sarene and Kangaruma villages and on Marudi Mountain to which the Indigenous Peoples did not consent; CCPR, Communication, Benito Oliveira Pereira and Lucio Guillermo Sosa Benega and the Indigenous Community of Campo Agua’ẽ, of the Ava Guaraní People v. Paraguay, on massive violations caused by large-scale soy farming. CCPR/C/132/D/2552/2015 (2021); CESCR, Concluding Observations, Argentina, on FPIC in relation to extractive activities and indigenous consultation and FPIC protocols. E/C.12/ARG/CO/4; CRC, Concluding Observations, Democratic Republic of the Congo, recommending the State to establish regulations to ensure that extractive industries comply with international and national human rights, labour, environmental and other standards. CRC/C/COD/CO/3-5; CEDAW, Concluding Observations, Suriname, expressing concern about the lack of legal framework to ensure accountability of foreign-owned companies for violations of indigenous women’s rights. CEDAW/C/SUR/CO/4-6; CAT. Concluding Observations, Panama, on arbitrary arrests and excessive use of force in protests against mining operations and hydroelectric production in Ngobe Bugle territory. CAT/C/PAN/CO/4.

<sup>6</sup> <https://www.ohchr.org/en/special-procedures/wg-business>.

<sup>7</sup> (2013) A/68/279.

<sup>8</sup> See Annex I.

<sup>9</sup> (2019) A/HRC/EMRIP/2019/3/Rev.1; (2014) A/HRC/27/52.

<sup>10</sup> See CERD, EA/UA Letter 29 August 2019: The Committee notes with concern that the State party does not recognize indigenous peoples, in contradiction with the principle of self-identification and without taking into account the Committee’s General Recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention. [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT\\_CERD\\_ALE\\_Ind\\_8974\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT_CERD_ALE_Ind_8974_E.pdf). See also CERD letter from 10 May 2019 expressing concern for proposed draft National Forest Policy which affects the rights recognized in the 2006 Forests Rights Act with the aim of extending plantations, at [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT\\_CERD\\_ALE\\_Ind\\_8930\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT_CERD_ALE_Ind_8930_E.pdf).

<sup>11</sup> UN Special Rapporteurs have pointed out that these rights are recognized under certain conditions that obstacle their enjoyment. See (2003) E/CN.4/2004/80/Add.2 and (2018) A/HRC/39/17/Add.2.

<sup>12</sup> Ley para la Protección de los Derechos de la Comunidad Maya del Estado de Yucatán and Ley del Sistema de Justicia Maya del Estado de Yucatán.

<sup>13</sup> [https://www.fao.org/faolex/results/details/en/c/LEX-FAOC013930/#:~:text=Philippines-,Indigenous%20Peoples%20Rights%20Act%201997%20\(Republic%20Act%20No.,therefor%2C%20and%20for%20other%20purposes](https://www.fao.org/faolex/results/details/en/c/LEX-FAOC013930/#:~:text=Philippines-,Indigenous%20Peoples%20Rights%20Act%201997%20(Republic%20Act%20No.,therefor%2C%20and%20for%20other%20purposes).

<sup>14</sup> Numerous amendments to indigenous laws and business exemptions initiated over the past decade reflect an increasing influence and powerful lobby of extractive industry in the country. Several decrees targeting indigenous groups in Russia were adopted in 2020, including Decree on Compensation for loss or damage to indigenous environment (September, 2020), Federal Law On Government Support for Business Activities in the Arctic Area of the Russian Federation (July, 2020) and Decree on the approval of the rules for the maintenance of the list of persons belonging to indigenous minority peoples. These legal instruments undermine the recognition and protection of the fundamental collective rights of indigenous peoples in the country.

<sup>15</sup> Such as the Mizoram Oil Palm (Regulation of Production & Processing) Act, 2004. In 2007, the Act was amended to extend it to the whole state of Mizoram, including the areas falling under three Autonomous District Councils (ADCs) namely Chakma ADC, Mara ADC and Lai ADC in southern part of the state. On the Arctic Development Strategy and indigenous peoples, see IWGIA (2022) The Indigenous World 2022. Available at: <https://www.iwgia.org/en/russia/4682-iw-2022-russian-federation.html>.

<sup>16</sup> IWGIA (2022) the Indigenous World 2022. After the 2020 amendment of the Constitution, two new paragraphs have been added to this article, including on the protection of the identity of ethnic Russians abroad.

<sup>17</sup> (2018) A/HRC/39/17.Add2.

<sup>18</sup> (1997) CERD General Recommendation XXIII on the rights of indigenous peoples. (2018) Human Rights Committee, General comment No. 36, Article 6: Right to Life, CCPR/C/GC/36, para. 26.

<sup>19</sup> Mizoram (Lushai Hills District (Village Councils) Act, 1953.

<sup>20</sup> The Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004 provides that the oil palm growers/farmers of a particular area “shall supply the fresh fruit bunches from the oil palm plantations grown in that area only to the factory to

whom the factory zone is attached and to none else.” Hence, the oil palm growers/farmers do not have the option to sell their production to any company other than the company selected by the government of Mizoram without any consultation with the affected communities. Failure to comply may result in heavy fines to the producers.

<sup>21</sup> UNDRIP, article 10.

<sup>22</sup> Poma Poma v. Peru, CCPR/C/95/D/1457/2006 (27 March 2009), para. 7.6 (“In the Committee's view, the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community depends on whether the members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy. The Committee considers that participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members”).

<sup>23</sup> The report quotes a 2021 opening statement in the review document of NCIP CAR of Gened I FPIC process stating that: FPIC shall be wielded strictly for the benefit of the IPs, and shall be rigidly executed for the IPs' advantage, and not for another's convenience. Neither shall it be used to fatigue the IPs to submission, lest the FPIC be misunderstood as a sledgehammer to break open the doors of the ancestral domains regardless if it was slammed shut by the indigenous peoples.

<sup>24</sup> See (2017) WGBHR report on its visit to Mexico, expressing the importance of FPIC (A/HRC/35/32/Add.2., párr.38 y ss. 108 b) y C). Also reports of the visits to Mexico of UNSRs on the rights of indigenous peoples referenced in Annex II.

<sup>25</sup> See e.g., Gallardo et al v. Mexico, CAT/C/72/D/992/2020 (7 Feb. 2022), para. 9(e) (a decision of the UN Committee Against Torture, inter alia, recommending that Mexico cease “the criminalization of the defence of indigenous peoples' rights”).

<sup>26</sup> He was one of the organizers of the AnswerUsElonMusk international campaign, whose participants wrote a letter to Tesla CEO Elon Musk asking him not to purchase products from NorNickel because of the company's systematic violation of indigenous rights in the Taimyr and Murmansk regions.

<sup>27</sup> The UN Human Rights Committee reflected its concern on the situation of indigenous peoples in the country including in the list of questions for the 8th periodic report of the Russian Federation a request for the country to respond on the measures taken for the respect of indigenous peoples' rights, including to FPIC, on the measures taken to prevent the environmental impacts caused by industrial operations and on the allegations of harassment of indigenous human rights defenders. (2020) UN Human Rights Committee, List of issues in relation to the eighth periodic report of the Russian Federation. CCPR/C/RUS/Q/8, 14 August, 2020.

<sup>28</sup> According to the case study, only 22 out of 257 pig farms in the State of Yucatán have submitted an environmental impact assessment, and State monitoring of their operations is not sufficient.

<sup>29</sup> The Companies Act, 2013 read with the Rules framed thereunder and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”) have mandated the formulation of certain policies for listed and/or unlisted companies.

<sup>30</sup> <https://globalnaps.org/country/india/> Also <https://www.ihrb.org/other/governments-role/commentary-indias-national-action-plan> According to the information submitted by India for the 41st session of the Universal Periodic Review (UPR) of the UNHRC: India has been developing its business responsibility framework to provide an enabling environment for improved participation of businesses in securing basic rights of the citizens. India has revised and aligned the National Voluntary Guidelines on Social, Economic and Environmental Responsibilities of Business with the UN Guiding Principles on Business and Human Rights and Sustainable Development Goals (SDGs) in 2019. This also led to the development of the National Guidelines on Responsible Business Conduct. Simultaneously, Business Responsibility Reports (BRR) were made mandatory in 2019 enjoining the businesses to report their actions towards adoption of responsible business practices. In 2021, pursuant to the recommendations of the BRR Committee, the Securities and Exchange Board of India (SEBI) prescribed the Business Responsibility and Sustainability Reporting requirement for top 1000 listed entities (by market capitalisation) on voluntary basis for the FY 2021-22, and on mandatory basis from FY 2022-23 onwards. A draft National Action Plan on Business and Human Rights was first released in 2018 for stakeholder consultations and is presently under discussion. (2022) A/HRC/WG.6/41/IND/1 National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21. India. 17 August 2022, paras. 16-17.

<sup>31</sup> <https://globalnaps.org/country/mexico/>.

<sup>32</sup> <https://globalnaps.org/country/philippines/>.

<sup>33</sup> (2010) A/HRC/15/37.

<sup>34</sup> <https://www.godrejagrovvet.com/>.

<sup>35</sup> [https://www.godrejagrovvet.com/public/pdfs/codes\\_policies/people/HumanRightsPolicy.pdf](https://www.godrejagrovvet.com/public/pdfs/codes_policies/people/HumanRightsPolicy.pdf).

<sup>36</sup> <https://www.godrejagrovvet.com/public/uploads/reports/2021-22/Business-Responsibility-Report-2021-22-V2.pdf>.

<sup>37</sup> Now Patanjali Foods Ltd. <http://www.ruchisoya.com/index.php> Information on oil palm plantations provided by the company at <http://www.ruchisoya.com/horizons.php>.

<sup>38</sup> [http://www.ruchisoya.com/csr/CSR\\_Policy.pdf](http://www.ruchisoya.com/csr/CSR_Policy.pdf).

<sup>39</sup> <https://kuo.com.mx/somos-kuo>.

<sup>40</sup> [https://kuo.com.mx/site/uploads/es/documents/general\\_documents/Politica\\_de\\_Integridad.pdf](https://kuo.com.mx/site/uploads/es/documents/general_documents/Politica_de_Integridad.pdf).

<sup>41</sup> 2021 Annual Report at [https://kuo.com.mx/site/uploads/es/documents/annual\\_reports/kuo-ia-21.pdf](https://kuo.com.mx/site/uploads/es/documents/annual_reports/kuo-ia-21.pdf).

<sup>42</sup> <https://kekensustainable.com/porcicultura-sustentable/>.

<sup>43</sup> <https://www.NorNickel.com/sustainability/social-responsibility/human-rights/>. Indigenous Peoples' Rights Policy at: [https://www.NorNickel.com/upload/iblock/029/PJSC\\_MMC\\_Norilsk\\_Nickel\\_Indigenous\\_Peoples\\_Rights\\_Policy.pdf](https://www.NorNickel.com/upload/iblock/029/PJSC_MMC_Norilsk_Nickel_Indigenous_Peoples_Rights_Policy.pdf).

<sup>44</sup> Indigenous Peoples Rights Policy, p.1-2

<sup>45</sup> NorNickel claims to “regularly assess the potential impact of its operations on human rights. The Risk Management Service monitors key risk management initiatives, including those identified in the process of stakeholder engagement regarding the respect and protection of human rights, and develops company-wide methodological principles and approaches to risk management.”

<sup>46</sup> One of the reviewers of PPRPPC’s Environment Impact Assessment (EIA) in 2016 publicly mentioned that in the IEA, there was no mention as to the total number of households in the project’s impact area. The EIA also did not mention the social and cultural impact of the project to the Isnag indigenous peoples whose identity is rooted in the river and the mountains.

<sup>47</sup> 2021 Report, p.56.

<sup>48</sup> Regarding respect for indigenous culture, the case study narrates: Isnag peoples have also referred to the lack of respect for their cultural rights. Warling Maludon recalled with great dismay: “Tinanong namin sila kung papaano ang mga minatay namin. Ang sagot ng atorni ng Pan Pacific, hayaan na daw kasi patay na ang mga iyon,” (We asked them, “How about our ancestors’ graves”? The lawyer of Pan Pacific said, “never mind” the dead). For Maludon and other Isnag elders, saying “never mind the dead” is a manifestation of total disrespect not only to the Isnag ancestors but to the past, present and future generations of the river people. For them, the remains of their ancestors are impossible to unearth. It is part of their belief that disturbing the dead will bring misfortune to the living. Also, most of their ancestors are impossible to unearth because they are already part of their land, their rivers and their forest.

<sup>49</sup> Indigenous Peoples Rights Policy, para. 4.6.

<sup>50</sup> IWGIA (2022) The Indigenous World 2022.

<sup>51</sup> For further cases and overall analysis of the issue, see DOYLE, C (ed.) 2015. Business and Human Rights. Indigenous Peoples’ Experiences with Access to Remedy. AIPP, Almaciga, IWGIA.

<sup>52</sup> The Mizoram Oil Palm Act, 2004 further bars any court from taking cognizance of an offence punishable under the Act, or any rule or order, made thereunder except upon a complaint in writing made by the Oil Palm Officer or any authority or Officer authorised by him in this behalf. Further, no suit, prosecution or other legal proceeding shall lie against any person which includes business enterprises for anything which is in “good faith done or intended to be done in pursuance of any provision of this Act any rule or order made thereunder.”

<sup>53</sup> (2019) A/HRC/42/37. In the case of the Philippines, also (2002) E/CN.4/2003/90/Add.3.

<sup>54</sup> <https://www.NorNickel.com/sustainability/social-responsibility/human-rights/>.

<sup>55</sup> Indigenous Peoples Rights Policy, para. 4.7.

<sup>56</sup> Numbers in between brackets indicate paragraph(s) referenced from each report

<sup>57</sup> Special Rapporteurs have referred to this issue in all their country visits. Only the mission reports of the countries examined in the case studies are mentioned. Communications of the UNSR since 2010 can be found at <https://spcommreports.ohchr.org/>.

**RUSSIAN FEDERATION**

**Indigenous Peoples of  
Taimyr Dolgan-Nenets District  
and the UN Guiding  
Principles on BHR**

Dr. Lyubov Sulyanziga



## Methodology note

This paper looks at MMC Norilsk Nickel (NorNickel) and its major set of strategies pursued to regulate relations with local indigenous peoples. The goal of the report is to gather data on the experiences of indigenous communities on the impacts of NorNickel mining business operation based on the UN Guiding Principles on BHR framework.

The research methodology was based on qualitative analysis of primary and secondary sources. Literature reviewed included:

- Constitution and legislative documents of the Russian Federation;
- International documents (treaties, agreements, resolutions, etc.);
- Governmental/official publications and materials (Russian and Western);
- Statistical information, guides, and reference books;
- Scholarly literature: monographs, analytical papers, and articles from peer-reviewed journals and books;
- Media publications and internet websites on the subject.

The paper focuses on Taimyr Dolgan-Nenets District indigenous peoples as a case study, using participatory observation and lessons learned from discussions in seminars and workshops. Additionally, findings were supported and complemented by the perspectives of relevant actors and individuals through online meetings and interviews. The choice of respondents was determined by membership of indigenous community, living in rural areas and engaging in traditional activities (fishing, hunting, gathering, reindeer herding, etc.). The interviews aimed to give a voice to direct witnesses and document participants' understanding of the scope of the current and expected changes and the effect on the livelihood of their respective communities. Guiding questions focused on major challenges indigenous groups face in the implementation of their rights, with particular focus on relations with businesses operating in the region. The study was limited by the lack of publicly disclosed documents and available data on company's operations, especially those related to violations of indigenous rights.

## 1. Introduction

In May 2020, President Vladimir Putin presented a new strategic policy for the Arctic region aimed towards 2035, a vision of natural resource development and environmental protection going hand in hand.<sup>1</sup>

A few weeks later, on May 29, an aged fuel storage tank of Russia's mining giant MMC Norilsk Nickel (NorNickel) released 21,000 tons of diesel oil into local rivers. The spill has been catastrophic for the inhabitants of the region, particularly the indigenous peoples in the area, and is deemed one of the Arctic's worst environmental disasters after the 1989 Exxon Valdez oil spill in Alaska.

Taimyr Peninsula (Taimyr Dolgan-Nenets district)—the world's northernmost part of Eurasia located in the north of the Krasnoyarsk Territory—has long been identified by ecologists and observers as one of the most polluted places on the planet because of NorNickel, the world's largest extractor of nickel, palladium and platinum and Russia's leading metals and mining company.<sup>2</sup> Throughout years of operation in Taymyr and Murmansk, NorNickel has consistently failed to translate declarations of partnership with indigenous peoples and environment responsibility into action.



Taimyr Peninsula Rivers

## 2. NorNickel operations in the Russian North

In the 1930s, NorNickel launched its production first in Taimyr and then in the Murmansk region, which historically were the territories of traditional residence of indigenous peoples of the Russian North: Sámi, Nenets, Nganasan, Enets, Dolgan and Evenk.<sup>3</sup>

The first nickel smelter in the region was opened in 1942. Like other Soviet-era monoregions, since its creation the district economy was planned around NorNickel mining activities, with its largest operations located in the city of Norilsk, whose political life is also reported to be largely determined by the company. No consideration was given to the indigenous inhabitants. Their nomadic ways of life became increasingly difficult with the construction of the facilities for extractive initiatives. Many of them, such as the Dolgan, were forced to become sedentary.<sup>4</sup>

The company's production is currently located in Taimyr (mainly the city of Norilsk) and Murmansk regions (mainly the city of Monchegorsk). In 2019, NorNickel had a turnover of US\$14 billion and a profit of US\$6 billion, which made the company one of the world's most profitable enterprises in the sector.<sup>5</sup> Among the company's largest partners and investors are Germany's BASF, Finland's Fortum, the Union Bank of Switzerland and Swiss banking company Credit Suisse, to name a few.<sup>6</sup>

Every year, the company smelters release around two million tons of sulphur dioxide, which is equivalent to more than half of the country's total emissions or twice the total amount of US emissions.<sup>7</sup> Large amounts of sulfur dioxide cause eye irritation, respiratory damage, and acid rain. Moreover, the concentration of iron, nickel and copper



Taimyr Dolgan Indigenous Peoples

in Norilsk rivers exceeds threshold values by 9-10 times.<sup>8</sup> Such a low environmental record is not limited to the company's facilities in Taimyr; indigenous communities living in the territories surrounding NorNickel factories in the Murmansk region near Russia's border with Norway and Finland have long complained about the polluted environment as well.<sup>9</sup>

Through the years of operation, the company has caused substantial environmental damage by polluting air with heavy metals and dumping chemical wastewater into district rivers. The most recent accidents in NorNickel and its subsidiaries' facilities include:

- In 2016, iron oxide was released into the environment in a newly built NorNickel Nadezhda Metallurgical Plant. As a result, the Daldykan River has turned red;
- In May 2020, 21,000 tons of diesel oil leaked from a NorNickel poorly maintained reservoir into local rivers and lakes;
- In July 2020, a pipeline rupture released 44.5 tons of aviation fuel into the environment near Tuchar village situated some 43 miles from NorNickel's Arctic port at company's subsidiary NorilskTransgaz;
- In February 2021, an industrial accident at a partially collapsed processing plant in Norilsk during maintenance claimed the lives of three workers.<sup>10</sup>

After the NorNickel spill on May 29, 2020, the power plant director, chief engineer and the Norilsk Mayor were arrested and charged with criminal negligence. The company also paid a \$2 billion fine, the largest environmental penalty in the country's history.<sup>11</sup> While NorNickel has ranked top in global pollution for decades, the company's executives are persuaded they can rehabilitate the Arctic's fragile environment and vowed to invest more than \$5 billion on pollution prevention and socioeconomic revitalization throughout the region.<sup>12</sup>





Nadezhda Metallurgical Plant

### 3. Impacts of NorNickel operations on indigenous peoples

#### Indigenous Peoples of Russia

The Russian Federation is the home of over 160 distinct peoples. Russian federal legislation protects the so-called “small-numbered indigenous peoples of Russia,” defined as those who live in territories traditionally inhabited by their ancestors, maintain a traditional way of life and economic activity, number fewer than 50,000 and identify themselves as separate ethnic communities. Of the 47 indigenous peoples thus recognized, 40 live or used to live in the North, Siberia and Far East.

The Russian Federation has not ratified ILO Convention 169 and abstained in the vote for the UN Declaration on the Rights of Indigenous Peoples.

Article 69 of the 1993 Federal Constitution provides that “[t]he Russian Federation shall guarantee the rights of the indigenous small peoples according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation.”

The federal legal framework in the country regarding small-numbered indigenous peoples consists of three framework laws addressing guarantees, territories and resources and *obshchinas*. Indigenous peoples in Russia are accorded rights to use the land and its renewable and common resources, while title ownership remains with the state. Rights to consultation and participation in specific cases have also been recognized. Indigenous activists have denounced lack of implementation of the existing laws.<sup>13</sup>

Relevant legislation has been enacted in some constituent units of the Federation. The federal and regional governments jointly administer all issues concerning ownership, use and allocation of land, mineral resources, water and other natural resources. Agricultural, forest, pasture and other land parcels are currently utilized by private entities primarily on a lease basis from the Government.

Moreover, the protection legal framework has been progressively weakened in the last two decades, together with the re-centralization of Russia and the abolition of several indigenous autonomous territories. New laws and decrees have further undermined indigenous rights in the country, affecting their right to FPIC and their main collective rights.<sup>14</sup>

The UN Human Rights Committee has reflected its concern on the situation of indigenous peoples in the country. Included in the list of questions for the 8th periodic report of the Russian Federation is a request for the country to respond on the measures taken for the respect of indigenous peoples’ rights including to FPIC, on the measures taken to prevent the environmental impacts caused by industrial operations and on the allegations of harassment of indigenous human rights defenders.<sup>15</sup>

NorNickel operates its activity in traditional lands of indigenous peoples. Due to the scale of many construction projects and increasing pollution, indigenous communities had to leave their ancestral homelands. Today, they are forced to live and lead a traditional way of life, including fishing, hunting, gathering and reindeer herding in the immediate vicinity of the NorNickel operating sites.

According to the 2010 Census, the population of indigenous peoples in Taimyr Dolgan-Nenets district was 10,132 people or 29.5 per cent of the total population including Dolgans (5,393), Nenets (3,494), Nganasans (747), Evenks (266), and Enets (204).<sup>16</sup>

Sámi people is the only indigenous nation living in the Murmansk area. The 2,000 Russian Sámi form part of a larger nation whose traditional homeland—Sápmi—is divided between Russia, Finland, Norway and Sweden. Since the Russian Sámi inhabit an area bordering Western powers and make part of a nation that transcends this border, they have been repeatedly accused of separatism, the most dramatic example being accusations of separatism during the Stalinist terror.<sup>17</sup> Due to its proximity to its Nordic neighbors and the fact that the indigenous Sámi population is part of the Sápmi transnational entity, after years of negotiations Norwegian residents and environmental organizations managed to achieve a reduction in emissions from NorNickel. Also, in March 2021, a plant in the city of Monchegorsk of the Murmansk region was shut down.<sup>18</sup>

In both Taimyr Peninsula and Murmansk regions, NorNickel has caused extensive contamination to the territories of indigenous peoples with environmental pollution being a widespread, routine occurrence. Indigenous peoples in the regions have reported multiple accidents that are often sealed by companies' authorities and uncovered by the media and share common concerns: inadequate participation in decision-making process and catastrophic ecological situation.

According to indigenous respondents, the company's industrial waste is regularly washed out during rains or dumped into regional lakes Pyasino (Taimyr) and Imandra (Murmansk region), where local indigenous peoples fish. Eventually, the heavy metals and chemical particles get into fish and meat and end up on the tables of indigenous peoples. The thick smoke from the company's chimneys, carried long distances by the wind currents, settles in the surrounding forests and tundra. One of the most negative impacts reported by indigenous experts is disruption of wild animals' migration paths and disappearance of fish from the regions' waters. In both regions, a close proximity of industrial facilities to indigenous traditional lands has led to increased contact between reindeer herders and companies' employees, and a reduction of reindeer pastures. Generally, hunting, fishing and reindeer grounds have been considerably diminished with the arrival of NorNickel in the region. Finally, negative effects of the pollution not only directly impact on indigenous traditional ways of life but on health of all residents as well.

Observers from Murmansk claim that indigenous lands have been long poisoned by NorNickel operations. While public health authorities recommend no subsistence activity within 100 km of industrial activity, this measure is not easy to abide by Sámi reindeer-herding communities.

Generally, experts agree that coupled with absolute neglect of old infrastructure, illegal toxic waste disposal and strong resistance to modernization, NorNickel has a poor record on corporate social responsibility among the indigenous population in both regions. Indigenous communities state that they are not informed about the forthcoming projects beforehand, and no information about meetings or hearings on company's operations is provided.

## *2020 oil spill in Taimyr*

Although all the population in the area was affected, the most negative consequences of the 2020 oil spill in Taimyr fell on the shoulders of local indigenous peoples. The accident released more than 20,000 tons of diesel fuel into the Pyasino lake, contaminated the nearby Daldykan river and flew onward to the Kara sea. Fishing in the lake, which was previously a main source for traditional fishing of neighboring communities, is currently impossible. Indigenous peoples are forced to travel some distance from villages to the tundra in order to find fish, as fish in nearby rivers are now also at risk of various diseases because of the contamination.

The spill had a devastating impact on natural resource areas and food supply and affected economic practices of indigenous groups (reindeer husbandry, fishing, hunting and gathering), which not only form the basis of the economic life but are also a part of the traditional culture of indigenous communities and of global historical and cultural value. Under Arctic hostile weather conditions and cold environment, spilled oil does not naturally disperse as it does in warmer waters and is much more troublesome and disastrous to an extremely fragile Arctic ecosystem.<sup>19</sup>

Due to delays in sharing crucial information and inadequate cooperation among relevant government agencies, the full-scale clean-up operation started a few days after the incident. Only a month later, in June 2020 a study tour to the accident site with participation of indigenous peoples was organized. The company hired consultants who met with the indigenous peoples several times, yet no full-fledged information has been provided to local residents. The authorities and the company have not disclosed information about the scale of pollution, results of environmental studies or any examination of the accident. The company itself did not consult with the indigenous peoples.

Respondents from affected regions report that NorNickel reaction was limited to compensation payment for the spill impact (250,000 rubles/person or \$3,000) for indigenous community living along Pyasino lake while those living alongside neighboring rivers were not compensated at all. The company has not addressed the requests for remedy or a long-term plan to recover an affected environment; plans for remedy proposed by indigenous communities are left ignored. On top of that, only those communities who agree to “collaborate” and support the company’s activities receive the financial aid from the company which creates divisions within the indigenous communities.<sup>20</sup>

In the same manner, the local authorities failed to respond to the disaster in an adequate and timely manner, while the government officials were unable or unwilling to assume their roles and responsibilities and were reported to be “far more interested in covering up the details of the accident.”

## *Resettlement in Tukhard village*

In October 2020, the Norilsk-Transgaz pipeline ruptured and released 44.5 tons of kerosene into the environment near the Tukhard village. A year later, the company announced its plan to resettle indigenous residents to new lands. Further, this initiative has been presented by the company as the first implementation of Free, Prior and Informed Consent (FPIC) standards in Russia.<sup>21</sup>

Observers note that any relocation threatens to destroy the identity and culture of the indigenous population and negatively affects the process of indigenous traditional knowledge transfer. Experts emphasize that it is surprising that no one mentions the catastrophic condition of the village caused by company’s activities; further, since the sanitary law requires to protect people from the dangerous proximity with industrial objects, people of Tukhard do not have a choice but to resettle. Therefore, what is presented as “the first implementation of FPIC standards in Russia” is nothing more but an implementation of the federal law on Sanitary Zones (03.08.2018 N 342-FZ).

## *Harassment against indigenous activists*

More and more human rights activists from the affected regions report harassment of indigenous representatives. According to some, NorNickel “buys off indigenous leaders and provides subsidies to allied NGOs” in order to undermine independent voices. On August 29, 2021 in the city of Monchegorsk in Murmansk region, during the cultural event organized with the support of NorNickel and the town administration, a well-known Sami activist and director of the Sami Heritage and Development Fund, Andrey Danilov was detained. He was one of the organizers of the AnswerUsElonMusk international campaign, whose participants wrote a letter to Tesla CEO Elon Musk asking him not to purchase products from NorNickel because of the company’s systematic violation of indigenous rights in the Taimyr and Murmansk regions.<sup>22</sup>

Another prominent indigenous activist from Taimyr—Gennady Schukin, a chair of the Association of the Indigenous Peoples in Taimyr and a leader of the local Dolgan community—has long been pursued by the Russian government for fighting on regional, federal and international levels for the rights of indigenous peoples to lands, resources and self-determination. In December 2017 he was convicted of organizing illegal hunting of wild reindeers in Taimyr and was sentenced to penal fines of 120,000 rubles. In August 2018, he was restrained from participation in the Taimyr regional election campaign.<sup>23</sup>

## **4. Analysis of the business project in relation to the UNGPs**

In recent decades, indigenous peoples’ rights have become one of the core elements not only in the state’s policy development but in the corporate sector’s strategies as well. Since a large proportion of the world’s natural resources—including minerals and energy sources—are located on indigenous lands, natural-resource extraction increasingly occurs in or near traditional indigenous areas. While resource exploration may bring opportunities for indigenous development through employment or tax generation, historically some businesses (especially extractive industry) have either directly or indirectly caused or contributed to adverse impacts on indigenous peoples and the environment.<sup>24</sup> Given the ethical, legal and political challenges, the idea to make both governments and corporations accountable for those impacts has emerged.<sup>25</sup>

### *State duty to protect*

State duty to protect includes the state obligation to provide adequate protection to prevent violations by business. As mentioned, the Russian authorities, either at the federal or local level, have not adopted measures to ensure this protection. Powerful lobby by extractive industry and business representation in political structures are typically found in those regions where there are important business assets and where governors rely to a significant extent on the economic support of big enterprises. As shown in the case of the 2020 oil spill, the authorities were more interested in covering up the accident than in ensuring the protection of the affected population and of the local indigenous peoples.

State policy reinforces indigenous peoples’ dependence on companies/patronage networks, whereas their basic and inherent rights are equated with charity. The state leaves in the hands of the private sector the provision of the basic services that the state is obliged to provide to ensure compliance with human rights.

Numerous amendments to indigenous laws and business exemptions initiated over the past decade reflect an increasing influence and powerful lobby of extractive industry in the country. Several decrees targeting indigenous groups in Russia were adopted in 2020, including Decree on Compensation for loss or damage to indigenous environment (September, 2020), Federal Law on Government Support for Business Activities in the Arctic Area of

the Russian Federation (July, 2020), and its article 28 on indigenous traditional activities in particular, and Decree on the approval of the rules for the maintenance of the list of persons belonging to indigenous minority peoples. These legal instruments undermine the recognition and protection of the fundamental collective rights of indigenous peoples in the country.

### *Business responsibility to respect*

The corporate responsibility concept developed in the Soviet years was characterized by the top-down welfare provision, high level of industry dependence on the state policy and informal ties with the authorities as a key factor of success. Since the enterprises were state units and, as such, provided social services, the state identified which kinds of infrastructure and which social needs had to be addressed.

Many Russian companies base their operations on this legacy of state-owned enterprises and maintain an important role in social welfare provision in the local communities. Companies are encouraged to manage the activities in partnership with central and local authorities and take on some aspects of welfare provision. All decisions generally occur behind closed doors without consultation with the public about their needs or interests. Compensation is offered as gifts to prevent community mobilization; communities accept compensatory payments that in practice look more like pay-offs. While special entitlements (e.g., benefits in the spheres of pensions, culture, support of indigenous entrepreneurship, etc.) are beneficial for some indigenous peoples, they do not necessarily contribute or ensure equality in the long term. Aspects of infrastructure and welfare are, hence, presented as gifts or limited to “ribbon-cutting” ceremonies, while a desired support targeted at long-term sustainable development for the community is not even on the table.

Backed up by authorities, businesses are at liberty to weaken protection of indigenous rights to participate in decision-making and usually take full advantage of their position of strength in negotiations.

Absence of environmental impact assessments of industrial projects and legal responsibility for organizing consultation on the environmental impacts with local population is another area of concern among respondents. Few companies, integrated into the global economy, and using global financial instruments tend to include an ethnological study into their environmental assessment policies. Such practice has been reported in only few regions (for example, Sakha Yakutia region advanced the law on anthropological impact assessment).<sup>26</sup>

In the case of NorNickel, the company adopted a Human Rights Policy<sup>27</sup> in 2017 and a policy on Indigenous Peoples<sup>28</sup> in 2018 and has a department dedicated to the interaction with indigenous communities. According to the company, the Indigenous Rights Policy was to be reviewed in the third quarter of 2021.<sup>29</sup> According to indigenous representatives, the department creates tensions between the communities and their leaders and does not take into account indigenous proposals.<sup>30</sup>

By and large, extractive industries in the Russian Arctic inspired by new possibilities in developing natural resources appear to be ill-prepared to comply with their responsibility to respect indigenous peoples' human rights. Companies' policies still have very little, if any, contextual understanding of the scope of impacts extractive industries have on indigenous peoples' lives and lag behind in understanding substantive rights for indigenous peoples regarding their lands and natural resources, as well as the need for additional social and environmental policies or building relations with local communities.<sup>31</sup>

## Remedy

Both states and companies have the obligation of providing access to remedy whenever human rights have been violated. Companies should put in place adequate complaint mechanisms.

In the case of the 2020 oil spill, NorNickel announced that they would pay compensation to those affected. As mentioned, the “compensation payment” for the spill impact (250,000 rubles /person or \$3,000) was not paid to all those affected. Indigenous representatives denounce the bureaucratic obstacles to access the compensation, which is paid via organizations and groups loyal to the company.<sup>32</sup>

At the end of 2020, the company announced the creation of a 5-year program for the development of indigenous communities on the Taimyr Peninsula.<sup>33</sup> The program was not discussed or consulted with the indigenous peoples of Taimyr, but will be implemented with the Russian Association of Indigenous small-numbered Peoples of the North, Siberia and the Far East (RAIPON), which has been heavily criticized by indigenous activists as an illegitimate representative of Russian indigenous peoples. The program includes social, cultural and infrastructure projects but does not address the substantive issues for indigenous peoples, such as land, resources and adequate compensation mechanisms.<sup>34</sup> Similar to other Russian companies, NorNickel tends to engage only with formal indigenous representative bodies and pro-government indigenous politicians, while grassroots community members are left with no voice.

## 5. Actions taken by affected communities and their allies

The growing influence of enterprises during the second half of the 20th century and increasing pressure to balance out the interests of all parties resulted in an international regulatory system designed to hold corporations to account by ensuring basic human rights and environmentally responsible policies.<sup>35</sup> The ever-expanding role of transnational enterprises, coupled with incorporation of indigenous protections into international legislative framework, has had a revolutionary effect on both international law and conceptions of economic governance.<sup>36</sup> Eventually, those companies who fail to demonstrate adherence to international standards for human rights suffer the reputational impacts from partners, stakeholders and investors.

After numerous environmental disasters, the pressure on NorNickel by national and international public opinion has significantly increased. Already in 2009, the Norwegian Pension Fund, one of the world’s largest investors, blacklisted NorNickel due to “severe environmental damage” and poor human rights record, followed by other financial institutions including Dutch asset management companies Actiam and Robeco, Swedish financial institution Scandia, Norwegian investment management company NBIM and Germany’s asset management company FDC.

Starting from August 2020 a group of indigenous peoples in Russia started their campaign against NorNickel and its partners and have successfully attracted support from over 70 NGOs including Cultural Survival, Earthworks, among others. First, they urged Tesla Inc’s Elon Musk to stop buying supplies from Norilsk Nickel until Russia’s giant agrees to compensate indigenous communities for environmental damage to their ancestral territories.<sup>37</sup> Then, Russian indigenous peoples directly addressed NorNickel’s largest western investors, asking them to stop cooperation with NorNickel. In summer 2021, Swiss NGO the Society for Threatened Peoples organized a trip to Switzerland for Russia’s indigenous activists to meet and share their concerns with Swiss largest banks Credit Suisse and Union Bank of Switzerland, as well as politicians, members of parliament and local civil society organizations.<sup>38</sup>

## 6. Conclusions and recommendations

Indigenous peoples in Russia have long been suffering at the hands of various forces eyeing their lands. Today it is mostly private business that goes hand-in-hand with the Russian state and state-backed extraction industries in its agenda to extract resources stored on indigenous lands and territories. Generally, in Murmansk, Taimyr and many other regions in Russia, indigenous rights look more satisfactory on paper than in reality and are mostly declarative in nature.

The NorNickel mining company is responsible for numerous ecological disasters and human rights violations. For years, the company's operations have caused a detrimental impact on the environment of the region and neighboring territories. For its poor environmental and human rights record, NorNickel has earned its reputation as the Arctic biggest polluter while the city of Norilsk has been notoriously known as one of the most polluted places on Earth and the number one hotspot for sulfur dioxide emissions in the world. Although the company administration manages to successfully hide its numerous accidents, the most disastrous ones, such as the 2020 diesel oil spill, do receive media coverage and cause a strong expression of public disapproval.

As of today, the Arctic is threatened on all fronts, from climate change, toxic contamination, plastic pollution to extractive industries' projects. In response, Kremlin has cemented Arctic future with oil and gas. Indigenous issues are handled in the usual paternalist manner in hopes that the solution lies within short-term remedial provisions. In general, Russia represents a particularly salient example of linking environmental and human rights issues. Soviet-type barbaric treatment of the environment and aggressive exploitation of natural resources, coupled with complete ignorance of indigenous rights, remains unchanged and largely unaddressed.

The economic impact of the pandemic compounded by a decade-long period of near-zero growth left Russia with no other choice but to turn to (yet again) Arctic programs to save the day. Since no country may be better positioned to capitalize on climate change, there is no surprise on what the number one priority for the Russian elite in post-pandemic world will be. Under the pretext of the economic feasibility of the industry, it will substantially ignore the requirements of indigenous peoples' human rights standards and environmental safety. Therefore, the long-term task for Russia is to adapt its legislation to include detailed requirements for the extractive industries operating within or near indigenous lands.

Some recommendations to address the current situation:

### **To the Russian Federation:**

- To ratify the ILO Convention 169.
- To incorporate UNDRIP standards in Russian federal and regional legislation, including Russia's Arctic strategy.
- To stop criminalization and repression of indigenous, environmental, human rights defenders and activists.

### **To NorNickel:**

- To adopt and implement a policy on indigenous peoples in line with the relevant international human rights standards on the rights of indigenous peoples.
- To initiate transparent dialogue, consultation and cooperation with indigenous communities affected by the company's business operations.
- To comply with international environmental standards, including the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the IFC Performance Standards.

- To establish adequate complaint mechanisms and remedy measures in accordance with the UNWGBHR recommendations and the international standards on the rights of indigenous peoples.
- To develop adequate environmental and human rights impact assessment, together with indigenous peoples.

#### To NorNickel's partners/investors:

- To encourage and promote greater emphasis on a consistent application of international environmental and human rights standards by the company.
- To identify, assess, and understand the risks of NorNickel present/future projects for indigenous communities.
- To organize a regular review and/or designate an authority responsible for environmental and human rights policies of NorNickel.
- To implement financial sanctions including termination of business relationships with NorNickel in case of failure of NorNickel to comply with international standards on the rights of indigenous peoples, environmental safety and human rights.
- To establish adequate and accessible complaint/redress mechanism on human rights and environmental concerns consistent with international human rights standards and for environment protection.

## Endnotes

<sup>1</sup> Whereas there is much political rhetoric about environmental protection, sustainable development, and the "human dimension" as the priorities of the Russian Chairmanship of the Arctic Council, the "Strategy for the Development of the Russian Arctic Zone and Provision of National Security Through 2035" adopted in October 2020 essentially announces Arctic as the platform and the backbone for big business. Support of the resource-based economy—a motto of the Strategy—effectively requires development of the regulatory system aimed at giving primacy to thirsty-for-profit industries whereas environmental and social costs of this priority scheme are largely omitted from the document. Although indigenous peoples were given a passing mention in the document on different occasions, no separate chapter dedicated to their specific development has been included either.

<sup>2</sup> Hellman (2014).

<sup>3</sup> Bellona Report (2010).

<sup>4</sup> IWGIA (2020) Russian oil spill exposes history of Indigenous Peoples' rights violations. The Society for Threatened Peoples (2021).

<sup>5</sup> Vladimir Potanin - the major shareholder of NorNickel who owns about 35% of shares is currently one of the richest men in Russia. See The Society for Threatened Peoples (2021).

<sup>6</sup> BASF public answer on its relation with NorNickel, see <https://www.business-humanrights.org/en/latest-news/basf-respond-ed/>.

<sup>7</sup> The Moscow Times "How NorNickel Became the Arctic's Biggest Polluter." September 28, 2020.

<sup>8</sup> The Society for Threatened Peoples (2021).

<sup>9</sup> IWGIA (2020) Russian oil spill exposes history of Indigenous Peoples' rights violations.

<sup>10</sup> The Moscow Times (2021).

<sup>11</sup> Reuters (2021).

<sup>12</sup> Hellman (2014).

<sup>13</sup> A/HRC/15/37/Add.5 (2010).

<sup>14</sup> Such as the decree "on the approval of the rules for the maintenance of the list of persons belonging to indigenous minority peoples, see IWGIA (2021), p. 549-551.

<sup>15</sup> CCPR/C/RUS/Q/8 (2020): Rights of indigenous peoples (arts. 6, 19, 22 and 27) 24. In connection with the Committee's previous concluding observations (CCPR/C/RUS/CO/7, para. 24), describe the measures taken to respect and protect the rights of indigenous peoples, including their right to recognition as indigenous, and to ensure their free, prior and informed consent in any decisions affecting them, especially with regard to the operations of extractive industries. Indicate the measures taken in law and practice to prevent the pollution of the air and soil, the degradation of drinking water and the destruction of sacred



sites and burial sites, such as the sacred mountain Karagay-Lyash, as a result of industrial operations. Respond to the allegations of the harassment of indigenous human rights defenders, including Vladislav Tannageshev and Yana Tannagesheva, and the forced liquidation of indigenous organizations, such as the Centre for Support of Indigenous Peoples of the North. The Russian Federation will be reviewed in the Committee's 134 session (Feb-March, 2022).

<sup>16</sup> Russian Federal State Statistics Service (2010).

<sup>17</sup> This is not an entirely unique feature of the Sámi case, though. During the Stalinist terror, ethnic minorities were targeted all over Russia.

<sup>18</sup> The border-transcending aspect of the Russian Sámi has contributed to comparison of Russian Sámi politics with Scandinavian practices among Western media and academia. In other words, Russian Sámi are inevitably contrasted with the Nordic model of indigenous policy, that is fairly perceived as the benchmark. See The Society for Threatened Peoples (2021).

<sup>19</sup> Harvey and Walker (2013).

<sup>20</sup> The Society for Threatened Peoples (2021). See also IWGIA (2021), p.552 on the role of RAIPON.

<sup>21</sup> Nornickel (2021).

<sup>22</sup> The Independent Barents Observer (2020).

<sup>23</sup> Cultural Survival (2019).

<sup>24</sup> United Nations Global Compact (2013), pp.1-86.

<sup>25</sup> Stammler and Ivanova (2017); Murashko (2008), pp.48-59; A/HRC/24/41 (2013); Tulaeva and Tysiachniouk (2017); Tysiachniouk, Henry, Lamers and van Tatenhove (2017), pp.556-579; Tysiachniouk, Petrov, Kuklina and Krasnoshtanova (2018), p.3334.

<sup>26</sup> Novikova and Wilson (2015), pp.108-117.

<sup>27</sup> Approved by the resolution of the Board of Directors of PJSC “MMC “Norilsk Nickel” No. GMK/31-pr-sd of September 18, 2017, accessed on February 12, 2021 at: [https://www.nornickel.ru/upload/iblock/ff2/Human\\_Rights\\_Policy\\_rus\\_271117.pdf](https://www.nornickel.ru/upload/iblock/ff2/Human_Rights_Policy_rus_271117.pdf).

<sup>28</sup> [https://www.nornickel.ru/files/ru/corporate\\_documents/policies/Politika\\_v\\_otnoshenii\\_prav\\_korennyh\\_narodov.pdf](https://www.nornickel.ru/files/ru/corporate_documents/policies/Politika_v_otnoshenii_prav_korennyh_narodov.pdf).

<sup>29</sup> [https://media.business-humanrights.org/media/documents/Nornickel\\_response\\_03-05-2021.pdf](https://media.business-humanrights.org/media/documents/Nornickel_response_03-05-2021.pdf).

<sup>30</sup> In 2021, the Business and Human Rights Resource Center addressed a letter to the company requesting additional information on the actual implementation of Nornickel's responsibility to respect human rights. In its response NorNickel states that 699 individuals from indigenous communities who depend on fishing in Lake Paysino and Pyasina river received direct compensation. “Furthermore, in early March 2021, Nornickel signed a cooperation agreement with the Federal Agency for Ethnic Affairs (FAEA) to promote sustainable development and to preserve and foster the traditional lifestyles of indigenous peoples living across the areas of the company's operation, all the while providing them with a 3 May 2021 better quality of life. In mid-March 2021, Nornickel also pledged to restore fauna habitats that may have been affected by the fuel spill in the vicinity of Norilsk. Nornickel has the utmost respect for the rights of indigenous communities in our regions of operation. We are fully invested in these communities and design our projects to avoid any adverse impacts on them.” [https://media.business-humanrights.org/media/documents/Nornickel\\_response\\_03-05-2021.pdf](https://media.business-humanrights.org/media/documents/Nornickel_response_03-05-2021.pdf).

<sup>31</sup> Wilson and Blackmore (2013).

<sup>32</sup> The Society for Threatened Peoples (2020), p.12.

<sup>33</sup> According to the company: In September 2020, Nornickel signed a series of new cooperation agreements on a comprehensive, five-year assistance programme totalling 2 billion roubles with three organisations representing over 90% of the indigenous peoples living in the north of Russia. The programme includes measures, amongst many others, to protect the natural habitat and support the traditional activities of the indigenous peoples of the North and Siberia, in addition to providing funding for various needs, from housing and healthcare to infrastructure and tourism to education and cultural projects, all of which were defined with significant input from the beneficiary communities during the aforementioned expedition. This case study alone demonstrates that we are committed to going from theory to practice and are eager to act to effect positive change and improve people's standard of living in a tangible way. [https://media.business-humanrights.org/media/documents/Nornickel\\_response\\_03-05-2021.pdf](https://media.business-humanrights.org/media/documents/Nornickel_response_03-05-2021.pdf).

<sup>34</sup> Pavel Sulyandziga in The Society for Threatened Peoples (2020), p.13.

<sup>35</sup> Morgera (2012).

<sup>36</sup> Harvard Law Review (2016).

<sup>37</sup> <https://www.iprights.org/campaigns/petitions/joint-letter-of-appeal-to-elon-musk-tesla-stop-buying-products-from-nornickel>; <https://indigenous-russia.com/archives/6719>; <https://iwgia.org/en/russia/4553-russia-indigenous-peoples-international-support-save-arctic.html>.

<sup>38</sup> The Society for Threatened Peoples (2021).

## References

- Basov, A. (2018). Dialogue and bureaucratic procedures: “etnologicheskaya ekspertiza” (ethnological impact assessment) in the Republic of Sakha (Yakutia). *Sibirskie istoricheskie issledovaniya*, (2), pp.91-123.
- BBC News (2007) “Toxic truth of secretive Siberian city.” April 5, 2007. At: <http://news.bbc.co.uk/2/hi/europe/6528853.stm>.
- Bellona Report. (2010). Norilsk Nickel: The Soviet Legacy of Industrial Pollution. At <http://bellona.no/assets/The-Soviet-Legacy-of-Industrial-Pollution.pdf>.
- Business and Human Rights Resource Centre, Information and follow up on NorNickel operations <https://www.business-humanrights.org/en/companies/norilsk-nickel/>.
- Cultural Survival. (2019). Acts of intimidation, criminalization and other types of activities with the aim to prevent human rights work of indigenous activists in Russia. At [https://www.culturalsurvival.org/sites/default/files/2019.05-Berezhkov-D.-and-Sulyandziga-P.-Criminalization-of-indigenous-activists-in-Russia%20\(1\)%20\(1\).pdf](https://www.culturalsurvival.org/sites/default/files/2019.05-Berezhkov-D.-and-Sulyandziga-P.-Criminalization-of-indigenous-activists-in-Russia%20(1)%20(1).pdf).
- Harvard Law Review (2016) Developments in the Law. [online] 129(6), pp.1755-1778. Available at: <http://harvardlawreview.org/wp-content/uploads/2016/04/1755-1778-Online.pdf> [Accessed 28 Apr. 2019].
- Harvey, F. and Walker, S. (2013). Arctic oil spill is certain if drilling goes ahead, says top scientist. *The Guardian*. <https://www.theguardian.com/world/2013/nov/19/arctic-oil-drilling-russia>.
- Hellman, Jacqueline. (2014). The Fifth Crime Under International Criminal Law: Ecocide?. 10.1007/978-3-319-05993-8\_22.
- IWGIA. (2020). Russian oil spill exposes history of Indigenous Peoples’ rights violations. <https://iwgia.org/en/news/3790-russian-oil-spill-exposes-history-of-indigenous-peoples%E2%80%99-right-violations.html>.
- IWGIA. (2021) The Indigenous World 2021. <https://www.iwgia.org/en/resources/indigenous-world.html>.
- Morgera, E. (2012). From Corporate Social Responsibility to Accountability Mechanisms: The Role of the Convention on Biological Diversity. *SSRN Electronic Journal*. [online] Available at: <http://dx.doi.org/10.2139/ssrn.1995521>. [Accessed 1 May 2019].
- Murashko, O.A. (2008) “Protecting Indigenous Peoples’ Rights to their Natural Resources – the Case of Russia.” *Indigenous Affairs*, 3-4/08.
- NorNickel (2018) Policy on Indigenous Peoples [https://www.nornickel.ru/files/ru/corporate\\_documents/policies/Politika\\_v\\_otnoshenii\\_prav\\_korennyh\\_narodov.pdf](https://www.nornickel.ru/files/ru/corporate_documents/policies/Politika_v_otnoshenii_prav_korennyh_narodov.pdf).
- NorNickel (2021) “Nornickel gets go-ahead from Tukhard and tundra residents on free, prior and informed consent.” November 29, 2021. <https://www.nornickel.com/news-and-media/press-releases-and-news/nornickel-gets-go-ahead-from-tukhard-and-tundra-residents-on-free-prior-and-informed-consent/>.
- NorNickel (2021) Response on implementation of UN Guiding Principles to the letter sent by Business and Human Rights Research Centre [https://media.business-humanrights.org/media/documents/Nornickel\\_response\\_03-05-2021.pdf](https://media.business-humanrights.org/media/documents/Nornickel_response_03-05-2021.pdf).
- Novikova, N. and Wilson, E. (2015). Corporate Social Responsibility: Transformation of the Concept in the West and its importance for the Indigenous Peoples of Russia. *Ural Historical Herald*, [online] 2(47). Available at: [https://www.academia.edu/35223021/КОРПОРАТИВНАЯ\\_СОЦИАЛЬНАЯ\\_ОТВЕТСТВЕННОСТЬ\\_ТРАНСФОРМАЦИЯ\\_ПОНЯТИЯ\\_НА\\_ЗАПАДЕ\\_И\\_ЗНАЧИМОСТЬ\\_ДЛЯ\\_КОРЕННЫХ\\_НАРОДОВ\\_РОССИИ](https://www.academia.edu/35223021/КОРПОРАТИВНАЯ_СОЦИАЛЬНАЯ_ОТВЕТСТВЕННОСТЬ_ТРАНСФОРМАЦИЯ_ПОНЯТИЯ_НА_ЗАПАДЕ_И_ЗНАЧИМОСТЬ_ДЛЯ_КОРЕННЫХ_НАРОДОВ_РОССИИ) [Accessed 28 Apr. 2019].
- NPR (2020) “The Oil Spill From Russian Nickel Mine Is Moving Toward The Arctic Ocean.” June 16, 2020. At: <https://www.npr.org/2020/06/16/878852931/the-oil-spill-from-russian-nickel-mine-is-moving-towards-the-arctic-ocean?emci=60bc2fa0-d2b0-ea11-9b05-00155d039e74&emdi=e3780d2d-35b2-ea11-9b05-00155d039e74&ceid=243994>.
- Reuters (2021) “Nornickel fined \$2 billion for massive fuel leak in the Arctic.” February 5, 2021. <https://www.reuters.com/article/russia-pollution-nornickel-idUSL1N2KB0QX>.
- Russian Federal State Statistics Service (2010). All-Russian Population Census 2010. Russian Federal State Statistics Service.
- Russian Federation. Governmental Decree No. 1488 (2020). On the procedure for compensation for losses caused to the indigenous peoples of the Russian Federation, associations of indigenous peoples of the Russian Federation and persons belonging to the indigenous peoples of the Russian Federation, as a result of damage to the original habitat of indigenous small-numbered peoples of the Russian Federation by the economic activities of organizations of all forms of ownership, as well as by natural persons.
- Russian Federation. No. 193-FZ (2020). On the state support of business activity in the Arctic zone of the Russian Federation.

- Russian Federation. Executive Order N 645 (2020). On the strategy for developing the Russian Arctic Zone and ensuring national security until 2035.
- Stammler, F. and Ivanova, A. (2017). Case studies of northern indigenous people and extractive industry Sakha Republic (Yakutia). Árran Lule Sámi Centre.
- The Independent Barents Observer (2020), “Russian Indigenous groups ask Elon Musk not to buy battery metals from Nornickel.” August 7, 2020. <https://www.arctictoday.com/russian-indigenous-groups-ask-elon-musk-not-to-buy-battery-metals-from-nornickel/>.
- The Moscow Times (2020) “How Nornickel Became the Arctic’s Biggest Polluter.” September 28, 2020. <https://www.themoscowtimes.com/2020/09/28/how-nornickel-became-the-arctics-biggest-polluter-a71572>.
- The Moscow Times (2021), “3 Dead in Russian Mining Giant’s Arctic Accident.” February 21, 2021. <https://www.themoscowtimes.com/2021/02/21/3-dead-in-russian-mining-giants-arctic-accident-a73027>.
- The Society for Threatened Peoples. (2021). Nornickel: Toxic Business at the Expense of Indigenous Peoples. [https://www.gfbv.ch/wp-content/uploads/factsheet\\_arktis\\_en\\_def-3.pdf](https://www.gfbv.ch/wp-content/uploads/factsheet_arktis_en_def-3.pdf).
- Tulaeva, S. and Tysiachniouk, M. (2017). Benefit-Sharing Arrangements between Oil Companies and Indigenous People in Russian Northern Regions. *Sustainability*, 9(8).
- Tysiachniouk, M., Henry, L., Lamers, M. and van Tatenhove, J. (2017). Oil Extraction and Benefit Sharing in an Illiberal Context: The Nenets and Komi-Izhemtsi Indigenous Peoples in the Russian Arctic. *Society & Natural Resources*, 31(5), pp.556-579.
- Tysiachniouk, M., Petrov, A., Kuklina, V. and Krasnoshtanova, N. (2018). Between Soviet Legacy and Corporate Social Responsibility: Emerging Benefit Sharing Frameworks in the Irkutsk Oil Region, Russia. *Sustainability*, 10(9).
- United Nations. Extractive Industries and Indigenous Peoples. Report of the Special Rapporteur on the Rights of Indigenous Peoples, S James Anaya. UN Doc. A/HRC/24/4, 2013.
- United Nations. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya. Addendum. Situation of indigenous peoples in the Russian Federation. UN Doc. A/HRC/15/37/Add.5. 23 June 2010.
- United Nations Global Compact (2013). A Business Reference Guide: United Nations Declaration of Indigenous Peoples. New York.
- United Nations Human Rights Committee, List of issues in relation to the eighth periodic report of the Russian Federation. CCPR/C/RUS/Q/8, 14 August 2020.
- United Nations. (2011). Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” framework.
- Wilson, E. and Blackmore, E. (2013). Dispute or Dialogue? Community perspectives on company-led grievance mechanisms. [online] London: International Institute for Environment and Development. Available at: <https://pubs.iied.org/pdfs/16529IIED.pdf> [Accessed 29 April 2019].

MEXICO

# Homún: Mayan Water Guardian People Fighting Against Mega-Farm of 49,000 Pigs

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## Methodology

The authors consulted reports and press dossiers written by civil society organizations and non-governmental organizations. Academic articles that have studied the socio-environmental conflict in Homún, the installation of the pig farms and the organizational processes of current Mayan peoples were also used. Furthermore, the report retrieved several testimonies of the community of Homún and the members of the local group fighting against the farm, the Ka'anán Ts'onot (Guardians of the Cenotes\*).

\*underground chamber or cave which contains water reserve.

## 1. Introduction

Homún is a mostly Mayan community located in the central region of the state of Yucatán and is one of the 53 municipalities that make up the Ring of Cenotes Geohydrological State Reserve (Reserva Geohidrológica Estatal Anillo de Cenotes), the most important underground water reserve in the country. The inhabitants of Homún have found in the care of and tourism around the cenotes a form of sustainable economic development. Hundreds of families are sustained by the ecotourism that has revitalized the village.

Since 2016, the inhabitants have been resisting the establishment of a mega-farm of 49,000 pigs, which threatens their territory, ecosystem and way of life. Homún was the first community in the Yucatán Peninsula to oppose and sue a pig farm in order to defend its own development model: ecotourism activities around the cenotes, thus reclaiming their right as an indigenous peoples to self-determination, water, health and, in particular, their children's right to a healthy environment. Thanks to Homún's community and legal defense, a court ordered in October 2018 the suspension of the mega-farm's activities as a precautionary measure. However, the risk persists because the project has not been cancelled, and the judicial process continues.<sup>1</sup>

## 2. Background

According to a Greenpeace report, Yucatán is the region with the highest growth of pig farms in the country (39%), with around 220 pig farms, 86 per cent of which are located in indigenous territories.<sup>2</sup> The establishment of pig farms in Yucatán has been characterized by environmental irregularities.<sup>3</sup> Thirty-one per cent of the state's surface area occupied by pig farming has been deforested, 43 pig farms are located in protected natural areas, and only 18 farms have an Environmental Impact Assessment (EIA).<sup>4</sup>

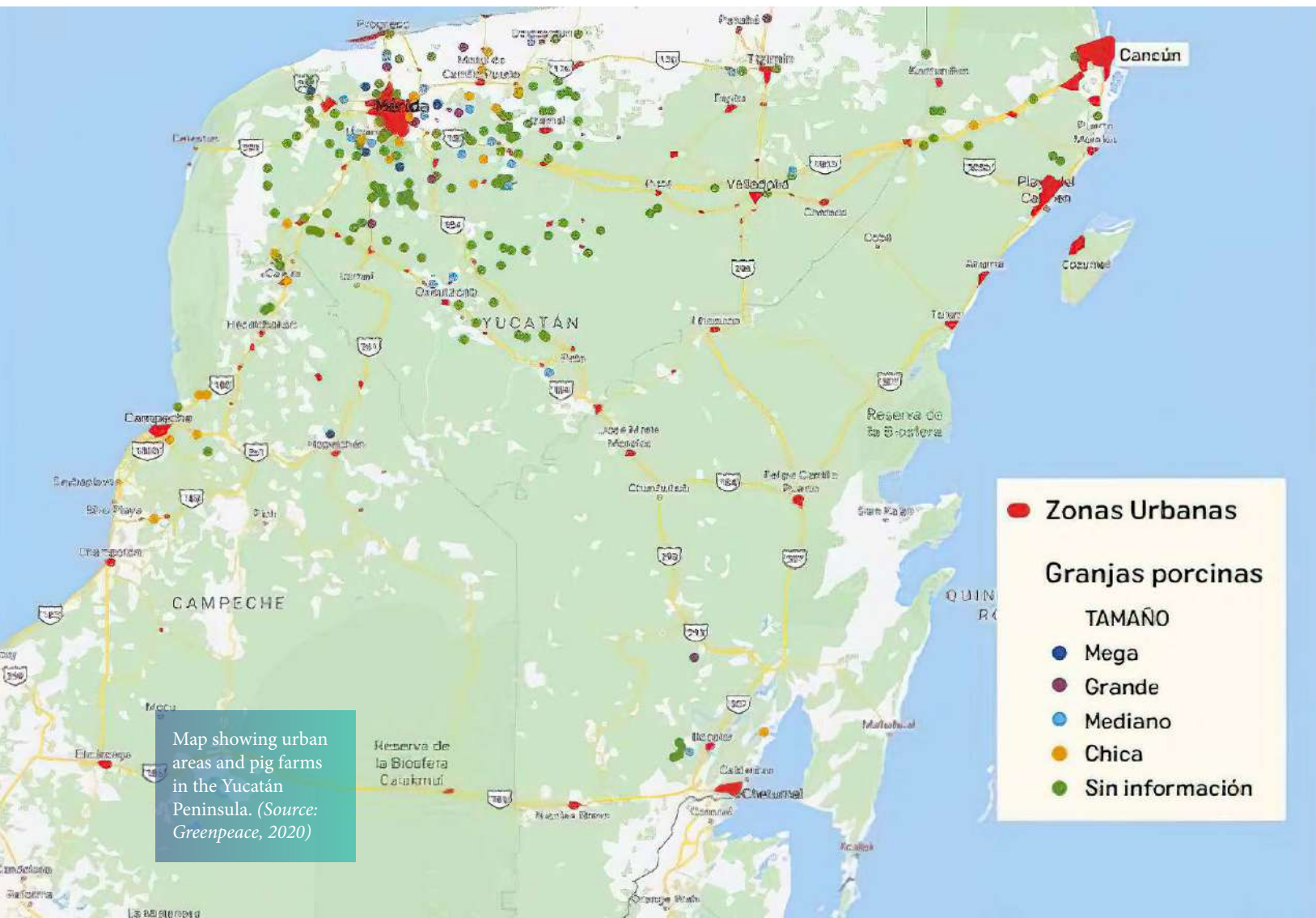


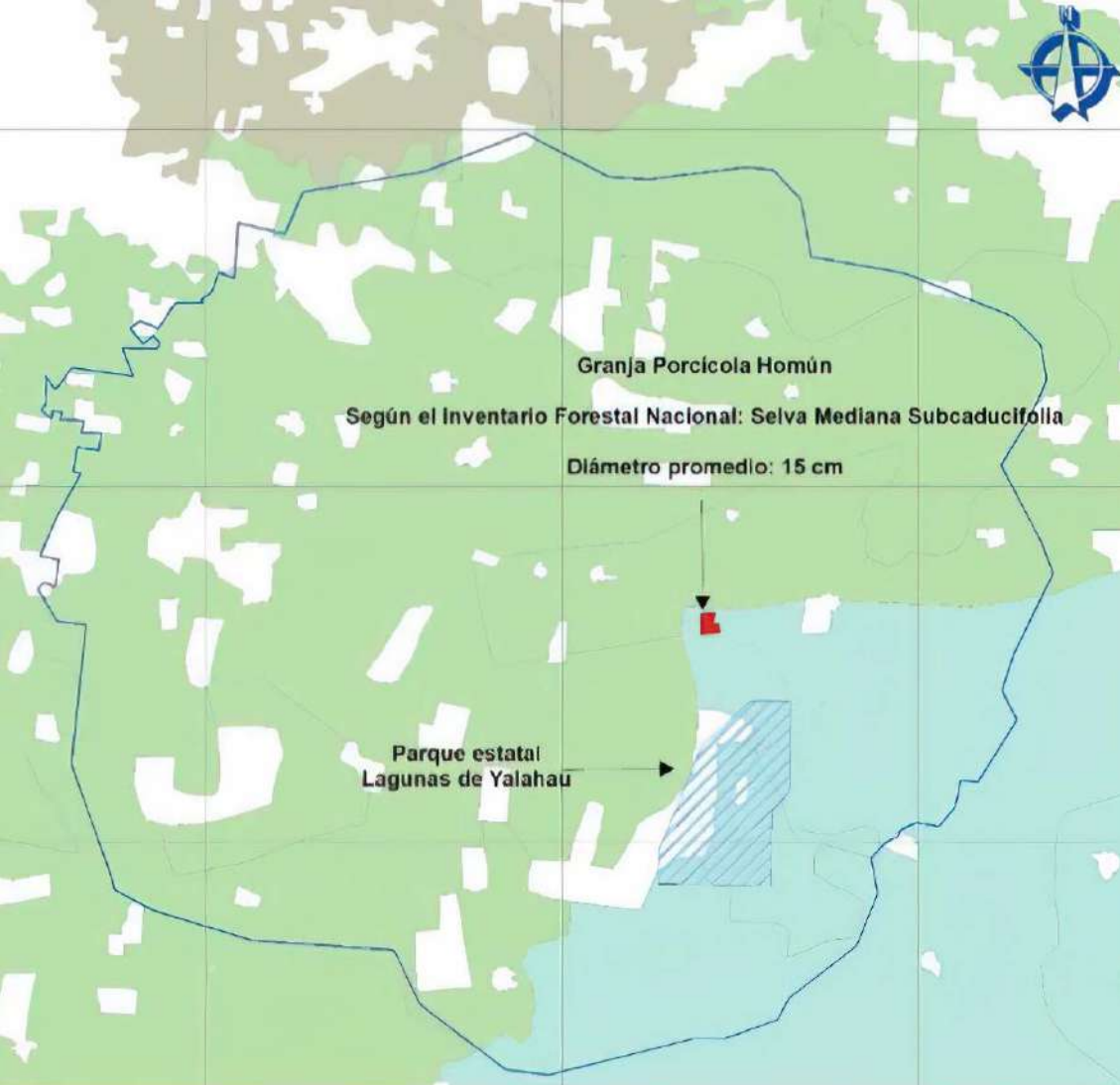
One of the main concerns is that wastewater from the pig industry is highly polluting due to the organic matter and antibiotics it contains. The Homún farm alone could produce up to two million kilograms of faeces per month. The expansion of pig farms, with the support of the state government, is alarming in a region where environmental conditions are especially vulnerable to this type of industry and to water pollution. According to several studies, the karst soil (rocky, porous and shallow) that is characteristic of this region facilitates the seepage of contaminated water from pig farms into the groundwater, affecting Mexico's main hydrological reserve.

### PAPO's mega pig farm in Homún

On 13 October 2016, Homún's municipal president, without consulting the population and without an EIA, granted a construction permit for building pig sheds and wastewater treatment units for a mega pig farm to the company Producción Alimentaria Porcícola (PAPO), a Limited Liability Rural Production Company with Variable Capital (Sociedad de Producción Rural de Responsabilidad Limitada de Capital Variable).

PAPO is part of the sharecropping system of the company Grupo Porcícola Mexicano, S.A. de C.V. (Limited Company with Variable Capital) (Kekén), part of Grupo Kuo, which accounts for 12.1 per cent of the national pork production, being the largest pork producer in the country and the 20th largest in the world.<sup>5</sup> The Grupo Kuo is a Mexican business group with a portfolio that encompasses consumer (including the meat industry), chemical and automotive sectors. The consumer sector accounted for 45 per cent of its revenues in 2021. Grupo Kuo was created in 2007 when Grupo DESC (founded in 1973) was split into Grupo INDE (in charge of the real estate sector) and Grupo Kuo.<sup>6</sup> Grupo Kuo is mainly active in Mexico but also has plants in the USA, Belgium, Spain and China.





Detail of a map presented by one of the experts on topography showing the area corresponding to the medium sub-deciduous rainforest where the Homún farm is intended to be installed. The recharge zone areas of the Ring of Cenotes Geohydrological State Reserve and of the Lagunas de Yalahau State Park can also be seen.

The Homún mega-farm is part of Kekén's sharecropper farm system. The company controls the breeding, slaughtering and processing of the animals. Kekén delivers the piglet and collects the pig when it is ready for slaughter. The sharecropping farms take care of the breeding, without Kekén taking responsibility for all the social and environmental damage that these sharecropping farms generate. It is important to understand that such mega pig farms are not small-scale livestock farming but a massive industrialized system of production where thousands of pigs are kept in a small, enclosed space under abusive conditions.

The Homún mega-farm occupies an area of 117 hectares, surrounded by sub-deciduous lowland rainforest.<sup>7</sup> This area is intended to house 49,000 pigs. The operation of the farm puts at risk the health and economic subsistence of the Mayan people of Homún and access to water for the entire metropolitan area of the state capital by contaminating the geohydrological reserve of the Ring of Cenotes, and the flora, fauna and waters of the Lagunas de Yalahau reserve classified as a Ramsar site.

The Urban Development and Environment Secretariat (*Secretaría de Desarrollo Urbano y Medio Ambiente-SEDUMA*), now called the Sustainable Development Secretariat (*Secretaría de Desarrollo Sustentable-SDS*), of the Yucatán state government approved the company's EIA without observing the precautionary principle. This principle establishes that the authorities must take all necessary measures to avoid possible environmental and health damage when there is insufficient scientific evidence to ensure it. Furthermore, the EIA had numerous irregularities.

On 29 June 2017, through an extraordinary session the Homún Town Council, the local government body, revoked the permits granted to the PAPO company, relying on the state government's decree establishing the Ring of Cenotes Geohydrological State Reserve, among other things.

However, the company filed a contentious administrative lawsuit against the Town Council and the municipal president of Homún before the Fiscal and Administrative Justice Court of the Yucatán State Judiciary. On 18 July 2017, the Magistrate ruled in favor of the company as he considered that continuing with the construction of the farm did not represent a harm against an obvious social interest or contravene public order provisions, ignoring the risks of the mega-farm for the Mayan communities.

## Indigenous Peoples in Mexico

According to the 2020 Census, the indigenous population of Mexico is 7,364,645 people (6.6% of the country's population), although the National Institute of Statistics and Geography (INEGI) survey in 2015 using the self-identification criterion indicated an approximate indigenous population of 25 million people or 25.1% of the total population. There are 68 linguistic groupings in Mexico, with 364 variants.<sup>8</sup>

Mexico ratified ILO Convention No. 169 in 1990 and co-sponsored the adoption of the UN Declaration on the Rights of Indigenous Peoples.<sup>9</sup>

Mexico's current Constitution recognizes the pluricultural composition of the country and the existence of Indigenous Peoples. Article 2 recognizes indigenous rights over lands, right to self-determination and autonomy, and other aspects albeit with conditions that make their actual exercise difficult and in a way that is not consistent with international human rights law, as underlined by UN Special Rapporteurs.<sup>10</sup> Many indigenous communities maintain their systems of governance and organization, defined by their customs and traditions. In indigenous-majority municipalities, there has been official recognition of their regulatory systems, procedures and practices for the election of their authorities. The federal states have also developed legislation concerning indigenous rights.

UN human rights bodies and the Inter-American system have pointed to the problems faced by indigenous peoples in Mexico that are linked to the lack of effective enforcement of their rights.<sup>11</sup> Structural racism and discrimination result in poverty and exclusion. The widespread context of violence in the country, accompanied by critical levels of impunity, particularly affects their individual and collective human rights, including through enforced disappearances, extrajudicial killings, torture, forced displacement and other serious human rights violations. This makes it particularly difficult for them to defend their rights, lands, territories and resources, and to exercise their autonomy.

### 3. Social and environmental impacts caused by mega-farm

Homún is a village located in the central part of the state of Yucatán in the same-named municipality. In 2015, more than half (53%) of the municipality's population spoke an indigenous language.<sup>12</sup> In 2020, indigenous households made up 73% per cent of the population.<sup>13</sup> In addition, the majority of the municipality's population self-identifies as Mayan (91% in 2015 for Homún as opposed to 66% in Yucatán).<sup>14</sup>

According to reports from speleologists and environmental institutions in the state of Yucatán, there are more than 100 cenotes in Homún. The spiritual and sacred link that the Mayas of Homún have with the cenotes (*ts'onot*), wells (*chèen*) and caves (*áaktun*) found in their territory is as old as the village itself, which has existed at least since the end of the 15th century.

For the Mayan inhabitants, the village's cenotes and caves are also the dwelling places of the *yuumtsilòòb*, guardians of the mountain, and *Cháak*, the bringer of rain. In some of these cenotes the *jmenoòb* obtain the water necessary to carry out ceremonies such as the *chà cháak* and the *jets'lu'um*. The latter ceremony, which has been performed since time immemorial to ask permission from the *yuumtsilòòb*, continues to be performed in the cenotes managed by the inhabitants of Homún.

As stated in Article 5 of ILO Convention 169, such social, cultural, religious and spiritual values and practices must be recognized and protected. The mega pig farm, as a potential pollutant of the cenotes and caves, threatens the biocultural heritage of Homún.



The mega pig farm also puts at risk the health of the entire village of Homún and the population that depends on the groundwater. The mega-farms produce a lot of waste (faeces and urine) that contaminates the water with phosphorus, nitrates, nitrites and faecal matter. Water pollution from pig farms is associated with methaemoglobinaemia, or “blue baby syndrome”, potentially fatal in infants under six months of age; hyperthyroidism and diabetes. Air pollution from waste gases can cause nausea, headaches, dizziness, runny nose, itchy throat, burning eyes, coughing, wheezing and shortness of breath, as well as depression, anger, confusion and fatigue.<sup>15</sup>

Industrial meat production also has a strong impact on food sovereignty and the economic activities of affected communities. Mega pig farms displace other forms of small-scale pig farming and affect other community activities such as beekeeping and ecotourism.

#### **4. The Mayas of Homún and their actions against installation of the mega-farm**

To defend their territory and making use of their right to self-determination, a group of Mayan villagers from Homún created, in 2017, the *Kanan Ts'ono'ot* (Guardians of the Cenotes) committee. Kanan Ts'ono'ot soon after organized a consultation with planning, informative and deliberative phases for the people to decide whether or not to install the mega pig farm.

The consultative phase took place on 8 October 2017 in the park of Homún. A notary public certified the vote and various Mayan peoples' and civil society organizations were present as witnesses to the process, including the Chocholá ejidal commissariat, the *Colectivo Apícola de los Chenes* (Chenes Beekeeping Group), the *Unión de Pobladoras y Pobladores de Chablekal* (Union of Chablekal Settlers), the Yucatán Mayan councilors of the *Congreso Nacional Indígena* (National Indigenous Congress), members of the United Nations Development Programme (UNDP) and Equipo Indignación. The result of the consultation was 732 votes against, 52 in favor and five null votes—a resounding NO to the establishment of the mega pig farm.

Despite this, and in secrecy, without respecting the village's decision rejecting the establishment of the mega-farm, and despite several ongoing legal processes, the farm began operations in mid-September 2017 and operated for several weeks.

On 21 September 2017, the Kanan Ts'ono'ot Mayan committee, together with the Mayan people of Homún, called for a symbolic shutdown by citizens of the mega pig farm. While this peaceful act took place in the midst of a heavy police deployment, personnel from the Federal Attorney's Office for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*-PROFEPA) closed the cenotes of the members of the Kanan Ts'ono'ot board of directors without complying with the substantive and formal requirements demanded by law.<sup>16</sup> This action, which was intended to deprive the defenders of their livelihood, was an obvious reprisal by the federal government against the indigenous rights defenders of Homún, putting the peace of Homún and the exercise of their rights at risk. In response, the Mayan people of Homún demanded that PROFEPA officials remove the *Closed* signs.

PROFEPA's actions and bad faith and the Mayan people's response were used to criminalize the Mayan water defenders. PROFEPA's secretary in various media said that the villagers had committed federal crimes, his accusations contributing to the discrediting of the Kanan Ts'ono'ot members.

The intimidation began when the Mayan people of Homún organized to defend their way of life and to exercise their right to self-determination. Those who raise the voice of resistance have been defamed and discredited through one of the most powerful media outlets in the Yucatán Peninsula, which is also owned by members of the PAPO company. Where the Mayas of Homún have organized demonstrations, attempts were made to block the roads or the access to their trucks used for transportation. Retaliation continues as the state authorities have, on several occasions, closed the cenotes of the movement's leaders.



Cenote Balmil, managed by the president of the Kanan T'sono'ot Committee with the PROFEPA Closed signs.

## 5. Analysis of business project within UN Guiding Principles on Business and Human Rights framework

### *State obligation to protect human rights*

The State has an obligation to protect human rights against corporate activities.

The rights of indigenous peoples recognized in Article 2 of the Federal Constitution, in ILO Convention 169, and in the UNDRIP have not been protected. The business permits were granted without any prior, free and informed consultation with the Mayan communities affected by the establishment of the mega-farm. This is a violation of the provisions of ILO Convention 169.<sup>17</sup>

The violation of the right to consultation in Mexico has been repeatedly pointed out by UN human rights mechanisms. The UN Special Rapporteur on the rights of indigenous peoples has noted that these procedures in many cases are not prior, as authorizations and permits for projects are issued before indigenous peoples are consulted and often take place under threats, harassment and criminalization, and are therefore not free. The Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises in their working visit to Mexico found, based on a report of more than 100 civil society organizations, that in many cases of business projects and activities there is insufficient consultation.<sup>18</sup> In their report, the Working Group noted that: “A recurring issue that

has emerged in the information received on cases of alleged human rights violations related to business activities is the insufficient number of consultations with individuals and communities affected by large development projects...<sup>19</sup>

The Yucatán government has encouraged the meat industry in the state despite the region's high vulnerability to this type of economic activity due to its karst system. For its part, SEDUMA (now SDS) authorized pig farms in Yucatán despite the environmental and social risks associated with this sector.

Authorities have granted permits for mega-farms despite the fact that most of them do not have the necessary Environmental Impact Assessment. Only 22 of the 257 farms on the Yucatán Peninsula have an EIA. In addition, there is no information on emissions and pollutants from these farms, and Greenpeace has reported inconsistencies in water use and discharge permits, which means that many of them operate outside the law.<sup>20</sup> Regarding the duty of vigilance, the National Water Commission (Conagua) and PROFEPA should carry out regular monitoring of water discharges from pig farms. So far, this surveillance of the sector has been insufficient.

We therefore consider that the government has not only failed to protect but has violated the following human rights in the case of Homún:

- Right to self-determination of the Mayan people;
- Right to their lands, territories and natural resources;
- Right to consultation and to free, prior and informed consent;
- Right to non-discrimination and equality before the law;
- Right to water;
- Right to health;
- Right to a healthy environment, including the right of the child to a healthy environment.

### *Corporate responsibility to respect human rights*

Companies should respect human rights throughout their supply and value chains. The Homún case of the PAPO company, as well as the actions of the Kekén company in this and other agro-industrial projects in Yucatán, show corporate capture and the use of corporate social responsibility to position extractivist projects in indigenous communities without due diligence or respect for human and indigenous rights.

Neither PAPO nor Kekén informed the Mayan people of Homún about the project. When construction began on the road leading to the mega pig farm, it was claimed to be a tourist trail. It was the people from the community who organized themselves to learn about the many negative social and environmental impacts of mega pig farms. Other communities where there are mega pig farms were not consulted either. It is important to note that PAPO and Kekén were required to carry out a due diligence process to identify the risks of their activity in an area of high vulnerability due to the porous and shallow soil, the groundwater reserve, and the biocultural heritage of the region. The EIA, on the contrary, downplayed the environmental impacts. The document has several irregularities, including being signed by a person who is not a specialist in the field.

During their visit to Mexico, the UN Working Group on Business and Human Rights pointed out the importance of respecting the consent of indigenous peoples.<sup>21</sup> In this case, it is clear that the company has not respected the Homún peoples' NO. Despite this, the company has refused to withdraw and continues with various legal processes to impose the project.

At the legal level, the company has also taken actions that hinder access to justice. In 2018, it filed a recusal motion to try to remove the fourth district judge who had ruled in favor of the community's rights from the writ of amparo filed by the children of Homún before the start of the farm's operations. In the recusal, Equipo Indignación, which

accompanies the Mayan people of Homún, is described as “fallacious groups that control the now complainants.” The company also criticizes the fact that the complainants call themselves Mayas, Mayan-speaking indigenous peoples or natives of the town of Homún, apparently denying the right of members of native peoples to self-register as such in order to exercise their collective rights.

In addition, PAPO recently submitted a document containing irregularities as part of the litigation. The document, supposedly issued by the National Autonomous University of Mexico’s (UNAM) Directorate of Works and Conservation mentioned that the treatment plant complied with the norms and therefore would not generate pollution. However, when Homún and its representatives asked the university for clarification, the UNAM’s Director General for Legal Affairs said that the document presented “was not issued and/or signed by any university authority whatsoever.” These are some of the actions that illustrate the company’s actions at the legal level.<sup>22</sup>

In the case of the Kekén company, several actions have been documented that infringe on human rights in other communities. These include allegations of intimidation and interference (partly through corporate social responsibility) during the consultation processes of three communities in eastern Yucatán regarding pig farms in their territories. Centro Prodh and Artículo 19 documented several testimonies establishing surveillance, intimidation and the use of resources by the company and local authorities during the community consultations.

The Grupo DESC, now Grupo Kuo, has a Code of Conduct that includes sustainability and relations with communities.<sup>23</sup> This corporate code does not take into account issues of consultation or free, prior, informed and culturally appropriate consent, due diligence, human rights defenders, among other issues that are fundamental to the industry and to a good corporate policy on human rights. The Grupo Kuo is not part of the United Nations Global Compact. Kekén is responsible for its supply chain, and therefore for the actions of PAPO. In this regard, it is important to mention that the company lacks a human rights due diligence policy.

### Redress mechanisms

In terms of remediation mechanisms on the part of the State, the judiciary has been a key player in suspending the farm’s actions in Homún. However, Homún has had to file several legal remedies to achieve this suspension.

The judiciary however has at times hindered access to justice by accepting experts who participated in the Homún repression, taking as valid an EIA with several irregularities, among other actions, as described in the next section. The case is still open and we hope that the National Supreme Court of Justice will rule in favor of Homún’s cause.



## 6. Measures taken by affected communities and their supporters

In addition to the actions described above and the holding of their community consultation, the Mayas of Homún have filed several legal actions to challenge PAPO's pig farm project, including the following:

- Citizen complaints before PROFEPA: Since August 2017, complaints have been filed before PROFEPA highlighting the impacts that the mega pig farm represents for the territory, the environment, water, cenotes and ecotourism.
- Writ of Amparo against the irregular authorization of the EIA: Faced with what is considered a mistaken authorization of the EIA, a request for a writ of amparo was filed and the technical opinion was offered as evidence, exposing the polluting potential of the mega pig farm and the multiple irregularities of the EIA authorized by SEDUMA. The petition was filed with the Second District Judge, who denied it and thus the protection of federal justice, arguing, among other things, that although the EIA had irregularities, these were rectified when SEDUMA (now SDS) authorized it. The village challenged this ruling by filing an appeal for review of the writ of amparo before the Collegiate Court for Labor and Administrative Matters of the Fourteenth Circuit. In April 2019, this Court resolved the appeal for review and ordered the Second District Judge to reinstate the proceedings in order to gather more evidence so that he would have more elements to be able to pass sentence.
- Writ of Amparo for the Mayan people of Homún to participate in the administrative trial as interested third parties: In June 2017, the Town Council of Homún revoked the permits granted to PAPO. The company then filed a lawsuit before the Court of Administrative Justice of the State of Yucatán against the Town Council and the Municipal President of Homún. As a result of this lawsuit, the inhabitants of Homún went to court claiming to be injured third parties; however, the court denied the petition as well as the subsequent appeal that was lodged. After this last denial by the State Court, an amparo lawsuit was filed before the Judiciary of Mexico. However, when asked by the district judge to report on the act being claimed, the State Court informed, long before notifying the people of Homún they were not to be accepted as injured third parties, that it had already issued a sentence in case 91/2017. This sentence declared the revocation carried out by the Town Council of Homún null and void and declared the first permit granted by the municipal president of Homún to be firm.
- Writ of Amparo for the violation of the right to self-determination of the Mayan people of Homún: The Mayan inhabitants of Homún filed an amparo lawsuit to recognize, in accordance with their right to self-determination as a native people, the result of the October 2017 consultation, in which the people said NO to the installation of the mega pig farm.
- Writ of Amparo to protect the right to a healthy environment for the children of Homún: This appeal was filed by six children and adolescents of Homún for their right to a healthy environment. The appeal is currently before the Fourth District Judge of the Fourteenth Circuit. It was before this body that the operations of the farm have been stopped. As its functioning violates the right of the children of Homún to a dignified life, to water and to ecological balance, as a precautionary measure the judge has ordered the suspension of the farm's operations.

The responsible authorities and the swine company, however, have not complied with the definitive suspension, and have continually violated it. The company has used dozens of tricks to prevent the mega-farm from ceasing operations. Among their appeals filed to revoke the suspension are the filing of a review appeal, three complaint appeals, three motions to modify the definitive suspension and one recusal.

On 7 August 2019, the country's highest court, the Supreme Court of Justice of the Nation, due to the importance and significance of the case, exercised its faculty of attraction to resolve the review of the incidental trial for the suspension of the mega pig farm. This last trial is incidental to the amparo lawsuit brought by minors from the town of Homún.

Four of the five ministers that make up the First Chamber of the Supreme Court held that the matter is of interest and importance for the Court because it will establish new guidelines and criteria at the constitutional level and of significance for the Mexican legal order, since it will study violations of the right to a healthy environment, to water, to the health of Mayan children as well as the impact that the operation of a mega pig farm could have on the Ring of Cenotes Geohydrological State Reserve of Yucatán.

## 7. Lessons learned, conclusions and recommendations

The case of Homún is a fundamental case as it is the first community in Yucatán to initiate a process against mega pig farms, bringing the impacts of these mega projects to the forefront. Homún's struggle has encouraged other communities to resist and fight against other pig farms in their territories. As a result, a citizen complaint has been filed for the right to water and against mega pig farms that resulted in the suspension of four farms that did not comply with regulations. In this sense, the case gives us several guidelines and lessons that can be learned for other struggles:

Firstly, the case demonstrates the importance of strong local organization in resisting extractive projects. It is important to note that Homún's community-level organization and the actions of Kanan Ts'ono'ot have been successful in achieving the suspension of a mega pig farm. The community, over the years, has remained mobilized and organized. Community internal consultation was also a key exercise in self-determination.

Secondly, the case illustrates the challenges of litigating against a company and the need to generate expert opinions on multiple subjects (anthropology, hydrology, environmental, among others) to strengthen the demand for human rights. In light of these needs, alliances with the academia are key.

Thirdly, the case proves the importance of building multiple networks at different scales to make the community's demands visible and strengthen their struggle. In this sense, through the Homún case, an American regional alliance against mega-farms or pig factories has been promoted that includes peasant, Afro-American and indigenous communities in the United States, Argentina, Chile and Ecuador. This alliance allows for the sharing of knowledge, strategies and joint actions.

Fourthly, the case illustrates the company's lack of due diligence and the use of corporate social responsibility to convince communities to accept such projects without carrying out consultations or ensuring information on environmental and social impacts. In this regard, it is important to remember that CSR does not replace due diligence in fulfilling corporate responsibility to respect human rights under the Guiding Principles.

We also consider that the case of Homún opens up the debate on the meat industry. In this sense, it is crucial to re-evaluate this agro-industrial model and limit its expansion in favor of other, more sustainable forms of production. In addition, the government could decree a moratorium on the expansion of the meat industry in Yucatán, given the environmental, social and human rights impacts it is having in an area that is particularly affected by this industry. As for the right to water, it is essential that standards on permitted contamination and monitoring of contamination are improved. Finally, it is important to increase monitoring of this industry and to penalize mega-farms that do not comply with the law.

## Endnotes

<sup>1</sup> Video of the case available here: <https://vimeo.com/551705296>.

<sup>2</sup> Greenpeace (2020).

<sup>3</sup> Vid. Image 1.

<sup>4</sup> Environmental Impact Assessment (EIA) is a procedure of studies carried out by experts on the environmental and social impacts of an activity or project to determine whether it is sustainable and whether it requires modifications. Given the multiple impacts of mega pig farms on water, soil and air, such projects should be subject to an EIA. Vid. Annex, Image 2

<sup>5</sup> <https://www.kuo.com.mx/>.

<sup>6</sup> Cfr. <https://www.bmv.com.mx/en/issuers/profile/KUO-5262>.

<sup>7</sup> See image 2.

<sup>8</sup> INALI (2008) Catálogo de las lenguas indígenas nacionales: variantes lingüísticas de México con sus autodenominaciones y referencias geoestadísticas. Consejo Nacional del Instituto Nacional de Lenguas Indígenas. <https://www.inali.gob.mx/clin-inali/>.

<sup>9</sup> Constitutional article 1 states the constitutional hierarchy of international human rights treaties, such as ILO Convention No. 169.

<sup>10</sup> See reports by UNSRs Rodolfo Stavenhagen and Victoria Tauli-Corpuz.

<sup>11</sup> Besides the reports included in the references, observations on the human rights of Indigenous Peoples in Mexico can be found at: HRC (2019) CCPR/C/MEX/CO/6. 4 December 2019; CESCR (2018) E/C.12/MEX/CO/5-6. 17 April 2018; CEDAW (2018) CEDAW/C/MEX/CO/9 25 July 2018; CERD (2019) CERD/C/MEX/CO/18-21 29 August 2019; SR on the situation of human rights defenders. Mission to Mexico. A/HRC/37/51/Add.2 12 February 2018.

<sup>12</sup> The percentage of speakers of an indigenous language in the state of Yucatán is 29%, compared to 6% nationally.

<sup>13</sup> INEGI: Population and Housing Census 2010 and Population and Housing Census 2020.

<sup>14</sup> INEGI, Population and Housing Census 2010 and Intercensal Survey 2015.

<sup>15</sup> The scientific evidence on the multiple environmental and health impacts of mega pig farms was systematized by multiple organizations and experts in this amicus curiae brief: [https://earthjustice.org/sites/default/files/files/amicus\\_scjn\\_homun\\_5may\\_sefa\\_647\\_2019.pdf](https://earthjustice.org/sites/default/files/files/amicus_scjn_homun_5may_sefa_647_2019.pdf).

<sup>16</sup> Vid. Image 3.

<sup>17</sup> The right to consultation is recognized in Article 2 of the Constitution, regarding Indigenous Peoples.

<sup>18</sup> United Nations (2016) available at: <https://www.business-humanrights.org/es/%C3%BAltimas-noticias/m%C3%A9xico-em-presas-y-derechos-humanos/>.

To learn more about the right to consultation and its implementation, see the report *De la consulta a la libre determinación de los pueblos: Informe sobre la implementación del derecho a la consulta y al consentimiento previo, libre e informado en México*, available at: [https://fundar.org.mx/wp-content/uploads/2019/01/Documento\\_consulta-web.pdf](https://fundar.org.mx/wp-content/uploads/2019/01/Documento_consulta-web.pdf).

<sup>19</sup> For observations of the UN treaty committees on the implementation of the consultation in Mexico, see reports referred to in note 11 above.

<sup>20</sup> Greenpeace (2020).

<sup>21</sup> United Nations (2017) A/HRC/35/32/Add.2, paras. 38 et seq. 108 (b) and (C).

<sup>22</sup> Timeline of the legal process in Image 3.

<sup>23</sup> <https://desc.com.mx/codigo-de-conducta/nuestro-codigo-de-conducta>.

## References

Artículo 19 and Centro Prodh. 2021 “Informe Misión de Observación de la AutoConsultación de las granjas de cerdos de cerdos en Yucatán”. <https://articulo19.org/mision-de-observacion-de-la-autoconsulta-sobre-las-mega-granjas-de-cerdos-en-yucatan-llama-a-respetar-derechos-de-pueblos-indigenas/>.

Equipo Indignación. 2021. “Homún: pueblo maya guardián del agua”. Press dossier. Chablekal, Yucatán. [http://indignacion.org.mx/wp-content/uploads/2021/05/FD\\_Homun\\_0427.pdf](http://indignacion.org.mx/wp-content/uploads/2021/05/FD_Homun_0427.pdf).

Greenpeace. 2020. “La carne que está consumiendo al planeta ¿Qué hay detrás de la industria porcícola en la península de Yucatán?” [https://www.greenpeace.org/static/planet4-mexico-stateless/2020/05/188dc911-reporte\\_granjas\\_webok3.pdf](https://www.greenpeace.org/static/planet4-mexico-stateless/2020/05/188dc911-reporte_granjas_webok3.pdf).

López-Fabila, Atsiry. 2020. “Agroextractivismo y racismo ambiental: La industria porcícola en el estado de Yucatán.” Geopauta 4 (4): 93-112.

Medina Carrillo, Lourdes, Jorge Fernández Mendiburu, and Orvelín Montiel Cortés. 2021. “Contaminación del Acuífero Maya: Responsabilidad gubernamental y empresarial”. DPLF, Equipo Indignación. <http://www.dplf.org/es/AcuiferoMaya>.

United Nations. Statement by the United Nations Working Group on Business and Human Rights at the end of its visit to Mexico, 7 September 2016. <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20466&LangID=S>.

United Nations. Report of the United Nations Working Group on Business and Human Rights on its mission to Mexico. A/HRC/35/32/Add.2 27 April 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/101/93/PDF/G1710193.pdf?OpenElement>.

United Nations, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico. A/HRC/39/17/Add.2 28 June 2018. <https://undocs.org/es/A/HRC/39/17/Add.2>.

Velázquez Solís, Alberto Carlos. 2020. “U tookchajal u lu’umil, u k’áaxil maaya kaaj. Arrebato/defensa de la tierra, el monte del pueblo maya.” PhD thesis, San Cristóbal de las Casas, Chiapas: Centro de Investigaciones y Estudios Superiores en Antropología Social. <http://ciesas.repositorioinstitucional.mx/jspui/handle/1015/1033>.



INDIA

# Impact of Oil Palm Cultivation in Mizoram State

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## Methodology note

This research was conducted by Mr. Dilip Chakma, an indigenous lawyer and human rights activist. This report is based on field visits and interviews with the affected indigenous farmers, community leaders and other stakeholders in Mizoram state in Northeast India. During the field visits, evidence-based data was collected from the stakeholders involved in oil palm cultivation. The researcher conducted a desk study to identify the relevant issues, gathering information from secondary sources, mainly newspapers and online sources, as well as several field studies previously conducted by other researchers to study the socioeconomic impacts of oil palm cultivation in Mizoram. The researcher gathered official data from the Parliament of India and the state government of Mizoram. He used the Right to Information Act (RTI), 2005 to obtain information from Mizoram's Department of Agriculture.

The interviews with indigenous farmers, community leaders/activists, Village Council leaders, environmentalists among others were conducted in person and by telephone by field volunteers. Information was collected on human rights violations, both individual and collective, resulting from oil palm cultivation. This report has decided to keep the anonymity of some interviewees on their request/demand to prevent reprisals from the State or the corporations operating in the area.

## 1. Introduction

India is heavily dependent on imports to meet its edible oil requirements and is the largest importer of vegetable oils in the world followed by China and the USA.<sup>1</sup> To reduce the import of edible oils and to increase domestic production, the Government of India had launched the National Mission on Oil Seed and Oil Palm (NMOOP) from 2014-15 and subsumed it into the National Food Security Mission (NFSM) as 'NFSM-Oilseeds and Oil Palm' from 2018-19.<sup>2</sup> Currently, the total oil palm potential area in India is estimated at 1.93 million hectares in 19 states/ Union Territories (UTs);<sup>3</sup> but the actual planted area was 0.35 million hectares up to October, 2019 in 16 states/ UTs<sup>4</sup> of which approximate fruiting area was 0.135 million hectares in eight states.<sup>5</sup> The crude palm oil (CPO) production during 2018-19 from fruiting area was 0.27 million tons. During 2019-20 an area of 17,410 hectares had been targeted for oil palm plantation.<sup>6</sup>

On August 15, 2021, while addressing the nation on India's 75th Independence Day, Prime Minister Narendra Modi said, "There is a huge potential in the fields of tourism, adventure sports, organic farming, herbal medicine, and oil palm in the North East. We have to fully harness this potential and make it a part of the development journey of the country."<sup>7</sup> Three days later, the Government of India launched a new scheme called the "National Mission on Edible Oils – Oil Palm (NMEO-OP)" with a special focus on the Northeastern region and the Andaman and Nicobar Islands with a financial outlay of Rs11,040 crore (about US\$1.5 billion). The NMEO-OP will subsume the current National Food Security Mission-Oil Palm program. This new Centrally Sponsored Scheme aims to increase the area under cultivation for oil palm by an additional area of 0.65 million hectares till the year 2025-26 and thereby reaching the target of 1 million hectares ultimately. The production of CPO is expected to go up to 1.12 million tons by 2025-26 and up to 2.8 million tons by 2029-30.<sup>8</sup>

The NMEO-OP has been launched as part of India's "Atmanirbhar Bharat Abhiyan" (Self-Reliant India Mission) and Prime Minister Modi hailed the scheme as "a game-changer when it comes to helping oil palm farmers and creating an Atmanirbhar Bharat."<sup>9</sup> But former Environment Minister of India and opposition leader Shri Jairam Ramesh alleged that "the present proposal of course is designed to benefit Patanjali and Adani;" both are corporates with interests in edible oil expansion.<sup>10</sup> Meghalaya's parliamentarian Ms Agatha Sangma from the indigenous Garo tribe warned that the focus areas of Northeast India and Andaman and Nicobar Islands are "biodiversity hotspots and ecologically fragile," and oil palm plantations would denude forest cover and destroy the habitat of endangered wildlife and further could alter the community ownership of land and "wreak havoc on the social fabric."<sup>11</sup> Way back in 2002 the Supreme Court of India had ordered the "phasing out" of "commercial plantations on forest land"

in ecologically fragile and tribal inhabited Andaman and Nicobar Islands, It said, “There should be no expansion of monoculture or commercial plantations on forest land. The existing plantations of oil palm, rubber and teak are reportedly no longer viable and should be phased out.”<sup>12</sup>

It is feared that the Government of India’s push for oil palm cultivation shall cause irreparable damage in a small state like Mizoram which currently has the largest area under oil palm cultivation in Northeast India.<sup>13</sup>

Among all the states in India, Mizoram has the highest proportion of Scheduled Tribes (94.43%) who are India’s indigenous peoples.<sup>14</sup> Mizoram has a total population of 1,097,206 as per Census 2011, of which 94.43 per cent are Scheduled Tribes (STs). There are 15 STs in Mizoram, some of whom are further divided into several sub-tribes.<sup>15</sup> Of the 15 STs, the Lushai/Mizos are the largest comprising 66.98 per cent of the total population and 70.9 per cent of the total ST population. The second largest ST community are the Chakmas who comprise 8.83 per cent of the total population and 9.3 per cent of the ST population. While the majority of the Chakmas are Buddhist by religion, all other indigenous communities are Christians except for some Reang/Bru families who still practice the Hindu faith. In the Census 2011, the Reang/Bru are subsumed under “Any Kuki Tribes.” Other indigenous communities are the Mara, Lai, Hmar, among others.

All of these indigenous peoples will be affected by the expansion of oil palm cultivation in Mizoram. While the negative effects of oil palm cultivation and business operations in this sector are already evident in the testimonies of farmers and community leaders interviewed for this report, severe adverse impacts on the environment, biodiversity, and human rights of the indigenous communities due to expansion of the oil palm industry in Mizoram will be felt in near future.

## 2. Oil palm cultivation in Mizoram

Mizoram is the leader of oil palm cultivation in the Northeast, with a planted area of 28,914 hectares followed by Arunachal Pradesh (2,561 ha), Nagaland (3,322 ha), Assam (1,849 ha) and Tripura (530 ha). Mizoram is also the only state in the Northeast producing Fresh Fruit Bunches (FFBs) in a 530-hectare fruiting area; all the plantations in other states were below four years and hence had no FFBs production as of December 3, 2019, the latest year for which official data are currently available.<sup>16</sup>

Cultivation of oil palm in Mizoram started in 2005 after the Mizoram Legislative Assembly passed the Mizoram Oil Palm (Regulation of Production & Processing) Act, 2004 on December 2, 2004. In 2007, the Act was amended to extend it to the whole state of Mizoram, including the areas falling under three Autonomous District Councils (ADCs), namely Chakma ADC, Mara ADC and Lai ADC in the southern part of the state.<sup>17</sup>



An oil palm plantation at Tuikurlui village in in Lawngtlai district, Mizoram, India. (Photo credit: Volunteer, IRAC)



A farmer in an oil palm plantation in Mamit District, Mizoram, India. (Photo credit: TR SHANKAR RAMAN / WIKIMEDIA COMMONS)

Oil palm cultivation is being implemented through Public-Private Partnership (PPP) involving the State Agriculture Department and partner companies. The Mizoram Government has signed Memorandums of Understanding (MoUs) with three companies, namely Godrej Agrovet Ltd., 3F Oil Palm Agrotech Pvt. Ltd and Ruchi Soya Industries Ltd and assigned them the following districts:<sup>18</sup>

Sl No.	Name of company	Area allotted	Date of signing of MoU
1	Godrej Agrovet Ltd.	Kolasib & Mamit Districts	September 14, 2005
2	3F Oil Palm Agrotech Pvt. Ltd	Aizawl, Serchhip & Saiha Districts	March 7, 2006
3	Ruchi Soya Industries Ltd.	Lunglei and Lawngtlai districts	October 3, 2006

Of these companies, 3F Oil Palm Agrotech Pvt. Ltd withdrew from Mizoram in August 2021.<sup>19</sup>

According to the Mizoram government, as of July 2021, the potential area for oil palm cultivation is 66,791 hectares, of which the area covered by oil palm is 26,680 hectares.<sup>20</sup> Based on information obtained from the Directorate of Agriculture, Government of Mizoram, a total of 10,843 indigenous farmers are involved in oil palm cultivation in 197 villages in seven districts of the state.<sup>21</sup>

#### Status of Oil Palm by District (as of July, 2021)<sup>22</sup>

Sl No.	District	No. of farmers	No. of villages covered	Area covered (ha.)	FFB sold to partner companies (metric ton)
1	Kolasib	2,155	29	6965	14459.784
2	Mamit	3,042	42	5780	18028.951
3	Aizawl	403	6	859	53.504
4	Serchhip	1,390	15	2130	547.385
5	Siaha	43	10	86	-
6	Lunglei	1,803	49	6396	1926.358
7	Lawngtlai	2,007	46	4464	2239.415
8	Seed Garden, W. Serzawl	-	-	-	17.425
	TOTAL	10843	197	26680	37272.822

### 3. Impacts on the rights of affected indigenous peoples

While prompting the Northeastern states to adopt the National Mission on Edible Oils – Oil Palm scheme, G. Kishan Reddy, India’s Minister for Development of the North Eastern Region (DoNER), cited the state of Mizoram as a success story in the cultivation of oil palm and stated, “Farmers of states such as Mizoram already have significant Oil Palm cultivation experience and we can leverage their expertise in the rest of the North eastern states.”<sup>23</sup> However, ground realities in Mizoram are totally different. Contrary to the claims of the Government, oil palm cultivation in Mizoram has led to adverse impacts on communities’ land ownership, food security, rights of women and environment and biodiversity.

## Recognition of the rights of indigenous peoples in India

In India, indigenous peoples enjoy protection of their rights, including land rights, under the Constitution (particularly under Fifth Schedule and Sixth Schedule to the Constitution) and under a plethora of laws—both national and state. Among the national laws are the Forest Rights Act, 2006, the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (applicable in the areas under the Fifth Schedule), the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, among others.<sup>24</sup>

The state of Mizoram enjoys special status under Article 371G of the Indian Constitution which provides that no Act of Parliament in respect of (i) religious or social practices of the Mizos, (ii) Mizo customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Mizo customary law, (iv) ownership and transfer of land, shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides. The three Autonomous District Councils namely Chakma, Mara and Lai in the southern part of Mizoram are Sixth Schedule areas where no law passed by the Mizoram Legislative Assembly is applicable without the approval of the Governor. Non-indigenous persons cannot buy land or own businesses without the official permission. Even entry of non-residents of Mizoram (including Indians) into the state without passes is prohibited under the Bengal Eastern Frontier Regulation Act 1873.

### *Impacts on community land ownership, use and control*

For the state's indigenous communities, the traditional practice of shifting cultivation, locally known as *jhum*, remains an important mainstay for sustenance and food security. *Jhum* is a traditional form of agriculture where a piece of forest land is cleared, burnt and then used for cultivation. After harvesting, the land is abandoned for about five to six years to allow regeneration of the natural vegetation and nutrients in the soil, before the next round of cultivation can take place. It is a multiple-crop system that raises diverse food and cash crops, conserves indigenous seeds and varieties, and promotes household food security. Wildlife scientists widely believe that *jhum* helps retain forest cover and supports biodiversity in the landscape. In the context of Mizoram, noted scientist T R Shankar Raman working with the Nature Conservation Foundation (NCF) opined that the dense bamboo and secondary forests created by *jhum* are better for biodiversity conservation than any of the artificial monocultures being planted. Therefore, the state's attempt to eradicate *jhum* while encouraging/promoting monoculture plantations such as teak, rubber, and oil palm is regressive, as an economy based on culture, diversity, and community is being sought to be permanently replaced by one dependent on cash, permanent monocrops, and private interests.

In Mizoram, the forest is owned either by the state government (in case of reserved forests, national parks, tiger reserves etc) or the community. The entire forest land under traditional *jhum* cultivation is community land, owned by the local Village Councils. As part of local self-governance of the Indigenous Peoples, the Village Councils are established in Mizoram under the Lushai Hills District (Village Councils) Act, 1953 and these Village Councils allot certain plots of the community forest land within its jurisdiction to each *jhum* cultivator family for one agricultural year (January to December) free of any charges. Hence, the cultivators possess the allotted land and become the holders only for the particular year for which they were allotted and the next year they may be allotted another plot of forest land whose size may be different depending upon the availability of community land for cultivation.<sup>25</sup> But due to oil palm cultivation, the community lands are being gradually privatized with indigenous families becoming permanent owners of the land. The control of the traditional institutions or Village Councils over the land is gradually reduced, which will have far reaching effects including rise in conflicts over land ownership. Further, as the farmers are required to sell their FFBS only to those companies that have been assigned by the state government to their district, the oil palm companies are in indirect control of indigenous lands.<sup>26</sup> Hence, the State Government has created a business system where the corporations and the state government will decide everything, and the tribal farmers are left to their mercy.



(Photo credit: IRAC)

### *Impacts on livelihood and food security*

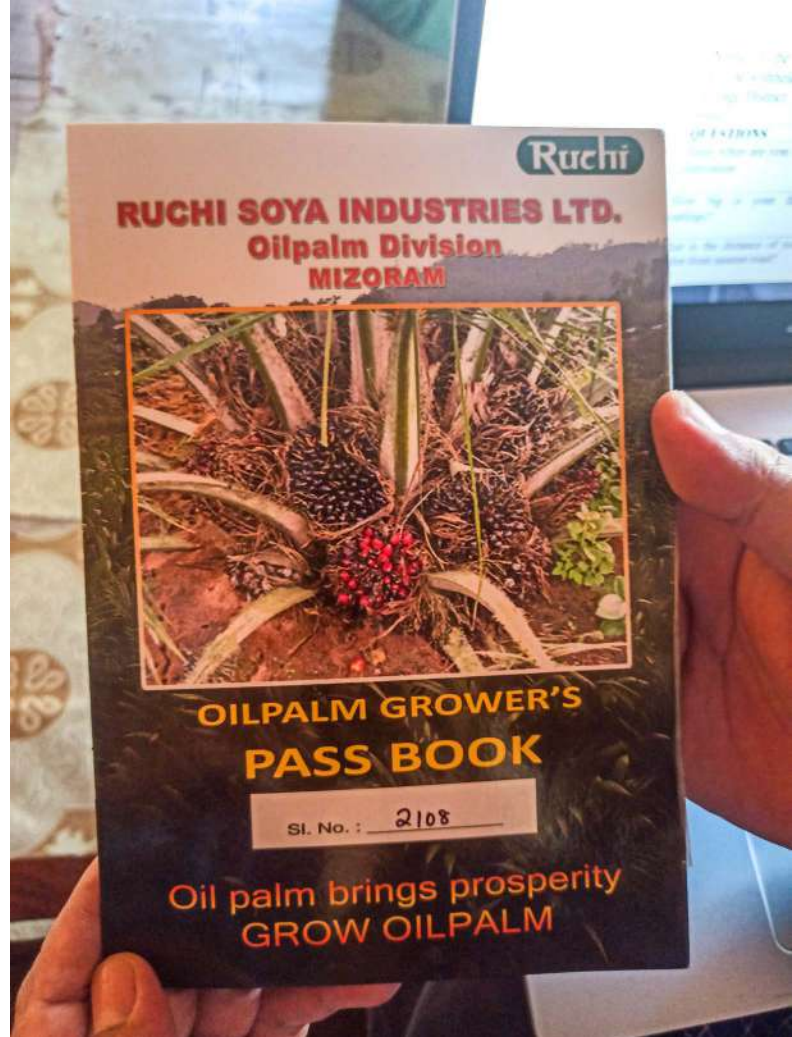
Tribal farmers have been traditionally producing both food crops (mainly rice) and cash crops (cotton, chilli, maize, oilseeds, potatoes, ginger, and a variety of vegetables, etc.) from jhum cultivation. Many of these jhum farmers are now gradually being enticed to shift to oil palm cultivation.<sup>27</sup> The State Government of Mizoram argues that oil palm cultivation provides “a secure and more lucrative income source for the poor farmers.”<sup>28</sup> But a lot of oil palm farmers are suffering financial losses mainly because of the inability to sell their FFBs and therefore losing their livelihood. The companies have set up “collection centres” at roadside locations and do not buy FFBs from plantations that are inaccessible by road. Even if connected by road, the companies have never reached some areas such as in Mamit district where jhum farmers have taken up oil palm cultivation following Government assurances and assistance. Now, several marginal farmers are either unable to sell at all or not earning enough even if selling from their oil palm plantations. Hence, many of these farmers have once again shifted or decided to shift to jhum cultivation or other plantations like areca nut by cutting off/destroying their oil palm trees in Mamit district in western Mizoram.<sup>29</sup>

### *Participation in decision-making and FPIC*

On the other hand, the Free, Prior and Informed Consent (FPIC) of indigenous peoples has been violated both at the Union and State levels as policies and laws were adopted without any consultation with the affected communities. Their rights to consultation and participation in decision-making on matters affecting them while framing the policy on oil palm have been wholly ignored from the beginning. The Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004 provides that the oil palm growers/farmers of a particular area “shall supply the fresh fruit bunches from the oil palm plantations grown in that area only to the factory to whom the factory zone is attached and to none else.”<sup>30</sup> Hence, the oil palm growers/farmers do not have the option to sell their FFBs to any company other than the company which was selected by the Government of Mizoram on the behalf of the indigenous peoples without any consultation with the affected communities. In travesty of justice, the farmers/growers can be punished with fines which may extend to Rupees 10,000 for contravention of the Mizoram Oil Palm (Regulation of Production

and Processing) Act, 2004 and continuous violation shall invite a further fine not exceeding Rs1,000 per day during which the contravention of the Act continues.<sup>31</sup> Hence, this law makes the indigenous peoples vulnerable to exploitation by the business enterprises and the State.

Farmers interviewed by this researcher in southern parts of Mizoram expressed their unhappiness with the current pricing which is Rs10 per kg of FFBs, including Rs5.50 paid by the company and Rs4.50 by the Mizoram Government (by way of incentive/subsidy).<sup>32</sup> But this financial support (incentive/subsidy) is provided to a very meagre number of farmers. As admitted by the Mizoram Government, financial assistance of Rs1 per kg was provided to only 830 farmers during 2017-18 and Rs4.50 per kg to only 684 farmers during 2020-21, while there were more than 10,800 oil palm farmers in the state.<sup>33</sup> The farmers stated that the current pricing is not sustainable as they have to hire laborers to carry their FFBs to the roadside Collection Centres at the rate of Rs400-500 per day per laborer.<sup>34</sup> The Mizoram authorities say that 3F Oil Palm Agrotech Pvt Ltd withdrew from the state as “they felt that it was economically unviable for the farmers and the company to grow Oil Palm successfully in the districts allotted to them.”<sup>35</sup>



Oil Palm Growers Pass Book of one of the company Ruchi Soya Industries Ltd., promoting oil palm as “Palm oil brings prosperity, GROW OIL PALM.” (Photo credit: Volunteer, IRAC)

### *Impacts on forests, the environment and biodiversity*

Indigenous peoples have an intrinsic relationship with their ecosystems, natural resources and species with their livelihoods and cultural practices deeply embedded in the lands and forests they live in. The degradation of the forests and the natural environment can have severe consequences for indigenous peoples through the loss of livelihoods and of traditional knowledge systems and cultural diversity.

Permanent plantations and settled agriculture such as oil palm result in permanent loss of forest cover, unlike the temporary loss of forest cover followed by regeneration that is characteristic of shifting cultivation. *India State of Forest Report 2011* recognized this fact and stated that one of the main reasons for depletion of forest cover in Mizoram is “Due to change in customary cultivation practices, the focus has now shifted to raising horticultural crops...thus preventing secondary growth on old shifting cultivation patches. This has also led to the decline in forest cover assessed in the state.”<sup>36</sup>

Echoing serious concern on the devastating impact of oil palm plantation in his home state (Mizoram), Dr. David C. Vanlalawka, Joint Secretary of Biodiversity and Nature Conservation Network (BIOCONE), stated, “There are lessons to be learnt from other countries that have seen the devastation caused by oil palm plantations. We don’t want to learn our lessons the hard way.”<sup>37</sup> Bibhab Talukdar, a biologist who heads the Guwahati-based conservation organization Aaranyak, stated, “The palm is an invasive species. It’s not a natural forest product of northeastern India and its impact on our biodiversity as well as on soil conditions has to be analysed even if it is grown in non-forest areas. Any kind of monoculture plantation is not desirable.”<sup>38</sup>



An oil palm plantation established on steep sloping land traditionally used for shifting cultivation (or jhum) near Dampa Tiger Reserve in Mamit District, Mizoram, India. (Photo credit: TR SHANKAR RAMAN / WIKIMEDIA COMMONS)

Research conducted in and around the Dampa Tiger Reserve by T R Shankar Raman, along with Jaydev Mandal, research scholar at Gauhati University, found that “Specifically, the establishment of monoculture plantations such as oil palm at the expense of jhum is counterproductive to the goals of conserving forest cover and biological diversity. Shifting agriculture, or jhum, is a better form of land use than monoculture plantations, and the denser and more diverse forest mosaic that it creates also helps to retain a significant fraction of forest birds in the landscape. As a form of land use, jhum therefore deserves to be supported as a better option for the buffer zone around Dampa Tiger Reserve.”<sup>39</sup>

Oil palm is a water-intensive crop and, hence, not suitable in a water-scarce hilly state like Mizoram. T.R. Shankar Raman lamented that while water is diverted from natural streams to tanks and taken through pipes to feed this water-demanding crop in newly deforested areas, the State Government provides no such support for farmers practicing jhum cultivation.<sup>40</sup>

### *Impacts on Indigenous Women*

In the traditional system of jhum cultivation, indigenous women play a crucial role in food production and household food provisioning and act as the guardians of food security, nutrition, health, and overall well-being of family members. Right from tilling the land to deciding the crops and harvesting them, indigenous women have been equal partners in work. However, the participation of women is found to be decreasing in families who have undertaken oil palm cultivation. Men do not consider it a woman’s job. The replacement of the traditional jhum practice system with monoculture plantations not only deprives rights of women to make decisions over land and its





(Photo credit: IRAC)

use but also diminishes their roles as food producers. Eventually, indigenous women will end up performing labor-intensive work in the oil palm plantations.<sup>41</sup>

## 4. Oil palm plantations in Mizoram and the UN Guiding Principles on Business and Human Rights

### *Duty of the State to protect*

In 2011, the Ministry of Corporate Affairs (MCA), Government of India, released a set of guidelines called the National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business (NVGs) which was expected to provide guidance to businesses on what constitutes responsible business conduct. This NVGs was upgraded into National Guidelines on Responsible Business Conduct (NGRBC) in December 2018 to align with the United Nations Guiding Principles on Business and Human Rights (UNGPs).<sup>42</sup>

Earlier in November 2018, the Indian Government had formally announced that it would develop a National Action Plan (NAP) on business and human rights at the Business and Human Rights Forum in Geneva<sup>43</sup> and released a 'Zero Draft' of NAP in December 2018.<sup>44</sup> India's Zero Draft is meant to kick start a national dialogue to prepare a NAP by 2020,<sup>45</sup> but the same is not yet ready.

One critical issue of the Zero Draft is that it does not list the rights guaranteed to the Indigenous Peoples, among others, under the Forest Rights Act, 2006 applicable across the country and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 applicable in the Fifth Schedule Areas in 10 states.<sup>46</sup> The human rights groups have called for more attention to indigenous land rights and corporate accountability in the NAP.<sup>47</sup>

Mizoram's principal legislation to regulate the oil palm business namely the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004 (Act No. 10 of 2004) has indeed nothing to do with the UNGPs. It does not mention the rights of indigenous peoples at all. There is no mechanism or provision to investigate, punish or redress violations of human rights by the business enterprises. The penalty of Rs10,000 imposed on business enterprises for not complying with the provisions of Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004 is a joke.

### *Responsibility of business to respect*

The responsibility of business to respect human rights is not mentioned anywhere in the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004 or the Memorandums of Understanding signed with the three companies involved in oil palm business in the state.

Godrej Agrovet Ltd has a "Human Rights Policy" issued in June 2017 which affirms respecting the highest standards of human rights.<sup>48</sup> It says that its human rights policy is guided by international covenants such as the International Bill of Human Rights (i.e., the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights) and the International Labor Organization's Declaration on Fundamental Principles and Rights at Work. The Company also says that it is committed to identifying, preventing and mitigating adverse human rights issues and impacts resulting from or caused by its business activities. The Company also commits itself to engaging with the stakeholders and to the principles of free, prior and informed consent of the local communities.<sup>49</sup> Ruchi Soya Industries Ltd also has its "Business Responsibility Policies" (effective from 10 November 2020) which say that "The Company is committed to respect the economic, social, cultural, political and civil rights of individuals in and impacted by its operations."<sup>50</sup>

However, in practice these Companies have not carried out human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts in Mizoram. No social impact assessment or environment impact assessment has been undertaken to assess actual and potential human rights impacts on affected indigenous communities.

### *Remedy*

The Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004 further bars any court from taking cognizance of an offense punishable under the Act, or any rule or order made thereunder except upon a complaint in writing made by the Oil Palm Officer or any authority or Officer authorized by him on his behalf.<sup>51</sup> Further, no suit, prosecution or other legal proceeding shall lie against any person which includes business enterprises for anything which is in "good faith done or intended to be done in pursuance of any provision of this Act any rule or order made thereunder."<sup>52</sup> The Act also provides an escape route for the business enterprises which are accused of an offense by simply levying a fine not exceeding Rs10,000.<sup>53</sup> Hence, the Mizoram Government has created an environment that facilitates companies to exploit the indigenous farmers and get away without any accountability.

The only complaint redressal mechanism provided under the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004 is the constitution of "Zonal Committees" which shall have the powers and function, among others, to "consider complaints of the grower regarding transportation, purchase of Oil Palm FFBs and payment of price by the factory to the Oil Palm Cultivators."<sup>54</sup> This complaint redressal mechanism is highly inadequate and ineffective.

None of the two companies currently involved in oil palm business in Mizoram have set up any grievance mechanisms which can be used by individuals and communities who may be adversely impacted by their business operations in



Fresh Fruits Buds (FFBs) in an oil palm plantation in Lawngtlai district of Mizoram, India (Photo credit: Volunteer, IRAC)

the state. The MoUs signed with the State Government of Mizoram do not provide for the establishment of any such grievance redressal mechanism by the companies.

While the grievance redressal mechanism of the Godrej Agrovet Ltd is unknown, Ruchi Soya Industries Ltd's "Business Responsibility Policies" (effective from 10 November 2020) state that it has "adequate mechanisms" for timely and proper redressal of complaints and asks stakeholders to write their concerns, if any, to the company through email at [brhead@ruchisoya.com](mailto:brhead@ruchisoya.com).<sup>55</sup> But such a grievance redressal mechanism is highly inadequate and not consistent with the UNGPs. Oil palm farmers interviewed by the researcher said they have no idea whom and where to approach when their FFBs are left to rot in their farms as they remain uncollected/unpurchased by the companies despite their legal obligation to do so.

In fact, as per the Mizoram Government, between 2004 and 2021, not a single complaint has been received from farmers or their organization against failure by the companies to purchase the oil palm FFBs.<sup>56</sup> On the contrary, many oil palm farmers interviewed in the districts of Lawngtlai, Lunglei, and Mamit claimed that their FFBs were not purchased by the companies, leading to huge losses. "No company has come to buy our oil palm fruits," stated Mr Mangala Basu, a tribal farmer in Mamit district. After suffering huge financial losses, he plans to totally abandon oil palm plantation.<sup>57</sup>

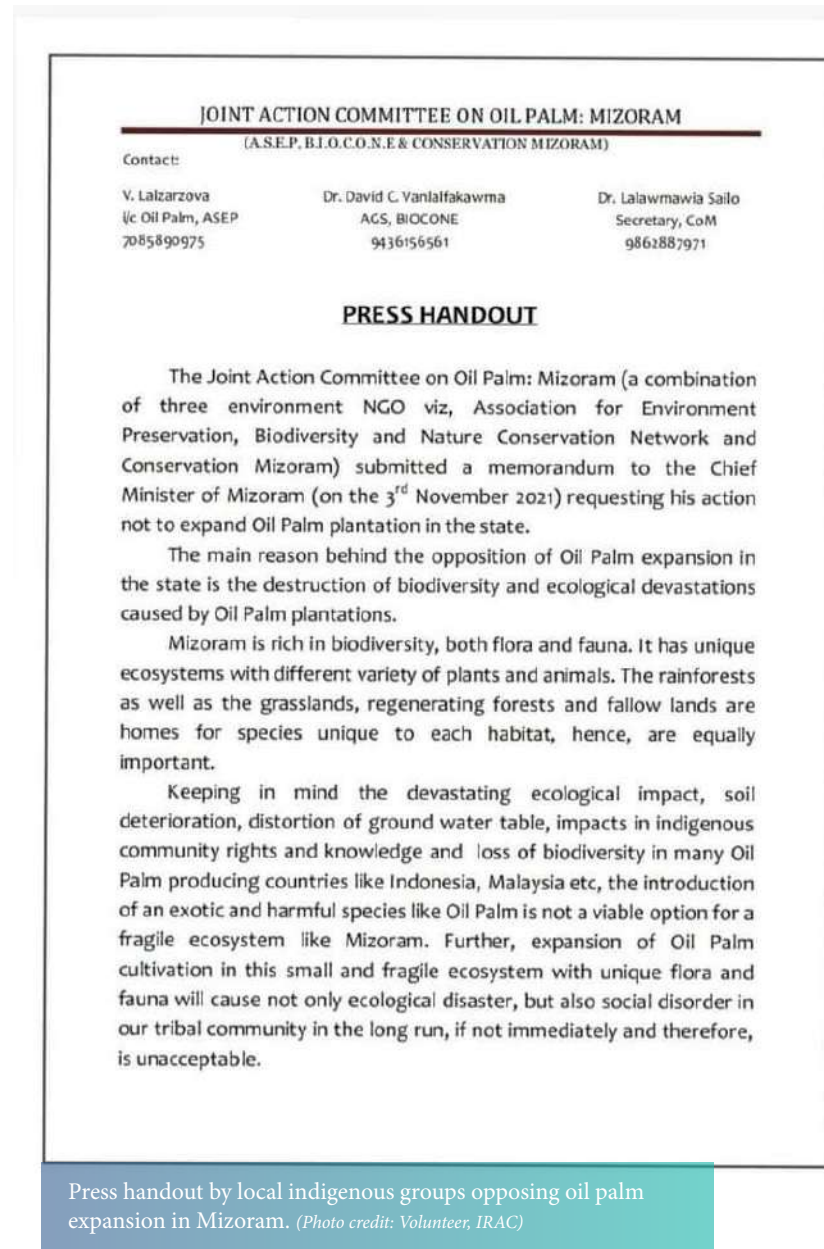
## 5. Actions taken by affected communities and their allies

There is not much awareness about the violation of human rights and adverse impacts on the environment and biodiversity among the local affected communities. The growers/farmers interviewed by the researcher stated that they do not know whether the oil palm plantations are harming the environment and biodiversity or whether the companies are violating their human rights. They also stated that they have not heard about any complaints redressal mechanism where they can lodge complaints.

However, at regional level, there is some collective response by the indigenous organizations which have expressed great concerns regarding the impacts of oil palm cultivation on the collective rights of the indigenous peoples to their lands and resources and their livelihoods. In September 2021, the Eastern Himalayan Youth Coordinating Committee on Climate Change urged all Chief Ministers of eight Northeast states to take up urgent action to stop and withdraw the centrally approved large-scale oil palm plantation project across the region under the National Mission on Edible Oil–Oil Palm. While requesting the state governments to withdraw all the laws passed by the respective legislative assemblies with regard to oil palm plantation in Northeastern states, the Committee has called India's oil palm plantation as “yet another project of destruction” for the people of Northeast India.<sup>58</sup>

On January 15, 2022 a farmers' consultation meeting was jointly organized by Human Rights Law Network (HRLN), Human Rights Alert (HRA) and Lounmi Sinmi Apun Lup (LOUSAL), which resolved to oppose oil palm plantation in Manipur.<sup>59</sup> Further, on January 23, 2022 the Youth's Forum for Protection of Human Rights (YFPHR) and the Justice Foundation jointly reached out to the villages across the belt of Thayong-Waithou Chiru Range of Imphal East in Manipur and held a community interaction wherein it was resolved to immediately stop the oil palm plantation in the state. The organizations also stressed the need to obtain the free, prior and informed consent of the people and consult all the citizens of Manipur before any projects are implemented in Manipur.<sup>60</sup>

The environmentalists and conservationists of Mizoram have raised similar concerns. On November 3, 2021, the Joint Action Committee on Oil Palm: Mizoram, comprising three environment NGOs, namely Association for Environmental Preservation, Biodiversity & Nature Conservation Network, and Conservation Mizoram, submitted a memorandum to Mizoram Chief Minister Zoramthanga opposing the expansion of oil palm in the state. In their memorandum, the Joint Action Committee stated that the main reason behind the opposition “is the destruction of biodiversity and ecological devastations caused by Oil Palm plantations.”<sup>61</sup>



## 6. Lessons learned, conclusions and recommendations

While the Government of India and the State Government of Mizoram are ready to aggressively expand oil palm cultivation in Mizoram, this decision has been taken without consultation with indigenous community leaders, institutions and farmers. As a result, activists have expressed deep apprehensions of adverse impacts on biodiversity, food security, and change in land ownership, in a context of lack of respect for their rights and lack of accountability of the companies.

Based on the lessons learned, this paper would like to submit the following recommendations:

### *Recommendations to the Government of India:*

- Finalize the National Action Plan on Business and Human Rights at the earliest in consultation with all the relevant rights holders and stakeholders and ensure consistency with the international human rights standards on the rights of indigenous peoples and affirmative laws on the rights of Scheduled Tribes.
- The National Action Plan should include, among others:
  - » the duty of the State and the corporations' responsibilities to fully comply with the international human rights law and the Indian laws including the Forest Rights Act, 2006, the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, among others.
  - » The National Action Plan should authorize the National Human Rights Institutions such as the National Human Rights Commission, the National Commission for Scheduled Tribes, etc. and their State counterparts, to investigate independently cases of human rights abuses by corporations.
- The Protection of Human Rights Act, 1993 should be suitably amended to provide the National Human Rights Commission with the powers and functions to investigate human rights abuses committed by business enterprises.



- Develop “National Commitment” towards sustainable oil palm program including to uphold environmental protection, wildlife conservation and human rights and social issues.

### *Recommendations to the Government of Mizoram:*

- Develop an oil palm policy based on meaningful consultations with affected communities including indigenous peoples, taking into account the respect and protection of their rights and well-being, equitable benefit sharing, and protection of the environment.
- Take appropriate steps to prevent, investigate, punish and redress human rights violations through effective policies, legislation, regulations, redress mechanisms and adjudication in accordance with the UNGPs. Further, establish a transparent and accessible mechanism to protect indigenous peoples against human rights violations.
- Ensure prevention of forcible land acquisition and/or land grabbing by State-owned companies or private companies or with joint ventures with private companies in Mizoram;
- Recognize the right to free, prior and informed consent of the Indigenous Peoples/Scheduled Tribes of the state in all matters affecting their land, culture, identity and natural resources;
- Carry out participatory Social and Human Rights Impact Assessments as well as Environmental Impact Assessments including involving the affected indigenous communities and their representatives to ensure inclusion of their perspectives and to assess the real and potential impacts on human rights and the environment; and make the reports accessible to affected indigenous peoples.
- Urgently develop a “Complaints System” which is accessible to communities and is fair, transparent and impartial. The Complaints System should have an Appeals procedure, allow confidentiality and ensure non-reprisal against complainants. Status of the complaints should be made available to the complainants.
- Amend the Mizoram Oil Palm (Regulation of Production and Processing) Act 2004 to make it consistent with international human rights standards including the United Nations Declaration on the Rights of Indigenous Peoples.
- Create awareness on the rights of indigenous peoples and their environmental concerns due to oil palm plantation by involving affected indigenous communities, their leaders and the Village Councils.

### *Recommendations for business enterprises operating in Mizoram:*

- Respect human rights and prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services. In this regard, detailed operational guidelines on the conduct of human rights due diligence should be developed and issued by business enterprises and ensure that these are accessible to indigenous peoples in forms and languages they understand.
- While carrying out human rights due diligence, the business enterprises should identify and assess any actual or potential adverse human rights impacts they may be involved in, either through their own activities or as a result of their business relationships, including impacts on the internationally recognized rights of Indigenous Peoples/Scheduled Tribes. This process should involve meaningful consultation with potentially affected groups including Indigenous Peoples.
- The Memorandums of Understanding signed by business enterprises with the Mizoram Government should include the annual submission of a “Human Rights Impacts Report” to the Government of Mizoram which should be made public. This yearly report should be a comprehensive report on the actions taken by the Company to identify, prevent, mitigate and address the adverse human rights impacts of its operations as well as information on the corporate social responsibility in the area of operation.

- All business enterprises should urgently develop a “Complaints System” which is accessible to indigenous peoples, is fair, transparent and impartial where any aggrieved individual/community and farmer can submit complaints for redressal. The Complaints System should have an Appeals procedure.
- Create awareness on the rights of indigenous peoples and their environmental concerns as well as affirmative policies for companies/business enterprises by involving the local communities, their leaders, Village Councils and other stakeholders.

## Endnotes

<sup>1</sup> Of all the imported edible oils, share of palm oil is about 60% followed by soybean oil (25%) and sunflower oil (12%).

Around 98% of crude palm oil (CPO) is being imported, mainly from Malaysia and Indonesia, top producers of palm oil in the world. See: Cabinet approves implementation of National Mission on Edible Oils – Oil Palm, Press Information Bureau, August 18, 2021, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1746942>.

<sup>2</sup> Reply of Minister of Agriculture and Farmers Welfare Shri Narendra Singh Tomar in the response to Unstarred Question No. 3839 in Lok Sabha on March 17, 2020.

<sup>3</sup> These 19 states/Union Territories are Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Telangana (major states); Mizoram, Arunachal Pradesh, Nagaland, Meghalaya, Assam and Tripura (Northeastern States); and Goa, Maharashtra, Gujarat, Andaman & Nicobar Islands, Chhattisgarh, West Bengal, Bihar and Odisha (Other potential states/UTs).

<sup>4</sup> These 16 states/Union Territories are Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Telangana (major states) and Mizoram, Arunachal Pradesh, Nagaland, Assam and Tripura (Northeastern States); and Goa, Maharashtra, Gujarat, Andaman & Nicobar Islands, Chhattisgarh, and Odisha (Other potential states/UTs).

<sup>5</sup> Although the Government of India mentioned 8 states as fruiting area, it provided a list of only 6 states, namely, Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Telangana (major states) and Mizoram (North-Eastern state). For State-wise Oil Palm Potential Area, Coverage and Fruiting area, see Annex 1.

<sup>6</sup> Reply of Minister of Agriculture and Farmers Welfare Shri Narendra Singh Tomar in the response to Starred Question No. 203 in the Lok Sabha on December 3, 2019.

<sup>7</sup> Kimi Colney, “Mizoram shows why centre’s palm-oil plans will be disastrous for farmers, environment,” *The Caravan*, September 28, 2021, <https://caravanmagazine.in/agriculture/mizoram-shows-why-centres-palm-oil-plans-will-be-disastrous-for-farmers-environment>.

<sup>8</sup> Cabinet approves implementation of National Mission on Edible Oils – Oil Palm, Press Information Bureau, August 18, 2021, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1746942>.

<sup>9</sup> Tweet of Prime Minister Narendra Modi, August 18, 2021, <https://twitter.com/narendramodi/status/1427986332240867344?lang=en>.

<sup>10</sup> Priscilla Jebaraj, “Oil palm plan for northeast, Andamans a recipe for disaster, say activists,” *The Hindu*, August 29, 2021, <https://www.thehindu.com/news/national/oil-palm-plan-for-northeast-andamans-a-recipe-for-disaster-say-activists/article36165229.ece>.

<sup>11</sup> Priscilla Jebaraj, “Oil palm plan for northeast, Andamans a recipe for disaster, say activists,” *The Hindu*, August 29, 2021, <https://www.thehindu.com/news/national/oil-palm-plan-for-northeast-andamans-a-recipe-for-disaster-say-activists/article36165229.ece>.

<sup>12</sup> Shorbori Purkayastha, “India Makes Aatmanirbhar Plans For Palm Oil, But at Huge Cost to the Environment,” *The Quint*, August 27, 2021, <https://www.thequint.com/news/environment/explained-india-makes-aatmanirbhar-plans-for-palm-oil-but-environmental-concerns-remain#read-more>.

<sup>13</sup> HC Vanlalruata, “Centre’s oil palm cultivation plan draws flak from experts in North East,” *The Times of India*, August 31, 2021, <https://timesofindia.indiatimes.com/city/guwahati/centres-oil-palm-cultivation-plan-draws-flak-from-experts-in-north-east/articleshow/85790541.cms>.

<sup>14</sup> Ministry of Tribal Affairs, *Statistical Profile Of Scheduled Tribes In India 2013*, p.5.

<sup>15</sup> The list of 15 Scheduled Tribes of Mizoram are Chakma, Dimasa (Kachari) Garo, Hajong, Hmar, Khasi and Jaintia, Any Kuki Tribes, including Reang, Lakher (Mara), Man (Tai speaking), Any Mizo (Lushai) tribes, Mikir, Any Naga tribes, Pawi (Lai), Synteng and Paite.

- <sup>16</sup> Reply of Minister of Agriculture and Farmers Welfare Shri Narendra Singh Tomar in the response to Starred Question No. 203 in the Lok Sabha on December 3, 2019.
- <sup>17</sup> The Mizoram Oil Palm (Regulation of Production and Processing) (Amendment) Act, 2007 received the assent of the Governor of Mizoram on September 21, 2007. The three Autonomous District Councils (ADCs) namely Chakma Autonomous District Council, Mara Autonomous District Council and Lai Autonomous District Council were created for the minority ethnic communities namely Chakma, Mara and Lai under the Sixth Schedule to the Constitution of India in 1972. As per the Sixth Schedule, the legislations passed by the State Assembly of Mizoram shall not automatically extend to these three ADCs unless the Governor of Mizoram extends the same to these ADCs.
- <sup>18</sup> RTI Reply of the Directorate of Agriculture, Government of Mizoram dated November 17, 2021.
- <sup>19</sup> Kimi Colney, "Mizoram shows why centre's palm-oil plans will be disastrous for farmers, environment," *The Caravan*, September 28, 2021, <https://caravanmagazine.in/agriculture/mizoram-shows-why-centres-palm-oil-plans-will-be-disastrous-for-farmers-environment>.
- <sup>20</sup> Department of Agriculture, Mizoram Government, <https://agriculturemizoram.nic.in/pages/oilpalm.html>.
- <sup>21</sup> RTI Reply of the Directorate of Agriculture, Government of Mizoram dated November 17, 2021.
- <sup>22</sup> Department of Agriculture, Mizoram Government, <https://agriculturemizoram.nic.in/pages/oilpalm.html>.
- <sup>23</sup> "NERAMAC revival and Oil Palm Mission are a big boost to North east Farmers, will contribute to doubling of their income": G Kishan Reddy, Press Information Bureau, August 19, 2021, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1747375>.
- <sup>24</sup> In November 2019, Mizoram Government revoked the Forest Rights Act 2006 on the ground that it had encroached on the special status the state enjoyed under Article 371(G) of the Constitution of India. The resolution, moved on November 19, 2019, by the Social Welfare Minister Dr K Beichhua and passed unanimously in the State Legislative Assembly, said the Forest Rights Act, 2006 challenged Mizo customary laws and practices.
- <sup>25</sup> Government of Mizoram, A Report on Agricultural Census 2015-16, p.vi.
- <sup>26</sup> T R Shankar Raman, "Perils of Oil Palm," *Nature Conservation Foundation*, August 24, 2014, <https://www.ncf-india.org/blog/perils-of-oil-palm>.
- <sup>27</sup> Government of Mizoram, A Report on Agricultural Census 2015-16, p.vi.
- <sup>28</sup> Department of Agriculture, Mizoram Government, <https://agriculturemizoram.nic.in/pages/oilpalm.html>.
- <sup>29</sup> Interview with a community leader (name withheld on request) in Rajiv Nagar, Mamit district, Mizoram on November 2, 2021.
- <sup>30</sup> Section 11(2) of the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004.
- <sup>31</sup> Section 15(1) of the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004.
- <sup>32</sup> Interviews with Mr Modhu Mangal of Jamersury village in Lawngtlai district, Mizoram, November 7, 2021, Mr Nilosen of Baganpara village, Lawngtlai district, Mizoram, November 7, 2021, and Ms Shanti Devi of Tuikhurlui village in Lai Autonomous District Council (LADC) under Lawngtlai district, Mizoram, November 6, 2021.
- <sup>33</sup> RTI Reply of the Directorate of Agriculture, Government of Mizoram dated November 17, 2021.
- <sup>34</sup> Interviews with Mr Modhu Mangal of Jamersury village in Lawngtlai district, Mizoram, November 7, 2021, Mr Nilosen of Baganpara village, Lawngtlai district, Mizoram, November 7, 2021, and Ms Shanti Devi of Tuikhurlui village in Lai Autonomous District Council (LADC) under Lawngtlai district, Mizoram, November 6, 2021.
- <sup>35</sup> RTI Reply of the Directorate of Agriculture, Government of Mizoram dated November 17, 2021.
- <sup>36</sup> India State of Forest Report 2011, p. 189, [https://www.fsi.nic.in/cover\\_2011/mizoram.pdf](https://www.fsi.nic.in/cover_2011/mizoram.pdf).
- <sup>37</sup> Phone Interview with Dr. David C. Vanlalfawkawma, Joint secretary of *Biodiversity and Nature Conservation Network (BIO-CONE)*, Mizoram on November 10, 2021.
- <sup>38</sup> Priscilla Jebaraj, "Oil palm plan for northeast, Andamans a recipe for disaster, say activists," *The Hindu*, August 29, 2021, <https://www.thehindu.com/news/national/oil-palm-plan-for-northeast-andamans-a-recipe-for-disaster-say-activists/article36165229.ece>.
- <sup>39</sup> Jaydev Mandal and T. R. Shankar Raman, "Shifting agriculture supports more tropical forest birds than oil palm or teak plantations in Mizoram, northeast India," *The Condor: Ornithological Applications*, Volume 118, 2016, pp. 345–359.
- <sup>40</sup> T R Shankar Raman, "Perils of Oil Palm," August 24, 2014, *Nature Conservation Foundation*, <https://www.ncf-india.org/blog/perils-of-oil-palm>.
- <sup>41</sup> Purabi Bose, "No country for women: The dark side of palm oil production in Mizoram," *Scroll.in*, September 11, 2018, <https://scroll.in/magazine/885136/no-country-for-women-the-dark-side-of-palm-oil-production-in-mizoram>.
- <sup>42</sup> India's National Guidelines on Responsible Business Conduct (NGRBC) is available at [https://www.mca.gov.in/Ministry/pdf/NationalGuideline\\_15032019.pdf](https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf).
- <sup>43</sup> <https://globalnaps.org/country/india/>.
- <sup>44</sup> India's National Action Plan on Business and Human Rights (Zero Draft) is available at [https://www.mca.gov.in/Ministry/pdf/ZeroDraft\\_11032020.pdf](https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf).



- <sup>45</sup> UN expert group welcomes India's plan to promote corporate respect for human rights, OHCHR, March 22, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24391&LangID=E>.
- <sup>46</sup> Arpitha Kodiveri, "Submission made to the Ministry of Corporate Affairs on the Draft NAP on business and human rights," [https://arpithakodiveri.wordpress.com/2020/03/10/submission-made-to-the-ministry-of-corporate-affairs-on-the-draft-nap-on-business-and-human-rights/amp/?\\_twitter\\_impression=true](https://arpithakodiveri.wordpress.com/2020/03/10/submission-made-to-the-ministry-of-corporate-affairs-on-the-draft-nap-on-business-and-human-rights/amp/?_twitter_impression=true).
- <sup>47</sup> Mayank Aggarwal, "India might soon implement a plan to ensure that businesses consider their human rights impact," *Scroll.in*, March 30, 2020, <https://scroll.in/article/956736/india-might-soon-implement-a-plan-to-ensure-that-businesses-consider-their-human-rights-impact>.
- <sup>48</sup> Available at [https://www.godrejagrovet.com/public/pdfs/codes\\_policies/people/HumanRightsPolicy.pdf](https://www.godrejagrovet.com/public/pdfs/codes_policies/people/HumanRightsPolicy.pdf).
- <sup>49</sup> Available at [https://www.godrejagrovet.com/public/pdfs/codes\\_policies/people/HumanRightsPolicy.pdf](https://www.godrejagrovet.com/public/pdfs/codes_policies/people/HumanRightsPolicy.pdf).
- <sup>50</sup> Available at [http://www.ruchisoya.com/policies/Business\\_Responsibility\\_policies.pdf](http://www.ruchisoya.com/policies/Business_Responsibility_policies.pdf).
- <sup>51</sup> Section 16(1) of the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004.
- <sup>52</sup> Section 18(1) of the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004.
- <sup>53</sup> Section 17 of the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004.
- <sup>54</sup> Section 6(1)(g) of the Mizoram Oil Palm (Regulation of Production and Processing) Act, 2004.
- <sup>55</sup> Available at [http://www.ruchisoya.com/policies/Business\\_Responsibility\\_policies.pdf](http://www.ruchisoya.com/policies/Business_Responsibility_policies.pdf).
- <sup>56</sup> RTI Reply of the Directorate of Agriculture, Government of Mizoram dated November 17, 2021.
- <sup>57</sup> Interviews with Mangala Basu Chakma of Rajiv Nagar village, Mamit district, Mizoram, November 6, 2021.
- <sup>58</sup> IFB Bureau, "States CMs urged to stop oil palm plantation mission in Northeast India," *Imphal Free Press*, September 8, 2021, <https://www.ifp.co.in/9620/states-cms-urged-to-stop-oil-palm-plantation-mission-in-northeast-india>.
- <sup>59</sup> "Farmers in Manipur make a clarion call," *The News Mill*, January 17, 2022, <https://thenewsmill.com/farmers-in-manipur-make-a-clarion-call/>.
- <sup>60</sup> IFB Bureau, "Mass sensitization to stop oil palm plantation in Manipur," *Imphal Free Press*, January 24, 2022, <https://www.ifp.co.in/agriculture/mass-sensitization-to-stop-oil-palm-plantation-in-manipur>.
- <sup>61</sup> Northeast unites in opposing oil palm plantations, *The New Indian Express*, November 7, 2021, <https://www.newindianexpress.com/nation/2021/nov/07/northeast-unites-in-opposing-oil-palm-plantations-2380609.html>. Also see Annex 3.

# THE PHILIPPINES

## Indigenous Peoples Confront Hydropower Dams in Kabugao, Apayao

Alma Sinumlag, Philippine Task Force for Indigenous Peoples' Rights (TFIP),  
Kabugao Youth, Manja Bayang



## Methodology note

The study used the qualitative research, in particular action research, method. Bhandari (2020) stated that qualitative research “involves collecting and analyzing non-numerical data (e.g., text, video, or audio) to understand concepts, opinions, or experiences. It can be used to gather in-depth insights into a problem or generate new ideas for research.” The action research approach also compels the researcher to collaborate with the participants in linking theory and practice towards social change.

Data collection methods employed were 1) Secondary research which involved collecting available documents, pictures, and videos related to the Gened dams 1 and 2 project in Kabugao, Apayao; 2) Interviews with several leaders in the affected villages in Kabugao; and 3) Recording of observations during field work particularly the dynamics and what people say during informal conversations.

Constant interaction with Kabugao Youth, the organization in the forefront of the struggle against the dams, helped in understanding the lived experiences of the Isnag indigenous communities on the burning issue of the Gened dams.

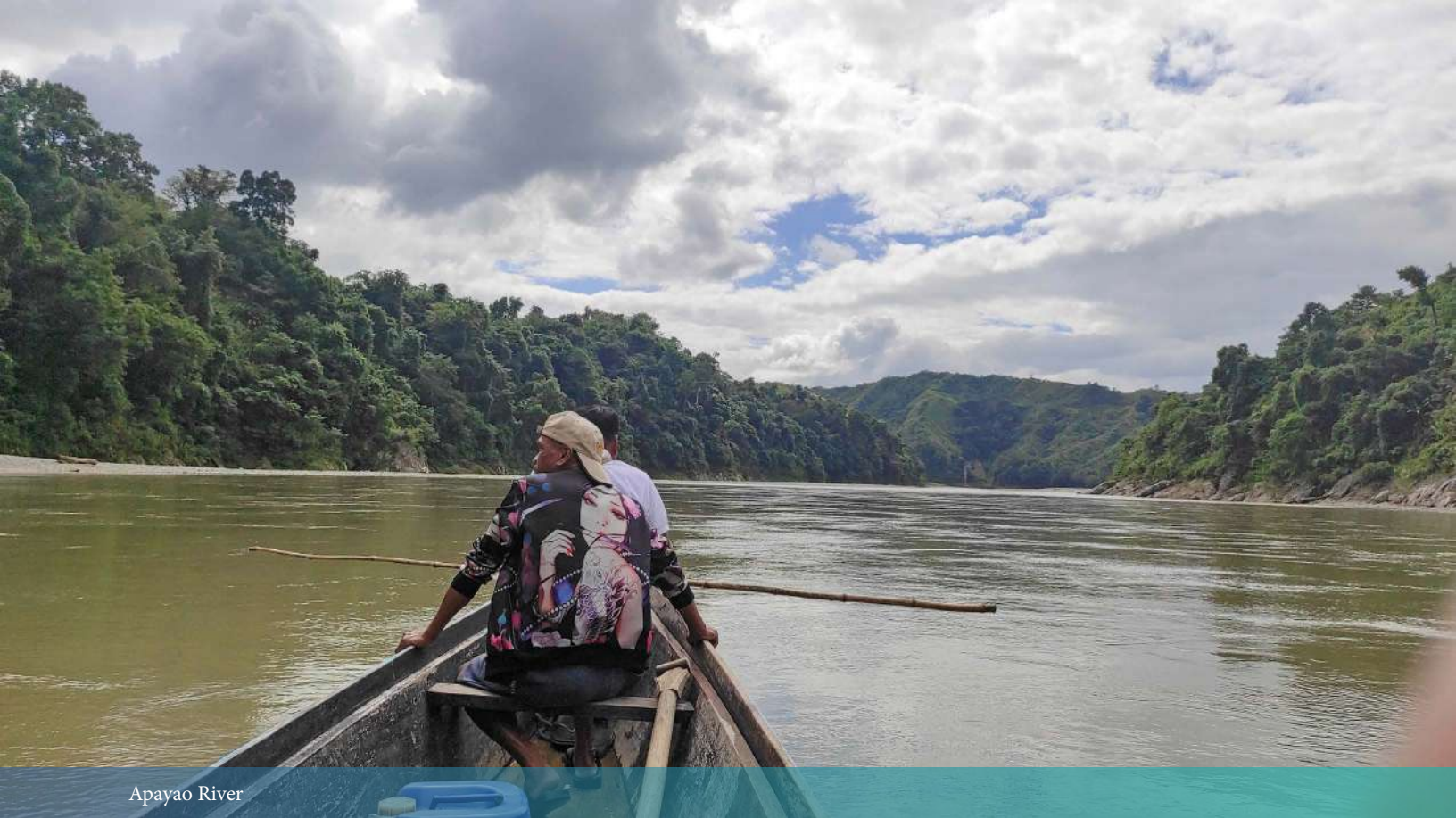
## 1. Introduction

*“If you destroy life in search of what you say is good life, we question it. Those who need electric lights are not thinking of us who are bound to be destroyed. Should the need for electric power be the reason for our death?”*

Macliing Dulag, in defiance to the IMF World Bank-funded 1000 MW Chico River Basin Development Project in Bontoc, Mt. Province and Kalinga in the Philippines in the 1970s to 1980s.<sup>1</sup>

In November 2000, the World Commission on Dams released a landmark report entitled [\*Dams and Development: A New Framework for Decision Making\*](#). In its findings, it stated: “Dams have made an important and significant contribution to human development, and the benefits derived from them have been considerable. [However] in too many cases an unacceptable and often unnecessary price has been paid to secure those benefits, by people displaced, by communities downstream, by taxpayers and the natural environment. Lack of equity in the distribution of benefits has called into question the value of many dams in meeting water and energy development needs when compared with alternatives.”<sup>2</sup>

Less than 20 years after the report, dam projects that were planned to be built along the major river systems of the Cordillera region have been revived. In Apayao province, a series of four dams along the Apayao-Abulug River are programmed to be constructed by the Pan Pacific Renewable Power Philippines Corporation (PPRPPC). These are: 1) Gened 1 (150 MW), 2) Gened 2 (335 MW), 3) Calanasan (170 MW), and 4) Aoan (191 MW) with a total capacity of 846 MW (NCIP, 2021).<sup>3</sup> In Kabugao town, the Apayao River will be blocked downstream along the boundary of Kabugao and Pudtol towns near Barangay Waga to build Gened 1 dam. This will possibly inundate 12 villages and leave Barangay Poblacion under water. Upstream of Apayao River in Barangay Madatag will also be blocked to give way to Gened 2, which is expected to inundate nine villages.



Apayao River

Nestled along the Apayao River and its tributaries is the municipality of Kabugao, home to Isnag indigenous peoples who refer to themselves as the river people. The Isnag communities in this town have been questioning and opposing the dam projects, particularly Gened 1 and Gened 2, which are currently under application and will submerge Kabugao town once constructed. Their opposition is being ignored by the company and the National Commission on Indigenous Peoples (NCIP).

The right of indigenous peoples to free, prior and informed consent (FPIC), enshrined in the Indigenous Peoples Rights Act (IPRA), has not been respected. Despite irregularities in the FPIC process for Gened 1 reported by its regional review team, the NCIP granted the project a Certification Precondition (CP) on August 13, 2021. The FPIC process for Gened 2 is ongoing, and tension among the Isnag, divided into anti-dam and pro-dam camps, is worsening. Two other dams, the Calanasan and Aoan dams in Calanasan town, are planned to be constructed upstream of Gened 1 and 2 by the same corporation. The FPIC process for these dams is still in its early stages. Reports from Calanasan mentioned irregularities in the process, but the local people's fear that the authorities and political elite will railroad the process hampers them from voicing their dissent.

The project has created uncertainties on the future of the Isnag indigenous communities, the majority of whom rely solely on the land and river for their livelihood. Only a handful of well-off families can afford to abandon their ancestral lands and territories to live in another place. Burial grounds and other sacred areas and the surrounding biodiversity will also be destroyed aside from major infrastructures and service institutions. Compensation promised by the Pan Pacific Renewable Power Philippines Corporation, according to the villagers, will never be enough for being uprooted from their ancestral land and whisked to some other place without assurance of their socioeconomic and cultural continuity.

## Indigenous Peoples Rights Act (1997)

The rights of indigenous peoples of the Philippines are legally recognized under the Indigenous Peoples Rights Act (IPRA) of 1997. These rights include: (1) rights to ancestral domains; (2) rights to self-governance and empowerment; (3) rights to social justice and human rights; and (4) rights to cultural integrity.

In the realization of these rights, the free, prior and informed consent of indigenous peoples in any project affecting their ancestral domains and rights is mandated. According to Chapter 2, Section 3 of IPRA, FPIC “shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.”

The National Commission on Indigenous Peoples, created by the IPRA, implements the provisions of the law and ensures the protection of Indigenous Peoples’ rights. Chapter VII of the IPRA states the NCIP “...shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and wellbeing of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.”

## 2. Overview of the project

The proposed dams along the Apayao-Abulug River were first sought in the 1980s during the administration of the late President Ferdinand Marcos. A government project under the National Power Corporation (NAPOCOR), the then named Apayao-Abulug Dam was a 176-meter high single mega dam. It came in parallel with the Chico River Basin Development Project, and like the dams along the Chico River, it was halted due to strong opposition from the Isnag communities.<sup>4</sup> Today, the Apayao-Abulug dam is again the subject of proposed construction by the Pan Pacific Renewable Power Philippines Corporation. This time, instead of one mega dam the PPRPPC intends to construct four big dams along the river. The Gened 1 and Gened 2 dams are the focus of this paper.

The Pan Pacific Renewable Power Philippines Corporation is registered as a Philippine company and has several applications in power generation using geothermal, solar, hydropower and biomass energy. The PPRPPC is not registered with the Philippine Stock Exchange (PSE) and there is no paper trail linking it to any multinational corporation. In one of its disclosure documents in 2017, the Philippine company San Miguel Corporation contemplated a partnership with PPRPPC in geothermal power generation. However in the field, the PPRPPC team are usually accompanied by foreigners introduced as Japanese engineers.

The PPRPPC has no track record in engaging indigenous peoples and fostering their rights in the Philippines. It has no official website or data on the internet relating to the company’s investors. The only available data are the name of its president and its office address.<sup>5</sup>

The corporation acquired an exclusive hydropower service contract to develop the 600 MW mega dam along the Apayao-Abulug River in 2011. The plan for a single dam was modified four years later. According to the NCIP, “[i]t was in 2011 when PPRPPC secured the Hydropower Service Contract from the Department of Energy. From its original plan of a 600 MW single mega dam, PPRPPC modified it to four mega dams along the stretch of the Apayao-Abulug River in 2016.”<sup>6</sup> The National Water Resource Board transferred the Water Permit from its previous owner, the NAPOCOR, to PPRPPC on October 21, 2015.

According to NCIP’s Regional Review Team, the Gened 1 hydroelectric power project (HEPP) encompasses the ancestral domains of Kabugao and Tawit in the municipalities of Kabugao, Pudtol and Flora, all in the province of Apayao. The project will utilize the water from the Apayao-Abulug River. The dam site is located downstream of Kabugao near barangay Waga and will submerge several villages upstream for its reservoir. The barangays (villages)

declared as directly affected are Waga, Laco, Bulu, Magabta, Luttuacan, Badduat, Poblacion, and Cabetayan, with a total population of 7,465 as of 2020. Four other barangays declared as indirectly affected are Baliwanan, Kumao, Lenneng, and Karagawan, with a population of 4,995 including Eleazar K. Bulut (EKB) as of 2020. The company never clarified the difference between directly and indirectly affected areas in terms of submergence.

The Gened 2 dam site is located upstream of Gened 1 along Nakagman River, a tributary of Apayao River in Barangay Madatag of Kabugao town. It will totally and partially submerge barangays Dibagat, Madatag, Tuyangan, Musimut, Lucab, Dagara, Dibagat, and Nagbabalayan and several barangays upstream in Calanasan town.



## Gened 1 and 2: Technical project descriptions<sup>7</sup>

### Gened 1 HEPP

#### I. Temporary Structures

- |   |                           |
|---|---------------------------|
| a. Upstream coffer dam crest elevation:   | 72 meters above sea level |
| b. Downstream coffer dam crest elevation: | 63.5 masl                 |
| c. Left diversion tunnel length:          | 648 meters                |
| d. Right diversion tunnel length:         | 888 meters                |

#### II. Concrete face rock fill dam

- |                                 |                          |
|---------------------------------|--------------------------|
| a. Dam height:                  | 60 meters                |
| b. Crest elevation:             | 110 masl                 |
| c. Level of bottom outlet:      | 73 masl                  |
| d. Crest length:                | 205 meters               |
| e. Crest width:                 | 15 meters                |
| f. Total area of concrete face: | 22,700 m <sup>2</sup>    |
| g. Rock fill volume:            | 1,300,000 m <sup>2</sup> |

#### III. Reservoir

- |                       |                              |
|-----------------------|------------------------------|
| a. Full supply level: | 105 masl                     |
| b. Gross storage:     | 153.8 million m <sup>3</sup> |
| c. Live storage:      | 72.6 million m <sup>3</sup>  |
| d. Dead storage:      | 85.7 million m <sup>3</sup>  |
| e. Surface area:      | 887 hectares                 |

#### IV. Spillway

- |                              |                 |
|------------------------------|-----------------|
| a. Crest elevation:          | 88.5 masl       |
| b. Type and number of gates: | 6 radial gates  |
| c. Size of each gate:        | 17.2 m x 13.2 m |
| d. Width of each chute:      | 13.2 meters     |
| e. Slope of chutes:          | 1:10            |

#### V. Power Intake

- |                                      |          |
|--------------------------------------|----------|
| a. Submergence:                      | 9 meters |
| b. Minimum operational level:        | 95 masl  |
| c. Level of approach channel invert: | 72 masl  |
| d. Level of intake invert:           | 75 masl  |

#### VI. Concrete headrace tunnel

- |                        |       |
|------------------------|-------|
| a. Length:             | 171 m |
| b. Internal diameter:  | 11 m  |
| c. Excavated diameter: | 13 m  |

#### VII. Steel-line headrace tunnel

- |                        |       |
|------------------------|-------|
| a. Length:             | 206 m |
| b. Internal diameter:  | 8.5 m |
| c. Excavated diameter: | 9.5 m |

#### VIII. Power plant

- |                        |           |
|------------------------|-----------|
| a. Number of turbines: | 4         |
| b. Maximum output:     | 150 MW    |
| c. Plant factor:       | 30%       |
| d. Annual generation:  | 1,632 Gwh |

### Gened 2 HEPP

- I. Dam height: 155 meters high main dam and 75 meters high saddle dam
- II. Ungated ogee-crested spillway, probable maximum flood (PMF) of 11,100 cubic meters per second at elevation 263.7 meters
- III. River diversion and bottom outlet
- IV. Intake and power waterway composed of steel-lined headrace tunnel, tow bifurcation and the tailrace
- V. Powerhouse, 335MW and switchyard
- VI. Reservoir, 1,926 hectares, gross storage volume of 827 million cubic meters and live storage of 473 million cubic meters

### 3. The Isnag indigenous peoples

The Isnag indigenous peoples are referred to as the river people. According to the ethnohistory written by a Kabugao Isnag elder, Ramos Bongui, the Isnags were constantly moving in search of better trade routes and wider areas for swidden farming.<sup>8</sup> Their settlements before and up to this day are located mostly along major river systems and their tributaries. The river serves as their source of food and transport route. The sloping hills and mountains in their surroundings are reserved for swidden farming.

Apayao is an Isnag term for a navigable big river. The majority of Kabugao villages are found along the big river (Apayao) and several navigable tributaries like Binuan and Nakagman. During the precolonial period, the Isnag people of Kabugao relied mainly on the navigable Apayao river for transportation. According to Bongui, the Isnags were experts in navigating the ebb and flow of rivers. When the American colonizers transferred their military stronghold from Tawit to Kabugao, the Isnags were hired as *bagadores* or boat rowers who transported food and military supplies amid the dangerous rapids upstream of the Apayao River.

Kabugao town is dubbed as the heart of the Isnag indigenous peoples. It is composed of 21 barangays<sup>9</sup> and one administrative barangay with a total population of 18,782 and 5,071 households, respectively, as of 2020. Kabugao Youth estimated that 80 per cent of the population is Isnag and the rest are migrants from the Ilocos region and other Cordillera provinces and those who have settled in Kabugao through intermarriage.

The people in these villages grow upland rice as their main crop and staple food. This is supplemented by corn, yam, *ubi*, *tugue* (kinds of yam), and various vegetables. Coconut trees are found in all the settlement areas, and coconut is an ever-present ingredient in their viands.

A source of food for the Isnag, the Apayao river system abounds with various species of fresh water fishes, crustaceans, amphibians and shells.<sup>10</sup> The Isnags also hunt and gather food from the forest. Bongui mentioned that wild pig (*laman*) and deer (*ugta*) were mainly hunted with the use of traps. Lizard (*silay*) and wild cat (*mungao*), wild chicken and several birds are also taken as a source of meat when they are caught. Honey is gathered for food and other purposes, as well as edible insects like the *alallaaga* or the brown tree ant and the *dudon* or locust. Wild edible fruits, plants and herbs are additional sources of food.

To this day, the people of Kabugao rely on their swidden farms for consumption and cash crops. Occasionally, they hunt for wild pig and deer during harvest and planting seasons. They catch fish in the river for food and to sell for additional income. Several barangays still rely on the Apayao River for transportation. Households in remote barangays such as Waga and Dibagat, which are not reached by the power line, have installed solar power. When asked what else they needed, they said they needed bridges to connect the barangays along the Apayao River and farm-to-market roads to transport their farm produce.

Warling Maludon, the Indigenous Peoples Mandatory Representative (IPMR) of Barangay Waga, said they do not need a mega dam that will only wash out their source of life, the graves of their ancestors, and eventually their identity. For several generations, he said, their villages were denied basic necessities like bridges, farm-to-market roads and other social services. “The company is using our experience of neglect to convince us that their dam will answer our needs,” he added.

Soto Maludon, also a resident of Barangay Waga, said he is content with the life they have in their community; they do not want any disturbance and destruction so he will not rest until the corporation halts its dam project and leave them alone.

Jimmy Basan, one of the elders of Barangay Poblacion, pleaded that the company retreat to give them peace, as tension among their people because of the dam issue is escalating.



In addition to the social costs are the dam's environmental impacts. The dam will “severely impact on Apayao as one of the remaining key biodiversity areas (KBA) of the country. The dam's impact area is home to 105 plant species and 51 bird species including the Philippine duck, *anas luzonica*. Eleven species of amphibians and reptiles are also found in the impact area.”<sup>11</sup>

#### 4. Lack of FPIC and disrespect for customary lands and culture

*More than just a process or checklist, the free, prior and informed consent (FPIC), is a substantial right granted to the most vulnerable yet surviving sector—Indigenous Peoples (IPs). The right to FPIC, as one of the sharpest instruments for the protection, respect and exercise of the rights of indigenous peoples affirmed by IPRA and UNDRIP, was recognized by the state to ward off repetition of historical injustices, which once cast a dark cloud over the IP domains. FPIC shall be wielded strictly for the benefit of the IPs, and shall be rigidly executed for the IPs' advantage, and not for another's convenience. Neither shall it be used to fatigue the IPs to submission, lest the FPIC be misunderstood as a sledgehammer to break open the doors of the ancestral domains regardless if it was slammed shut by the IPs.*

Opening statement in NCIP Cordillera Administrative Region's review document of Gened 1 FPIC process (NCIP, 2021)

The very core of free, prior and informed consent is that it should be wielded to the advantage of the indigenous peoples. This was not the case in the conduct of the FPIC process for Gened 1 dam carried out by NCIP, which was rife with irregularities. The FPIC process “was wielded to the contrary... it did not help us and it did not assert our rights. It was used as a tool to drown our voices and disregard our rights.”<sup>12</sup> Similar irregularities are now being committed in the FPIC process for Gened 2.

The Gened 1 dam started its social acceptability process by undergoing the FPIC procedure from 2017 to 2021. Within that period, the people of Kabugao publicly rejected the dam thrice. They expressed their rejection through community resolutions issued in February 2019, September 2019, and January 2021, signed by several hundreds of Kabugao residents including elders and the youth (Basan, 2021). All three resolutions were disregarded by NCIP on technical grounds.

To go around the people's rejection, the community members of Kabugao allege that the NCIP maneuvered the FPIC process by creating a group of “authorized elders” to represent them and decide for the ancestral domain of Kabugao. These tribal elders they dubbed as “tribal dealers” were wined and dined in hotels outside of Kabugao, and on April 20, 2021 they signed a Memorandum of Agreement (MOA) without the knowledge of their Isnag brethren (Basan, 2021). The said MOA specifies the meager costs of houses and productive agricultural lands inside the ancestral domain and minuscule benefits that the Isnag would receive from the company once the dam project commences.

As a basis for the “authorized elders,” NCIP used barangay resolutions signed by community members supporting a list of handpicked elders whose names were not drawn from a community discourse or assembly. Kabugao Youth, which opposes the dam project, exposed the signatures were forged and worse, names of dead people were included. Attendance sheets in other activities were also reportedly attached to the resolutions. Several individuals filed complaints over forgery of signatures and some of those who signed the MOA retracted their signatures.

The review and evaluation by the NCIP Regional Review Team states: “[a]n attendance sheet was used as an attachment of one of the resolutions. Likewise, the records do not show how the list (authorized elders) were validated. Numerous resolutions reveal one handwriting and similar signatures.”<sup>13</sup>

Peter Putic of barangay Madatag, the dam site for Gened 2, was among the handpicked elders for Gened 1. “*Maysaak met kadagiti pulot da nga elders ngem inbabawik idi umay dan ditoy ayan mi para iti Gened 2* (I admit I am one of their handpicked elders but I withdrew my position when the company came here to implement Gened 2),” he said in an interview. Putic was fetched at dawn in his home by the company’s local agents and brought to a place in Barangay Eleazar K Bulut for the signing of the MOA for Gened 1. The contents of the MOA were not explained to him. When he signed, he noticed that he was signing blank documents; no MOA was attached. He said he signed in front of lawyers from NCIP Cordillera Administrative Region and staff of the NCIP field office in Kabugao. After the signing, a local government official gave him PhP25,000. He later signed an affidavit retracting his signature in the MOA. He now fears for his life due to his retraction. “*Aglellemengak tatta ta baka paltugan dak kadagita* (I am hiding now because I fear that they can shoot me anytime),” he said.

The NCIP also facilitated community consultations without prior notices to the affected villages. It allowed consultations and negotiations to be conducted outside of the ancestral domain, such as in Ivory Hotel, Tuguegarao City, Cagayan on January 17, 2020 and in Sola Hotel, San Nicholas, Ilocos Norte on February 19, 2020. In these two negotiations, the disposition of the handpicked elders turned in favor of the project proponent PRRPPC. The NCIP also peddled the wrong information that the people cannot reject a project if the government already approved it - information that further disempowers the people. These are all violations of the 2012 FPIC guidelines crafted by NCIP itself.

Moreover, the NCIP turned a blind eye to local authorities’ interference during the FPIC processes. As recounted by an elder in barangay Poblacion, during one of the negotiations for Gened 1 a family member of a political dynasty in Apayao province who vocally supports the dam project said, “*Sino pay ti agmadi-madi ditoy nga project. Kasla kayat ko manen nga pumaltog* (Who is still opposing this project. I feel like firing a gun again).” After he spoke, the elders in attendance were silent until the end of the meeting. The NCIP allowed this clear coercion and interference, without taking action to right the wrong.

Even after the Regional Review Team of NCIP pointed out the irregularities in documents, particularly the fake signatures and dead people’s names, the officials of NCIP Cordillera Administrative Region (NCIP-CAR) swore under oath that the documents were authentic and defended these before the NCIP Commission en banc, which eventually gave the green light to the Gened 1 project by issuing a Certification Precondition.

Despite the persistent and escalating tension in Kabugao villages brought about by the anomalous FPIC process for Gened 1, the PRRPPC and NCIP began the process for obtaining FPIC for Gened 2 in 2021, further worsening the animosity among the Isnag people.

Romeo Dicray, an elder of Barangay Madatag, said he was handpicked by the NCIP as an authorized elder to decide for his people on matters related to Gened 2 dam. He reported being wooed with money to support the dam. During the community assembly organized by the NCIP on July 15, 2021, a local government authority gave him PhP3,000 and told him to support the dam. Another PhP2,000 was given to him on July 23, 2021. He received the money but realized after the activities that if the processes were all legal, the company through their local dealers would not need to pay the people. He also pointed out that the selection of elders was not proper. The elders were handpicked instead of being duly selected by the people. To properly represent the community he said, “*Ti kayat ko koma ket ti tao ti mangipatakder kanyak, saan nga pinili ti barangay official* (I want the people to give me authority to represent them and not be handpicked by barangay officials).”

To silence opposition to the dam, the NCIP and local authorities spread misinformation that those against the dam project are influenced by the armed rebel group New People's Army and "left leaning groups." Then Regional Director of NCIP-CAR, Marlon Bosantog, fed a false narrative to the NCIP commissioners that there were sightings of the NPA in Kabugao. According to Kabugao Youth, this is the government's way of discrediting the legitimate issues they are raising, using its anti-terrorism campaign to threaten them.

The dam project is seriously undermining the social cohesion of indigenous communities, tribes and families in Kabugao, which has led to violence in some instances.

- In November 2021 two relatives, after arguing about their position on the dam project, ended up harming each other. One broke into the other's home and hacked him; the latter retaliated until relatives were able to stop them. They later settled the incident amicably.
- In December 2021, a local dealer of PPRPPC going door to door to convince fellow Isnag in Barangay Dibagat to support the dam project and reportedly distributing money for their Yes vote was shot in the arm by a staunch dam oppositionist who got agitated by his talk. The case is still unsolved.
- In January 2022, the village captain in Nagbabalayan village fired his .45 caliber gun at the house of a firm dam oppositionist to challenge him to come out and show how fierce he was. When the latter refused, the village captain entered his house and hit him in the face and head with the gun. Ironically, it was the village captain who filed a criminal case against the owner of the house.

The Isnag people have also raised the lack of respect for their cultural rights. IPMR Maludon recalled with great dismay: "*Tinanong namin sila kung papaano ang mga minatay namin. Ang sagot ng atorni ng Pan Pacific, 'hayaan na daw kasi patay na ang mga iyon'* (We asked them, "How about our ancestors' graves"? The lawyer of Pan Pacific reportedly said, "Never mind the dead.")" For Maludon and other Isnag elders, saying "never mind the dead" is a manifestation of total disrespect not only for the Isnag ancestors but for the past, present and future generations of the river people. For them, the remains of their ancestors are impossible to unearth. It is part of their belief that disturbing the dead will bring misfortune to the living. Also, most of their ancestors cannot be unearthed as they are already part of their land, their rivers and their forest.

In the aim to dodge reparations for deceased Isnag ancestors, the company disrespects Indigenous Peoples' concept of ancestral land which is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and in Section 4, Chapter III of the IPRA.<sup>14</sup>

## **5. Gened dams project and UN Guiding Principles on Business and Human Rights**

### *State duty to protect*

The State, through the National Commission on Indigenous Peoples, failed to protect the rights of the Isnag indigenous peoples to their ancestral lands, territories and resources, to their own ways of development, and to their exercise of self-determination to give or withhold consent through a genuine process of FPIC. These rights are affirmed by domestic law, the Indigenous Peoples Rights Act of 1997, and international human rights standards such as the UN Declaration on the Rights of Indigenous Peoples 2007.

The NCIP—the very State institution mandated to protect the rights of indigenous peoples—is violating the rights of the Isnag people, however. The NCIP-CAR's Regional Director and FPIC Team endorsed the Gened 1 dam project to the NCIP Central Office for approval, despite the FPIC irregularities that the NCIP's own Regional Review Team pointed out and the clear opposition by the communities affected. Moreover, despite the Isnag elders' pleas with

the NCIP commissioners to halt the dam project, the Commission en banc issued a Certification Precondition for Gened 1.

The State not only failed to protect but perpetrated violations against the Isnag people's freedom of expression and freedom from threat, harassment, and intimidation in expressing their dissent against the dams. This right was violated by the NCIP in the person of then Regional Director Marlon Bosantog who deliberately peddled the narrative of the NPA's and Left's influence on the opposition to discredit the people's legitimate concerns.

It must be recalled the United Nations treaty bodies and special procedures have repeatedly issued recommendations to the Philippine government to ensure respect for the free, prior and informed consent of indigenous peoples and full respect of their rights. The Committee on Economic, Social, and Cultural Rights (CESCR) recommended that the State party:

- (a) Fully implement the 1997 Indigenous Peoples' Rights Act to ensure that, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples' rights to their lands, territories and resources are fully recognized and protected and that their free, prior and informed consent is obtained in respect of the adoption of any legislation, policy or project affecting their lands or territories and other resources;
- (e) Ensure that the free, prior and informed consent of the indigenous peoples concerned is obtained before granting licenses to private companies; and that indigenous peoples are represented by their own chosen representatives on local decision-making bodies, such as local mining boards and development units;<sup>15</sup>

The Committee on the Elimination of Racial Discrimination (CERD), also in relation to FPIC and some underlying factors regarding access to justice, recommended that the Philippines "verify the current structures and guidelines/procedures established to conduct FPIC are in accordance with the spirit and letter of IPRA and set realistic time frames for consultation processes with indigenous peoples. It recommends that the State party verify that the apparent lack of formal protests is not the result of a lack of effective remedies, the victims' lack of awareness of their rights, fear of reprisals, or a lack of confidence in NCIP."<sup>16</sup>

In a general thematic report on indigenous peoples, the UN Working Group on Business and Human Rights, recommended that States "consider ways to ensure that policies and regulations in place enable the effective implementation of the requirements for free, prior and informed consent in the context of business activities."<sup>17</sup>

### *Business responsibility to respect people's rights*

One of the reviewers of PPRPPC's Environment Impact Assessment (EIA) in 2016 publicly noted that the IEA did not state the total number of households in the project's impact area. The EIA also did not cite the social and cultural impacts of the project on the Isnag indigenous peoples whose identity is rooted in the river and the mountains.<sup>18</sup>

The PPRPPC is operating its business in bad faith by not disclosing all significant information (both good and unfavorable) during its consultations. As elder Jimmy Basan said, there was no transparency in the meetings he attended. The corporation, he said, only tells the public of the advantages of the project. Moreover, during consultations the company discussed their project in a language and manner that the people could not understand. Their engineers, lawyers and other personnel presented the project as a requisite to fulfill, regardless of whether the people understood or not.

Moreso, elders' testimonies tell of bribery in PPRPPC's aim to subdue any opposition. They employ the divide and rule tactic by funding those who support their project regardless of whether it tears the Isnag's social cohesion.



The company is not sincere in hearing the plight of the affected communities; instead they impose what they think the Isnag people need. In one of the NCIP-facilitated online negotiations between PPRPPC and the community, the corporation was imposing a kind of development on the Isnag as they pushed the dam project as one that would bring employment and business investments like Starbucks and Jollibee to Apayao. Isnag people see this as a way of belittling their ways of life and their perspective of development.

Kabugao people already expressed their opposition to the project but the company played deaf and blind. As Budin Balalang, the IPMR of Barangay Dibagat, said in a community assembly, “*Madi mi dayta nga dam. Ti imbaga ti umili ket NO, ania pay aya nga klase ti NO ti maawatan yo? Agawid kayon!*” (We do not want the dam. The people already said NO. What kind of NO will you understand? Leave Now!)” Balalang said the PPRPPC is insisting on their project not because the people need electricity but because of the profit they can gain. “Why are we the ones being sacrificed for their business interest? What have we done wrong to be treated like this?” he said.

It appears that PPRPPC is unwary of the rights of indigenous peoples under the UNDRIP and IPRA, and especially its obligations under international law. The UN Working Group on Business and Human Rights has highlighted the responsibility of business to: respect human rights, including by adopting a gender-sensitive human rights policy, carrying out human rights impact assessments with regard to current and planned operations, and addressing any adverse human rights impacts that they cause, contribute to or are linked to, including by exercising leverage in business relationships to address adverse impacts and paying particular attention to any operations in the territories and lands of indigenous peoples; respect UNDRIP and ILO Convention No 169; and engage in regular consultation with Indigenous Peoples, including women, respecting their culture and traditional practices.<sup>19</sup>

## Remedy

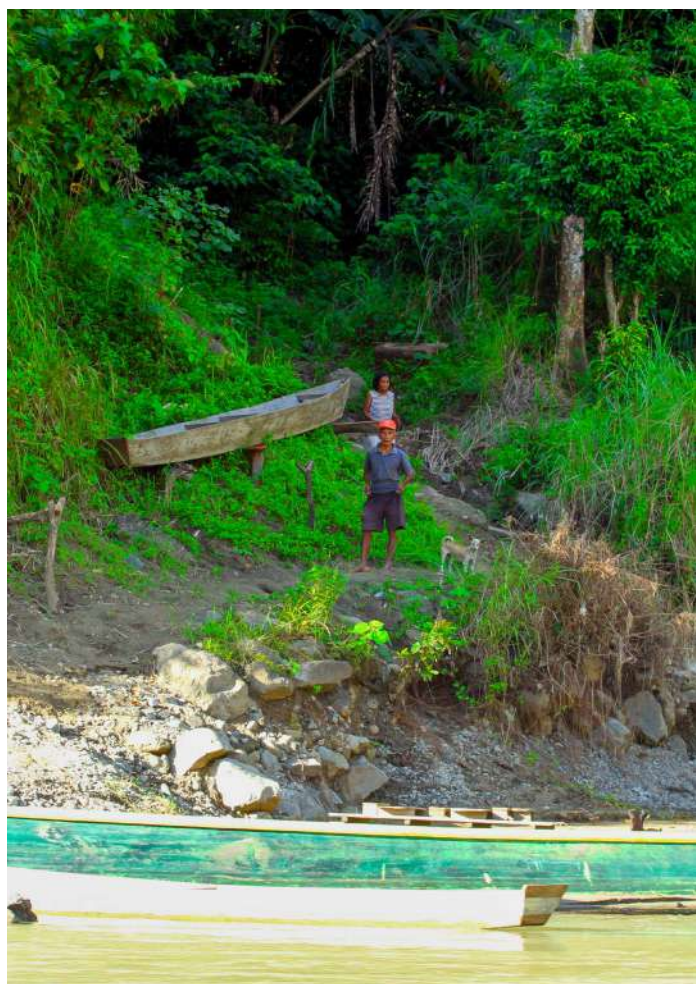
The Isnag communities are exerting all efforts to utilize all available administrative and judicial remedies to protect their rights to their lands and resources and to their life and security. Yet, despite their efforts, most of their complaints are ignored. They are instead vilified as anti-government or rebels and subjected to physical attacks by dam supporters who seem to be favored in the legal processes as cited above.

The following observation by the 2003 UN Special Rapporteur on the rights of indigenous peoples remains true to this day, indicating a continuing failure by the Philippine government to ensure adequate and culturally sensitive legal remedies for indigenous peoples.

- “Human rights violations frequently occur as one of the negative effects experienced by Philippine indigenous peoples of various economic development projects, including dams, mining, logging and commercial plantations. Such effects upon the livelihoods and lifestyles of indigenous peoples are aptly described as ‘development aggression.’ They involve damage to the traditional environment, involuntary displacements, threats to health, disruption of the right to food and shelter, imposed changes in economic activity and livelihoods, and cultural and psychological traumas. Such effects are particularly hard on women and children, especially indigenous girls. The Special Rapporteur concludes that unless adequate measures of protection are taken urgently to diminish or halt these development-induced negative impacts, the very survival of indigenous peoples may be at stake.”
- There are “numerous reports of harassment of indigenous human rights defenders and their organizations, who, together with responsible government agencies, are the cornerstone for the protection, promotion and realization of the human rights of indigenous peoples. These organizations should not be dismissed by the Government as troublesome critics of the State, but rather as partners in the search for constructive solutions to the human rights protection gap mentioned earlier. A democratic society can only thrive on full respect for human rights.”<sup>20</sup>

On access to remedies, the Special Rapporteur concluded that there was a “thriving, articulate and assertive human rights movement that is especially concerned about human rights abuses against the indigenous peoples. These are the most vulnerable social groups in human rights terms, particularly in the rural areas that are currently being targeted for rapid development activities. Nevertheless, this movement faces many handicaps and a serious challenge in the lack of effective remedial measures to rectify human rights violations perpetrated against the indigenous peoples. Many indigenous representatives reported that they regularly present their grievances to whoever they believe is in a position to assist them at the local barangay, municipal, provincial or national levels, including the police, the army, NCIP, and the National Commission on Human Rights, but most of the time they do not receive a satisfactory response.”

All these concerns raised by the Special Rapporteur are now being experienced by the Isnag communities confronting the construction of the Gened 1 and 2 dams. This shows a failure of the Philippine government to ensure effective and culturally sensitive legal mechanisms for indigenous peoples and the protection of indigenous peoples rights defenders.



## 6. Community actions and challenges

### *Legal action and access to justice*

Apart from thrice rejecting the dam project during the FPIC process, the Isnag people are seeking remedies before administrative and judicial bodies. They have filed administrative and criminal cases against concerned NCIP officials. The elders and youth of Kabugao have also filed motions for reconsideration questioning the Certification Precondition for Gened 1 and Gened 2. Even as they questioned the CP issuance for Gened 1, the NCIP issued another CP for Gened 2 in the first quarter of 2022, despite the municipal-wide declaration of non-consent for Gened 2 on December 23, 2021. They tirelessly adhered to the administrative proceedings hoping to overturn the CP to no avail. The elders witnessed how the administrative processes give more cognizance to the voice of the company while questioning and even muting those of the Isnag.

They have also written letters to different government agencies and the Commission on Human Rights, but their issues have not been addressed. They have no option but to seek legal representation from lawyers with expertise on indigenous peoples' rights, which are not available in their community. This demands resources they lack for the expensive and protracted legal processes they are now forced to take.



## *Amplifying dams issue despite the pandemic*

The youth and elders of Kabugao are maximizing the power of social media and other online platforms to share their stories and gather wider support from outside their ancestral domain. They spoke in conferences and several online activities of the academe, civil society and church groups to expose the violations of their rights committed by the NCIP and the proponent corporation. Elders issued a manifesto regarding the erroneous and deceitful process of the FPIC that was circulated through online platforms.

The online petition “Save the Isnag People, Say No To Apayao Dam” was launched by Kabugao Youth and is being circulated to gain more signatures.<sup>21</sup> The petition states: “This dam will not benefit the Isnag people at all. The promise of measly compensation for our lands will not pay for our losing our homes, our identity which is tightly tied to the depths of the Apayao river and the burial grounds of our ancestors and the only way of life we have ever known and ever wanted.”

These online platforms are likewise being used by the NCIP to spread disinformation that tend to break the unity of the community and portray oppositionists as rebels or terrorists.

## *Forging tighter unity*

Information campaigns on indigenous peoples’ rights and the pros and cons of the project are being intensified. Youth leaders and elders are going around Kabugao’s 21 barangays to explain how the dam project will impact their environment, their economic sustenance, and their identity. They believe that by doing so, they can empower their fellow Isnag to decide intelligently regarding Gened 2, Calanasan and Aonan dams.

## *Indigenous women breaking boundaries, taking up leadership roles*

Kabugao Youth co-founder Maan Umingli said that while the Isnag people are traditionally patriarchal, more and more women are now speaking out especially among the professional sector. On the eve of their struggle against the dam project, the youth observed that the it is the men who always take the front row and speak in public, and thus are being heard in matters affecting their society, in this case the hydropower dam project. “Although women are given importance and have roles to play in our rituals, women always rely on men when it comes to taking up leadership roles,” she said.

Umingli noted however that with access to education and empowerment programs women are breaking out of their traditional roles and taking up lead positions in their struggle against the hydropower dams.

Mrs. Dicray, a retired teacher, in a community consultation bravely bombarded the NCIP staff with difficult but direct questions which caught them off guard, including questioning the presence of local political elite in the activity. Another teacher from Barangay Dibagat is owning her role as the voice of Kabugao’s women sector on the dam project, speaking out at every opportunity she has to express their position.

Young Isnag women are leading the discussions on the Gened dams in the online platforms. All members of the Kabugao Youth steering committee, they serve as their elders’ secretariat, drafting position papers, resolutions, petitions, affidavits of complaint and many other documentation as well as supporting lawyers in building their cases. They are the voices that amplify their people’s voices by speaking in conferences and forging solidarity with other cause-oriented groups and other indigenous peoples.



To Jillie Karl Basan, another Kabugao Youth convenor, their struggle against the dams is “politically and culturally awakening and has deepened my interest to focus more on the community, on how to empower them particularly the youth and women sectors to be able to assert their rights.”

### *Persona Non Grata*

On October 23, 2021, hundreds of elders and leaders of the Kabugao ancestral domain issued a community resolution declaring PPRPPC and its representatives, NCIP personnel namely Atty. Marlon Bosantog, Atty. Atanacio Addog, and other government officers *persona non grata* or unwelcome in the municipality of Kabugao. The declaration was issued because of their manipulation of the FPIC process and manifest disregard of the voice of the community. According to the community resolution, there is clear “collusion and conspiracy between and among Bosantog, Addog and PPRPPC.”

### *Gaining traction and solidarity*

Numerous groups from across the country and overseas are sending statements and commitments of support and solidarity for the Isnag people. The issue has gained traction, being discussed in several platforms by academe, civil society and social movements across the globe.

The Movement Against Apayao Dams (MAAD), also called “Lapat Apayao,” was recently launched by nongovernment organizations and religious groups as another platform to amplify the voices of dam-affected communities in Apayao.

On December 1, 2021, Basan delivered an intervention during a side event at the UN Forum on Business and Human Rights organized by Indigenous Peoples’ Rights International (IPRI) entitled “Indigenous Peoples Rights and the UNGP Implementation: Business as Usual? Experiences of Indigenous Peoples.” She said, “Despite all this, we are hopeful. Our community has been fighting this battle since 2017; it has been a tedious and exhausting journey, yet we are still here. We are bent on defending our lands, on asserting our rights, and we will continue to do so until they realize that they cannot uproot us from our ancestral lands. We are optimistic that in the end, we can finally look at our mighty Apayao river without worrying how it will look like five years from now.”

The affected communities will continue their fight against the construction of the series of four mega dams along the Apayao-Abulug river. Having lost trust in the NCIP, the Isnag people are relying on their own strength in their battle to save their ancestral land from corporate grab and their people from being uprooted from their ancestral lands.

IPMR Balalang said, “...this is our ancestral land. The government has already recognized our rights as indigenous peoples. Why don’t they understand that? No amount of money can dissuade us from our position. We will not allow their manipulations to succeed. We already said no to dam, no to negotiation, stop the operation!” He also challenged the Isnag youth to lead the fight against the destruction of their ancestral domain since the youth have the strength and fervor.

## 7. Lessons learned, conclusions and recommendations

### *Business as Usual*

The State and the proponent corporation are failing in their human rights obligations and responsibilities in their aim to build hydropower dams within the territory of the Isnag indigenous peoples in Kabugao, Apayao. The Philippine government through its primary agency—the National Commission on Indigenous Peoples—that should be carrying out domestic laws/policies and implementing international agreements to protect the rights of indigenous communities failed in its duty and instead colluded with the corporation in railroading the needed social acceptability processes such as FPIC for Gened 1 and 2 dams. The NCIP turned a blind eye on the clear violations of the FPIC process and a deaf ear to the opposition of the community. Instead of hearing the dissenting voices, the agency used its platforms to discredit and vilify the protesting indigenous peoples by linking them with the rebel groups waging armed struggle in the countryside.

The PPRPPC has not taken sincerely the voices of affected indigenous communities. It is doing business as usual by not acknowledging at all the rights of indigenous peoples, by not disclosing accurate information about the hydropower dams (advantages and disadvantages), by disrespecting the burial grounds of the Isnag ancestors, and by blatantly bribing some local elite to sow discord and break the integrity of communities. The PPRPPC is clearly unaware of its obligations under the UN Guiding Principles on Business and Human Rights.

### *Power of documentation*

In the course of the Isnag people's struggle against the Gened 1 dam since 2017, the youth and elders have carefully documented the FPIC processes. Community decisions during assemblies were put on paper. They documented the irregularities using mobile phones, recorders, among others. They also secured all the paper trails they could access. This has given them leverage in playing the field of NCIP's paper-driven FPIC process. This experience is worth replicating in all communities facing threats of developmental aggression.

### *Community empowerment and solidarity*

The peoples' solidarity has undeniably helped boost the morale of the Isnag and their struggle to gain wider support. The Isnag youth and elders participated in a learning exchange with the Dumagat people of Quezon province who are experiencing the same situation. The realization that they are not alone in this kind of struggle helped firm up their determination to fight for and pursue their rights to their ancestral land and to self-determination.

The people of Kabugao are pleading with the public to join them in their call to halt PPRPPC's dam projects and let the Apayao river flow freely.



## Recommendations to the government

- Perform its duty to protect the rights of indigenous peoples, including ensuring that PPRPPC respects indigenous peoples' rights and putting redress mechanisms in place in accordance with the UN Guiding Principles on Business and Human Rights.
- Implement the numerous recommendations of UN treaty bodies and special procedures, especially in relation to FPIC, respect of indigenous peoples' rights including the Isnag people's right to say no to a development project, and protection of human rights defenders.
- For the NCIP to uphold their mandate to uphold the rights of indigenous peoples as enshrined in the Indigenous Peoples Rights Act of 1997.
- Conduct an investigation on the corrupt practices of NCIP officials in the conduct of the FPIC process and make them accountable for their actions.
- Provide effective and culturally sensitive remedial mechanisms for the Isnag communities for the proper and immediate adjudication of their issues.
- Ensure the protection of the Isnag rights defenders from any form of verbal or physical attacks against their person or their rights.
- For PPRPPC and NCIP to halt their activities in relation to Gened 1 and Gened 2 dams, pending resolution of the issues of the Isnag people.

## Recommendations to PPRPPC

- Be informed about its responsibilities to respect indigenous peoples' rights in accordance with the UNGPs.
- Be informed and to respect the rights of the Isnag indigenous peoples as elaborated in the UNDRIP and the IPRA, and thereby ensure the proper implementation of the FPIC process, and to respect their right to say no to the dam project.
- Halt their activities in relation to Gened 1 and Gened 2 dams, pending the resolution of the issues of the Isnag people.
- Respect cultural processes of the Isnag people and establish a culturally sensitive and accessible complaints mechanism within its institution to provide a platform for them to converse with the Isnag people about their issues and concerns.

## Endnotes

<sup>1</sup> Dulag was assassinated in 1980 by military forces in his home in Bugnay, Tinglayan, Kalinga. His death galvanized the movement against the Chico dams that eventually pressured the World Bank to halt the project in 1985.

<sup>2</sup> World Commission on Dams. (2001 December). Dams and development: A new framework for decision making. <https://pubs.iied.org/sites/default/files/pdfs/migrate/9126IIED.pdf>.

<sup>3</sup> NCIP CAR (2021 July 14), "Evaluation of the FPIC report for the proposed 150MW Gened Dam by the Pan Pacific Renewable Power Philippines Corporation within Kabugao and Tawit Ads of the Isneg/Isnag IPs in Apayao Province."

<sup>4</sup> Ibid.

<sup>5</sup> PPRPPC headed by its President, Allee Lourdes T. Sun, has an office located in Ortigas Center, Pasig City in Metro Manila.

<sup>6</sup> NCIP (2021),

<sup>7</sup> Ibid.

<sup>8</sup> Bongui, R. (n.d.), *The Ethno-history of the Isnag People of Apayao*. Unpublished

<sup>9</sup> The barangays are Badduat, Baliwanan, Bulu, Cabetayan, Dagara, Dibagat, Karagawan, Kumao, Laco, Lenneng, Lucab, Luttuacan, Madatag, Madduwang, Magabta, Maragat, Musimut, Nagbabalyan, Poblacion, Tuyangan, Waga, and Eleazar K. Bulut as administrative barangay.

<sup>10</sup> The common fish species found abundant in the Apayao river and its main tributaries are "ittubi, a large fish up to two feet length of the milkfish family; kullidaw, a fresh water catfish up to three feet length; turit, a small slender fish about the size of the ring finger up to five inches length of the alligator gar family; palilang, a black fresh water fish up to four inches length; modi, a small fresh water fish family and locally called bagal when fully grown; eel or kiwat..." (Bongui, n.d.) among many others.

<sup>11</sup> Philippine Task Force for Indigenous Peoples' Rights. (2021, May 28). Stop Pan Pacific Dams in Apayao. Philtftp. <https://philtftp.org/2021/05/28/stop-dams-in-apayao/>.

<sup>12</sup> Basan (2021) Basan, J.K. (2021, September 22). Pan Pacific's Gened Dam 1 FPIC process: not free, prior and informed. Philtftp. <https://philtftp.org/2021/09/22/gened-dam-1-irregular-fpic-process/>.

<sup>13</sup> Ibid.

<sup>14</sup> "Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership" (R.A. 8371).

<sup>15</sup> Concluding observations on the combined fifth and sixth periodic reports of the Philippines, E/C.12/PHL/CO/5-6, 26 October 2016.

<sup>16</sup> Consideration of reports submitted by States parties under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/PHL/CO/20, 3 September 2009.

<sup>17</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Business-related impacts on the rights of indigenous peoples", A/68/279, 7 August 2013.

<sup>18</sup> Castro, N. (2021 November 6). *Isnag elders and leaders of Kabugao ancestral domain resolution declaring PPRPC and NCIP persona non grata*. (Status update). Facebook. [https://web.facebook.com/coolanthropologist/posts/281251134006946?rdc=1&\\_rdr](https://web.facebook.com/coolanthropologist/posts/281251134006946?rdc=1&_rdr).

<sup>19</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Business-related impacts on the rights of indigenous peoples", A/68/279, 7 August 2013.

<sup>20</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission on Human rights resolution 200/65, Addendum, Mission to the Philippines, E/CN.4/2003/90/Add.3, 3 March 2003.

<sup>21</sup> <https://www.change.org/p/president-of-the-philippines-save-the-isnag-people-say-no-to-apayao-dam>.

## References

Basan, J.K. (2021, September 22). *Pan Pacific's Gened Dam 1 FPIC process: not free, prior and informed*. Philtfig. <https://philtfig.org/2021/09/22/gened-dam-1-irregular-fpic-process/>.

Bhandari, P. (2020, July 30). *An Introduction to Qualitative Research*. Scribbr. <https://www.scribbr.com/methodology/qualitative-research/>.

Bongui, R. (n.d.). *The Ethno-history of the Isnag People of Apayao*. Unpublished.

Castro, N. (2021 November 6). *Isnag elders and leaders of Kabugao ancestral domain resolution declaring PPRPC and NCIP persona non grata*. (Status update). Facebook. [https://web.facebook.com/coolanthropologist/posts/281251134006946?\\_rdc=1&\\_rdr](https://web.facebook.com/coolanthropologist/posts/281251134006946?_rdc=1&_rdr).

Concluding observations on the combined fifth and sixth periodic reports of the Philippines, E/C.12/PHL/CO/5-6.

Consideration of reports submitted by States parties under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/PHL/CO/20, September 3, 2009.

Indigenous Peoples Rights International (IPRI). (2021 December 1). *Indigenous Peoples' Rights and the UNGP Implementation: Business as Usual? Experiences of Indigenous Peoples*. <https://web.facebook.com/search/top?q=indigenous%20peoples%20rights%20international>.

Philippine Constitution. Article III, Section 4.

Philippine Task Force for Indigenous Peoples' Rights. (2021, May 28). *Stop Pan Pacific Dams in Apayao*. Philtfig. <https://philtfig.org/2021/05/28/stop-dams-in-apayao/>.

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Business-related impacts on the rights of indigenous peoples," A/68/279, 7 August 2013.

Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted in accordance with Commission on Human rights resolution 200/65, Addendum, Mission to the Philippines, E/CN.4/2003/90/Add.3, 3 March 2003.

San Miguel Corporation. (2017 June 13). *San Miguel plans to venture into geothermal energy*. [https://www.sanmiguel.com.ph/files/reports/PSE-San\\_Miguel\\_plans\\_to\\_venture\\_into\\_geothermal\\_energy\\_06.13\\_17.pdf](https://www.sanmiguel.com.ph/files/reports/PSE-San_Miguel_plans_to_venture_into_geothermal_energy_06.13_17.pdf).

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), (19 November 2018). [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf).

World Commission on Dams. (2001 December). *Dams and development: A new framework for decision making*. <https://pubs.iied.org/sites/default/files/pdfs/migrate/9126IIED.pdf>.

Business enterprises should pay particular attention to the potential impacts of any operations on the lands and territories of indigenous peoples; commit to respect indigenous peoples' rights as set out in the UN Declaration on the Rights of Indigenous Peoples; ensure their grievance mechanisms comply with the UN Guiding Principles on Business and Human Rights; and make sure to adequately inform, consult and engage with indigenous peoples.

