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

**Joint written statement* submitted by the World Federation
of Democratic Youth (WFDY), non-governmental
organization in general consultative status; France Libertes:
Fondation Danielle Mitterrand, the International Association
of Peace Messenger Cities, Women's Human Rights
International Association, non-governmental organizations in
special consultative status; the Indian Council of South
America (CISA), International Educational Development,
Inc., Mouvement contre le racisme et pour l'amitié entre les
peuples, non-governmental organizations on the roster**

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

[20 August 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Indigenous peoples' right to water threatened by extractive industries and large dams*

1. Development through economic growth: a lack of consideration of human, social and environmental rights

The UN Special Rapporteur on the rights of indigenous peoples, James Anaya, has noted that «the implementation of natural resource extraction (...) has become one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights» (A/HRC/18/35, par. 57).

The three United Nations mechanisms on indigenous peoples (the Permanent Forum on Indigenous Issues, the Expert Mechanism and the Special Rapporteur on the Rights of Indigenous Peoples) all conclude that: «there are plans to extract natural resources, in particular minerals, petroleum and gas, from the majority of indigenous territories» (E/C.19/2013/16).

The expansion of extractive industries affects indigenous peoples not only because it dispossesses them of their land, natural and cultural wealth, but also because these industries are part of an unsustainable (in human and environmental terms) type of development. Decreasing groundwater resources and pollution of surface and groundwater are among the principal damages linked to mining activities. The construction of large dams leads to the creation of huge water reservoirs that directly affect local ecosystems, causing reduced fish stocks and availability of fertile, reduced water quality, deforestation etc.

Yet, as Ms Navanethem Pillay, High Commissioner for Human Rights, underlined in an open letter dated March 30th, 2012, regarding the preparation of the Rio+20 Conference on sustainable development, seeking economic growth cannot be considered as progress if it does not take into account environmental, social and human rights issues. France Libertés and its partners similarly drew attention to the dangers of considering water as a mere economic resource in the written statement «Rio +20: human rights and rights of nature missing in the considerations about green economy» (A/HRC/20/NGO/72).

Much more than a simple factor of production, water is the source of life itself and is a fundamental human right.

In September 2010, the Human Rights Council adopted resolution 15/9 which specifies «that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living (...) as well as the right to life and human dignity» (A/HRC/RES/15/9). This resolution backs up the General Assembly's resolution recognising the right to access clean water for all as a fundamental right (A/RES/64/292).

The right to water is one of the foremost rights that are being infringed upon by practices inherent in extractive industries and large dams. According to the Joint Monitoring Programme for Water Supply and Sanitation (UNESCO – WHO, 2011), 768 million people do not have access to clean water and 2.5 billion people do not have access to improved

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sanitation. Considering the impact that mining industry and large dams can have on the quantity and quality of water, this is an extremely worrying situation.

2. Effective participation by indigenous peoples in the setting up of projects affecting their economic, cultural, social and environmental well-being

We find it most regrettable that a majority of States have not ratified International Labour Organisation Convention N° 169, establishing indigenous peoples' rights through a participation mechanism for decisions that concern them. Its article 7 states that «The peoples concerned shall have the right to decide on their own priorities for the process of development (...) and to exercise control, to the extent possible, over their own economic, social and cultural development».

It is necessary to guarantee the participation of indigenous peoples, in accordance with the principle of free, prior, and informed consent, as stated in articles 19 and 32 of the 2007 United Nations Declaration on the rights of indigenous peoples.

Each State is responsible for enforcing obligations in the field of human rights. It is urgent that States incorporate the principles of the aforementioned resolutions concerning the right to water into their national legislations and that they set up concrete implementation mechanisms for indigenous peoples' free consent prior to projects undertaken by, or with, transnational firms.

3. Reinforced legal protection for indigenous peoples facing the power of transnational firms

In its resolution 17/4 approved in June 2011, the Human Rights Council approved the Guiding Principles on Business and Human Rights, with the aim of compensating for the deficit of international and national governance dealing with economic forces and actors (A/HRC/17/31). This text established the following triptych:

- The State duty to protect human rights
- The corporate responsibility to respect human rights
- Appropriate and effective remedies for human rights violations.

The first Guiding Principle stipulates that «States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication».

The second principle provides that «States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations».

The transnational economic interests take advantage of States with less developed legal arsenals regarding respect for human rights. To this end, we encourage the Human Rights Council to implement a system of monitoring, control and penalties regarding human rights violations committed by transnational companies.

We join the Economic, Social and Cultural Council in suggesting that States should take measures to stop their citizens and their companies from committing violations in other countries (ECOSOC/HRI/GEN//Rev.8 and Add.1).

4. Two cases which illustrate the necessity for indigenous peoples to have access to an effective legal protection and effective participation in the drawing up and undertaking of extractive industries and large dams projects

These two cases are the object of specific written statements presented by the Foundation at the 24th session of the HRC.

The Conga project, initiated in Cajamarca (Peru) in 1993 by the company, Yanacocha, involves mining gold and copper. This project has direct consequences: destruction of wetlands, transformation of natural lakes into ponds of toxic waste, as well as pollution of rivers and aquifers, whilst preventing the population's access to clean and safe water. In spite of opposition by local populations, the project continues to grow, with the support of the Peruvian State. This case underlines the insufficiency of national legal protection compared to that recommended by the Guiding Principles (A/HRC/17/31).

In Uganda, local associations and les Amis de la Terre (France), demonstrate the human and environmental impacts of the construction of the Bujagali hydroelectric dam, approved in 2007. This project seriously affects local populations' human rights. Their consultation was seriously insufficient during planning stages. Reduction in Lake Victoria's water level, disappearance of the Bujagali's falls and flooding of agricultural lands depriving 6 800 inhabitants of their sources of food will result from the dam.

5. Recommendations

We call upon the Human Rights Council to:

- Promote the inscription of the right to water for all by all States in their national Constitutions. States should endeavor to guarantee without delay the implementation of action plans enabling effective right to water, without discrimination of any kind.
- Ensure that States involve indigenous peoples in effective participation mechanisms within the context of mining and hydroelectric dam projects, in order to seek fairer relations between indigenous peoples and transnational companies, including, where applicable, the possibility for indigenous people to prevent the undertaking of a project.
- Encourage Member States to follow the recommendations of Permanent Forum on Indigenous Issues, in particular to «progressively codify the duties of States to protect human rights against corporate violations: individually, as host and home States, as well as collectively through the international cooperation requirement of several United Nations human rights treaties» (E/C.19/2012/3).
- Promote towards all States the Guiding Principles on Business and Human Rights - adopted in June 2011, resolution 17/4, by the Human Rights Council - to ensure the effectiveness of State responsibility.