

Mandates of the Special Rapporteur on the rights of Indigenous Peoples; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of Indigenous Peoples; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 51/16, 44/15, 46/7, 43/4, 50/17 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning court orders against the Native Federation of the Madre de Dios River and Affluents, FENAMAD and its President, environmental rights defender Julio Ricardo Cusurichi, filed by the logging company Canales Tahuamanu S.A.C. following a statement issued by FENAMAD denouncing the deforestation in the territory of the Mashco Piro Indigenous People living in the Peruvian Amazon region of Madre de Dios in voluntary isolation. The logging company Canales Tahuamanu S.A.C. was granted concessions in 2002 and continues to operate in that area. Canales Tahuamanu S.A.C is a company that received certification by the Forest Stewardship Council (FSC). FSC is a multistakeholder initiative registered in Germany.**

According to the information received:

The Native Federation of the Madre de Dios River and Affluents (FENAMAD) is an indigenous-led organization representing the Indigenous Peoples of Madre de Dios in Peru. Since 1982, FENAMAD has been working to protect the rights of peoples living in voluntary isolation, in particular the Mashco Piro people. FENAMAD's research and advocacy work has been instrumental in the establishment of several territorial reserves for the aforementioned Indigenous Peoples living in voluntary isolation.

The Mashco Piro are one of Peru's nomadic peoples. They live in isolation in the middle and upper basins of the Manu, Los Amigos, Pariamanu, Las Piedras, Tahuamanu and Acre rivers, with no contact with other indigenous groups or society in general. According to the Ministry of Education, the language spoken by the Mashco Piro is a variety of Yine, which belongs to the

Arawak linguistic family. According to the Dirección de Pueblos Indígenas en Aislamiento y Contacto Inicial (PIACI) of the Viceministerio de Interculturalidad, the Mashco Piro engage in hunting, gathering, and possibly small-scale farming. Their survival is currently threatened by deforestation, forced contact caused by the presence of extractive industries, as well as climatic and environmental emergencies. As an isolated People, the Mashco Piro people have no immunity to diseases such as influenza and coronavirus. In 2014, the Mashco Piro were added to the Peruvian Official Database of Indigenous or Original Peoples of the Ministry of Culture.¹

Canales Tahuamanu S.A.C. is a logging company founded in 2010 and operating in Amazonian Madre de Dios basin in Peru. Canales Tahuamanu is currently managing concessions 17-TAH/C-J-012-02 (Canales Tahuamanu A) and 17-TAH/C-J-013-02 (Canales Tahuamanu B), which are certified by the Forest Stewardship Council.

Evidence of the presence of Mashco Piro People in the area was documented in a 1999 report from Indigenous-led human rights organization FENAMAD, which identified a delimited area of 2'428,613 hectares corresponding to a part of its ancestral territory.² The conclusions of the report were taken into account by the government at the time of the creation in 2002 of the Territorial Reserve of Madre de Dios, a delimited protected area (829.941 hectares). However, the Reserve only covers a portion of the territory effectively used by Indigenous Peoples living in isolation. The rest of the territory was distributed the same year as concessions, as part of the Peruvian Permanent Forestry Production.

In 2014, the Peruvian government officially recognized the Mashco Piro People in isolation. The government of Peru recognized in 2016 that Mashco Piro and other tribes living in isolation were effectively using territories previously distributed as forest concessions to private actors, such as Canales Tahuamanu S.A.C.³ In 2016, the government of Peru accepted a proposal for expansion of the Territorial reserve to encompass both of the concessions currently managed by Canales Tahuamanu S.A.C, but the expansion has not yet materialised.⁴

In 2020, due to the COVID-19 pandemic, the Peruvian government declared a national lockdown, before authorizing extractive companies, as part of a priority activity sector for the Peruvian economy, to resume operations throughout the country. On 12 June 2020, following the approval of the company's COVID-19 control and prevention protocol, the Ministry of Health authorized Canales Tahuamanu S.A.C. to resume operations in its concessions.

On 19 and 23 June 2020, FENAMAD issued several letters to the government warning against the irreparable damage that would be caused by possible forced contact and the transmission of COVID-19 and other diseases to the

¹ Decreto Supremo N° 001-2014-MC

² See FENAMAD Technical Study on “Establishment and Delimitation of Indigenous Peoples living in voluntary isolation in the of the Upper Basin of the Los Amigos, Las Piedras, Tahuamanu, Acre, Yaco and Chandless Rivers » (1999)

³ See Technical Study of the Comisión Multisectorial de Naturaleza Permanente para la Salvaguardia y Revalorización de los Conocimientos, Saberes y Prácticas Tradicionales y Ancestrales de los Pueblos Indígenas u Originarios adopted on 30 November 2016.

⁴ Government decision for 2016

isolated people as Canales Tahuamanu resumed their operation on their concessions. Following the lack of response from the government, FENAMAD raised those concerns publicly in a public statement on 3 July 2020.

In a letter dated 31 July 2020, FENAMAD shared their concerns regarding the operations of Canales Tahuamanu S.A.C. directly with your organization, highlighting the incompatibility of logging activities on or in the vicinity of the territory used by the Mashco Piro People. A FSC certification assessment was carried out in October 2020 by “NepCon – Preferred by nature”, an FSC-accredited certification body. In spite of information shared earlier with your organization, the FSC certification of the concessions (NC-FM/COC-005485) was approved for a period of 5 years counting from 23 December 2020.⁵ The logging company has benefitted from tremendous support and credibility in Peru as a result of the certification.

In October 2022, FENAMAD addressed these concerns again directly to NEPCon as part of the company’s concessions periodic verification process. It is unclear whether the concerns of FENAMAD were taken into account in Nepcon’s analysis or shared with the FSC. The concessions were still certified after FENAMAD’s letter last October.

According to principle 3 of the FSC criteria for certification⁶, the company shall “identify and uphold Indigenous Peoples’ legal and customary rights of ownership, use and management of land, territories and resources affected by management activities.” It further states that the company should “identify the Indigenous Peoples that exist within the Management Unit or are affected by management activities” and engage with (..) Indigenous Peoples, identify their rights of tenure, their rights of access to and use of forest resources and ecosystem services, their customary rights and legal rights and obligations, that apply within the Management Unit. The company shall also “identify areas where these rights are contested.”

Since 22 March 2007, the Peruvian State is the subject of an order for precautionary measures by the Inter-American Commission on Human Rights, requiring the government to adopt all measures necessary to guarantee the life and personal integrity of the members of the Mashco Piro, Yora, and Amahuaca Indigenous Peoples in voluntary isolation, especially the adoption of measures aimed at preventing irreparable harm resulting from the activities of third persons in their territory. These precautionary measures are still in force as of the day of this letter.⁷

⁵ See FSC Certificates Public Dashboard, available at <https://connect.fsc.org/fsc-public-certificate-search> and consulted on 16/02/2023

⁶ Forest Stewardship Council® FSC® International Standard FSC, Principles and Criteria for Forest Stewardship (FSC-STD-01-001 V5-2 EN p.12)

⁷ <http://www.cidh.org/medidas/2007.eng.htm>

On the overlap of rights claims over concessions distributed to Canales Tahuamanu S.A.C:

The position of Canales Tahuamanu S.A.C. expressed in their letter dated 9 July 2020⁸, is that the company is the official guardian of these concessions which were distributed to them by the State, and that the company has been operating with all official authorizations, even during the pandemic. This position however does not acknowledge the Peruvian State's international obligations to legally recognize and protect the land, territories and resources traditionally occupied or used by Indigenous Peoples,⁹ nor does it acknowledge the intent of the Peruvian government to expand the Territorial Reserve into their concessions to redress the current violations suffered by the Mashco Piro People on their traditional territory.

In the meantime, the Mashco Piro People is still at risk of irreparable harm resulting from the activities of the company, which are about to resume in the next few weeks as soon as the season permits.

While the international obligations and responsibilities of the State of Peru as reflected in the UN Declaration on the Rights of Indigenous Peoples does not apply directly to private businesses enterprises, it should be highlighted that private companies still have a corporate responsibility to respect human rights, in particular Indigenous Peoples' rights, as set forth in the UN Guiding Principles on Business and Human Rights. Business enterprises should indeed carry out human rights due diligence and avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved (principles 11 and 17). In this respect, Canales Tahuamanu S.A.C. should avoid causing or contributing to adverse impact on Indigenous Peoples through their activities and address such impacts when they occur. (principle 13).

On obtaining consent of the Mashco Piro affected by the company's operations as per FSC requirement

Given that the Indigenous Peoples present on concessions owned by Canales Tahuamanu S.A.C live in voluntary isolation, a binding agreement between the company and the Indigenous People affected is not possible. A consultation to obtain their free, prior and informed consent also presents significant challenges. International standards state that the right to consultation to obtain their prior, free, and informed consent should be interpreted mindful of Indigenous Peoples' decision to remain in isolation (...), which may be reflected in their decision not to use such mechanisms of participation and consultation.¹⁰ It is the view of the Inter American Commission on human rights¹¹ and of the UN Special Rapporteur on the Rights of Indigenous

⁸ See <https://fenamad.com.pe/en/publications/> to find a copy of the letter issued by Canales Tahuamanu. Publication titled "Cumplimiento de la Resolución N°05 del 14 de junio de 2021".

⁹ UN Declaration on the Rights of Indigenous Peoples, article 26(3)

¹⁰ <https://acnudh.org/directrices-de-proteccion-para-los-pueblos-indigenas-en-aislamiento-y-en-contacto-inicial-de-la-region-amazonica-el-gran-chaco-y-la-region-oriental-de-paraguay/> p.31 para 66

¹¹ IACHR, "Informe Pueblos Indígenas en aislamiento voluntario y contacto inicial en las Américas: Recomendaciones para el pleno respeto a sus derechos humanos." Recomendaciones, Párr. 14

¹² See Special Rapporteur on the Rights of Indigenous Peoples, "Amicus Curiae to the Inter-American Court on Human Rights in the case N. 12.973 Pueblos Indígenas Tagaeri y Taromenane (en aislamiento voluntario) Vs. Ecuador" Section (C)

Peoples¹² that, in the case of peoples in voluntary isolation, their non-consent is presumed against any type of activity that interferes with their territory.

On the impact of the legal proceedings engaged by Canales Tahuamanu S.A.C. on FENAMAD, an indigenous-led human rights organization:

Since 5 October 2020, the logging company Canales Tahuamanu S.A.C. has pursued legal action against FENAMAD, with long-standing recognition for their work defending Indigenous Peoples in the Madre de Dios basin. The company argues that a public statement issued by FENAMAD on 3 July 2020 regarding the resumption of Canales Tahuamanu S.A.C.'s operations on concessions overlapping with Indigenous territories, constituted a breach of the company's right to honor and good reputation. The local courts ruled in favour of the company and rejected a number of appeals and challenges brought in by the NGO. FENAMAD was ordered to publish a letter drafted on 9 July 2020 by the company, setting out the company's position and containing certain allegations against FENAMAD.¹³ In the absence of any immediately obvious further avenue to challenge the decision in the Peruvian judicial system, FENAMAD eventually published the letter on its website and social media on 18 January 2023.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed about the intimidation, attacks and defamations towards environmental human rights defenders and indigenous leaders that seek to delegitimize and create misunderstandings about their work.

We are equally concerned that the territory of the Indigenous Peoples living in isolation in the Madre de Dios basin has not been officially demarcated to date in accordance with their effective land use, and that active logging concessions currently overlap with their ancestral territory, despite reasonable evidence of their presence since 1999. We are concerned that in the midst of the complex legal process against FENAMAD, the company will resume in a few months its logging activity in concessions that overlap with the territory of the Mascho Piro People, and that this will lead to new incidents against loggers and threats to the survival of Indigenous Peoples living in isolation. We are further concerned about FSC involvement in the matter and the alleged failure to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services, including those related to FSC's certification, in line with the UN Guiding Principles on Business and Human Rights, and their own [Policy for Association](#), requiring that any organizations associated with FSC must refrain from "unacceptable activities that severely impact forests and people..." which includes human rights violations and abuses against Indigenous Peoples and human rights defenders.

Consequently, we would like to share our concern with your Excellency's Government regarding FSC's involvement in providing products and services, including certification to Canales Tahuamanu S.A.C allegedly complicit in the above-mentioned human rights violations in the Madre de Dios.

¹² See Special Rapporteur on the Rights of Indigenous Peoples, "Amicus Curiae to the Inter-American Court on Human Rights in the case N. 12.973 Pueblos Indígenas Tagaeri y Taromenane (en aislamiento voluntario) Vs. Ecuador" Section (C)

¹³ <https://fenamad.com.pe/cumplimiento-de-la-resolucion-n05-del-14-de-junio-de-2021/>

In connection with the above alleged facts and concerns, please refer to the **Annex referring to international human rights law and standards** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please, indicate any steps undertaken by your Excellency's Government to ensure that multistakeholder initiatives exercise human rights due diligence to identify, prevent, mitigate and account for how they address their human rights impacts throughout their operations, as set out in the UN Guiding Principles on Business and Human Rights.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that letters have also been sent to the Government of Peru, to the logging company Canales Tahuamanu S.A.C., and to the Forest Stewardship Council (FSC) related to the aforementioned allegations.

Please accept Excellency, the assurances of our highest consideration.

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Special Rapporteur on the rights of Indigenous Peoples

Pichamon Yeophantong
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the international norms and standards applicable to the present case.

We would like to recall the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which Germany voted in favour of at its adoption at the General Assembly in 2007. The UNDRIP sets out international human rights standards relating to Indigenous Peoples' rights. Article 26 asserts the right of Indigenous Peoples to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired".

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders, A/RES/53/144). The Declaration states that "everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international level" (art. 1). Article 6 (c) of the Declaration states that everyone has the right "to study, discuss, form and hold opinions on the observance, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters."

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011 and are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

In addition, we would like to highlight that the Committee on the Economic, Social and Cultural Rights (CESCR) has indicated that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.” (general recommendation 24 (2017)).

Finally, the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment through the adoption of resolutions HRC/Res/48/13 on 8 October 2021 and A/Res/76/300 on 28 July 2022. Furthermore, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.