

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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(Please use this reference in your reply)

19 June 2023

Mr. Carstensen,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your organization 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**

Forest Stewardship Council (FSC)

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).

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, Paríamanu, 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.

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)

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 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

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

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

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

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

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).

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

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)

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 Tuhamanu 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 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 Tuhamanu 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

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

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 its operations, products or services, including those related to FSC's certification, in line with the UN Guiding Principles on Business and Human Rights, and its 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.

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. Please provide information on the human rights due diligence policies and processes established by your organization to prevent or mitigate adverse human rights impacts that are directly linked to your operations, products or services, including those related to FSC's certification, in line with the UN Guiding Principles on Business and Human Rights.
2. Please provide information on how FSC ensures compliance with its 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.
3. Please provide information on the specific human rights and environmental due diligence measures taken by your organization prior to renewing Canales Tuhamanu SAC FSC certification, in particular with regards to potential land dispute with Indigenous Peoples living in concession areas, and regarding any other human rights concerns that local civil society may have in this regard.
4. Please provide information about any interim measures your organization can take to suspend the certification of Canales Tahuamanu SAC until the rights and survival of the Mashco Piro People living on the company's concessions are safeguarded, and until safeguards are set up to prevent any form of strategic lawsuit against those organizations defending the rights of Indigenous Peoples.
5. Please provide information on policies FSC has taken, or is considering taking, to ensure respect of human rights defenders and their legitimate

activities, in particular of those working to defend the human rights of Indigenous Peoples and their land, without fear of judicial harassment, violence, intimidation or other restrictions.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from you 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.

While awaiting a reply, we urge you to consider to undertake an interim review of the certification of Canales Tahuamanu S.A.C., with consideration given to the fact that the company's concessions overlap with the traditional territory of the Mashco Piro People who live in isolation and are protected by a decision by the Inter-American Commission on Human Rights.

Please be informed that letters on this matter have also been sent to the Government of Peru, to the Federal Republic of Germany, and to the logging company Canales Tahuamanu S.A.C., related to the aforementioned allegations.

Please accept, Mr. Carstensen, the assurances of our highest consideration.

José Francisco Cali Tzay
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

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, 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, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of the principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. [...] Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to guiding principle 25).

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.