

Franciscans International submission under Agenda item 3

Indigenous communities are often left out of policy discussions on issues ranging from the environment to development, are the first affected by the impacts of climate change, and as noted by the Special Rapporteur on the rights of indigenous peoples, face attacks, violence, and even criminalization, including in the context of “large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging.”¹ This targeting may be coupled with adverse impacts faced by indigenous communities once business activities and operations begin. Indeed, our partners across the world have drawn attention to the impacts of business activities on local indigenous populations. This submission highlights a few cases from the Americas and Asia-Pacific, and underscores the need for businesses to conduct ongoing human rights due diligence.

Guatemala

In Guatemala, indigenous human rights defender Bernardo Caal Xól is facing criminal charges due to his opposition to the Oxec hydroelectric project.² This project entails Oxec projects I, II, and III, all under different phases in the operating process. In the case of the Oxec I and II hydroelectric projects, the companies received approval from government authorities without conducting prior consultation in accordance with international standards with the impacted indigenous communities. Although the Constitutional Court issued a ruling requiring that the Ministry of Energy and Mines consult with relevant communities, the Court allowed for the companies to continue in their operations and activities.

As a result up to six hydroelectric power plants continue in their operations along the Cahabon River, where nearly 30 kilometers of the river have dried up, impacting communities that have used the river for personal consumption, agriculture, and fishing. As State authorities continue to fail to undertake their responsibilities, the indigenous communities themselves held a “Community Consultation of Good Faith,” which resulted in an overwhelming rejection against the use of water from the Oxec and Cahabón rivers for the installation and operation of Oxec I and II hydroelectric plants in the municipality. Since then, the community submitted the results of the consultation to the municipality and are awaiting ratification and implementation of the decision.

Brazil

¹ A/HRC/39/17, para. 4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/246/34/PDF/G1824634.pdf?OpenElement>

² <https://www.ohchr.org/en/press-releases/2021/07/guatemala-stop-treating-indigenous-human-rights-defenders-criminals-un>

Indigenous lands, especially in the “Legal Amazon”,³ are under serious threat by extractive companies. Indigenous peoples, quilombola communities, settlers “*assentados*” who have benefited from agrarian reform, fishing communities and other traditional communities are targeted by land invasion, forced evictions, and violence, among other forms of conflicts usually involving mining companies and illegal mining.

Between 2017 and 2020, legally and illegally mined areas expanded at least 66% into indigenous lands. In 2020, around 9.3% of illegal mining exploration in Brazil was carried out within indigenous lands. Among indigenous lands with mining activities, the ones which have the largest illegal mining areas are lands belonging to the Kayapó (Pará), Yanomami (Roraima and Amazonas) and Munduruku (Pará and Mato Grosso) peoples.⁴ In the territory of the Yanomami, mining activities are even taking over the infrastructure and resources belonging to indigenous communities, such as airstrips, health centers, and crops. This is due to the lack of inspection and protection by public authorities.

Illegal land occupation especially by mining activities, which go beyond their actual license to encroach on additional land; the increase of illegal mining activities (*garimpos*); and the deforestation of indigenous lands all contravene standards enshrined in the 169 ILO Convention. In addition, the increase of illegal mining activities in recent years generates other human rights violations against indigenous peoples, including the right to a clean, healthy, and sustainable environment.

Solomon Islands

For example, the economy of the Solomon Islands is heavily dependent on its logging industry, which as acknowledged by the Government is currently being practiced at an unsustainable rate, and will have a “hindering effect on the country’s sustainable future.”⁵ The adverse human rights and environmental impacts of logging, however, are already being felt by residents. For example, water quality for home use has deteriorated, as has water quality in coastal areas which has impacted the fishing industry. In February 2022, the UN High Commissioner for Human Rights reasserted the need for the State to ensure that logging activities “do not adversely affect the enjoyment of economic, social and cultural rights of local communities,” that the right to a safe,

³ Legal Amazon refers to the area under the jurisdiction of the Superintendency for the Development of the Amazon (SUDAM). This is regulated by Art. 2 of Supplementary Law No. 124, of January 3, 2007. The area comprises 772 municipalities, arranged as follows: 52 municipalities in Rondônia, 22 in Acre, 62 in Amazonas, 15 in Roraima, 144 in Pará, 16 in Amapá, 139 in Tocantins, 141 in Mato Grosso, as well as 181 municipalities in the State of Maranhão, west of the 44th Meridian, among which, 21 are partially integrated into the Legal Amazon. It covers an area of around 5,015,067.75 km², taking up around 58.9% of the Brazilian territory.

For further information see: Instituto Brasileiro de Geografia e Estatística. *Legal Amazon*. 2020, Accessible at: <https://www.ibge.gov.br/en/geosciences/environmental-information/vegetation/17927-legal-amazon.html?=&t=o-que-e>. [Accessed on 28 March, 2022]

⁴ Projeto MapBiomias. *Mapeamento Da Superfície De Mineração Industrial E Garimpo No Brasil - Coleção 6*. 2022, Accessible at: <https://mapbiomas.org/estatisticas> [Last accessed on 1 February, 2022].

⁵ Solomon Islands Voluntary National Review, June 2020 p.54, https://sustainabledevelopment.un.org/content/documents/26795VNR_2020_Solomon_Report.pdf

clean, healthy and sustainable environment is protected, and for the State to ensure “effective remedies against such abuses.”⁶ These and other impacts are in part due to lack of respect for the meaningful participation and consent of local communities by logging plans and operations, as well as a lack of monitoring and enforcement of laws by government authorities.

Indonesia

Our partners in West Papua have drawn our attention to similar issues. There, the forest coverage remains the highest of Indonesia, in comparison to other regions. However, between 2001 to 2018, West-Papua lost at least 713.766 hectares of its forest, mainly because of the expansion of palm-oil plantations, the production of pulpwood, selective logging, and the continuous clearance for infrastructure expansion. A study conducted on palm-oil plantations in West-Papua shows that this activity contributed to the changes in environmental conditions in the areas of the plantations, particularly as far as the quality of water and air is concerned.

Chemical substances used in the production process, in particular insecticides and pesticides, enter the water systems around the plantation area. The plantation drainage systems are typically connected to small rivers and swamps that are often used by the local communities for fishing, drinking water and bathing. Communities living around the plantations are increasingly concerned about water contamination, and thus about the respect and protection of their human right to safe drinking water. They worry that they will no longer be able to find fish nor be able to access clean water for their daily use.

In general, the use of manipulation, corruption, intimidation, or violence against the local indigenous people have been reported in relation to the extraction of natural resources. Instead of improving living conditions, the activities of the mining, palm-oil and logging industries in indigenous Papuan lands and forest have been contributing to the poverty in which local indigenous communities live. Indigenous Papuans are often left with the option of either leaving their lands altogether or agreeing to an arrangement with the company which can push them into a more marginalized situation.

Given the pervasiveness of human rights abuses and the context of impunity often enjoyed by corporations, international avenues towards accountability are critical. In June 2014, the UN Human Rights Council adopted resolution 26/9 establishing an intergovernmental working group to elaborate an international legally binding instrument to regulate under international human rights law the activities of transnational corporations and other business enterprises. Importantly, the 2021 draft by the Working Group recognizes the disproportionate impacts of business abuses on indigenous peoples, amongst other groups, and calls for businesses to conduct meaningful consultations in accordance with the principle of free, prior and informed consent. It also notably defines “human rights abuse” to include any direct or indirect harm to

⁶ Letter, including Annex, from UN High Commissioner for Human Rights Michelle Bachelet to Solomon Islands, 21 February 2022, <https://www.ohchr.org/sites/default/files/2022-03/Solomon%20Islands.pdf>

the enjoyment of a safe, clean, healthy and sustainable environment, amongst other human rights.

Franciscans International underscores the need for businesses to undertake ongoing human rights due diligence, including by ensuring the free, prior and informed consent of indigenous peoples. In cases where human rights abuses do occur, impacted individuals should have access to justice; accordingly, we call on all States to support the process towards a legally binding instrument to regulate transnational corporations under international human rights law.