

# **EXTRACTIVE INDUSTRIES and INDIGENOUS PEOPLE in LATIN AMERICA**

## **RECOMMENDATIONS to the EUROPEAN UNION**

### **LATIN AMERICAN MINING MONITORING PROGRAMME**

LAMMP (Latin American Mining Monitoring Programme) is a UK-based charity supporting rural and indigenous women activists and human rights defenders affected by mining developments. Funded by the European Instrument for Democracy and Human Rights, we work in Venezuela, Mexico, Guatemala, Peru, Ecuador and Bolivia.

These pages describe the situation we find, and set out our recommendations for improvement in each of four principal areas of concern:

1. Difficulties in implementation on the ground of the policy of Free, Prior and Informed Consent (FPIC) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
2. Forced evictions, security and human rights violations against indigenous people
3. Corporate accountability and victims' access to remedy
4. Opportunities for the European Union to promote and protect indigenous peoples' rights on the ground.

In addition, we have some some recommendations specific to:

5. Workings of the European Instrument for Democracy and Human Rights (EIDHR).

## **BACKGROUND**

Threats to the environment put women's livelihoods, families, health, security, rights and culture at risk. A growing number of women are recognising that their activism is essential to improving not only their own individual lives, but also their communities. Yet even though environmental contamination disproportionately impacts on women, they are less likely to be invited to take part in community consultations, less likely to be compensated during relocation and less likely to participate in training workshops. When mining disasters happen, the burden of feeding the family often falls to women, and many are forced to become breadwinners when men are no longer able to farm due to contamination and must migrate in search of work. Women activists are also more vulnerable to violence and sexual attacks during protests. Centuries of exclusion means that their activism is not considered important, and even that their work is ridiculed.

# 1. Difficulties in implementation on the ground of the policy of Free, Prior and Informed Consent (FPIC) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Concern</b></p>	<p>Despite millions of indigenous people taking part in public consultations regarding extractive projects, in some countries there is a reluctance to recognise FPIC as a right.</p> <p>For example, in Mexico business enterprises (through their Consejo Coordinador Empresarial) consider that – because FPIC has a negative impact on business - the government should not expect companies to adhere to community decisions, thus undermining the entire concept of consultation.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Impact on Indigenous Peoples</b></p>	<p>States have the obligation under international law to consult indigenous communities regarding any project or programme, including resource extraction, that may directly or indirectly affect them. However, indigenous peoples continue to report:</p> <ul style="list-style-type: none"> <li>• Arbitrary selection of community members attending consultations, for example excluding those averse to mining and natural resource extraction</li> <li>• Failure to take into account the language and literacy barriers in consultation meetings</li> <li>• Failure to take into account the economic and time resources for attending the consultations</li> <li>• Absence of space provided for negotiation and community feedback.</li> </ul>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Gender Issues</b></p>	<p>Although failure to consult communities affects all of its members, women are disproportionately excluded from decision-making processes, and their specific priorities and rights are overlooked. Rooted in long-standing inequality and gender discrimination, the lack of consultation effectively reinforces the power gap between men and women.</p> <p>Lack of consultation stems from:</p> <ul style="list-style-type: none"> <li>• Women not being considered legal owners of the land under customary law, despite being the principal carer for household and families</li> <li>• Deeply-rooted gender discrimination confines women to the household and domestic sphere, affecting their opportunities to participate in decision-making processes, free from prejudice and violence.</li> </ul>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Recommendations</b></p>	<ul style="list-style-type: none"> <li>• For EU member states to sign, ratify and implement the ILO Convention 169 on the rights of indigenous and tribal peoples, showing commitment to upholding international human rights law and standards</li> <li>• For EU member states to include strengthened references to indigenous peoples' rights in their Business and Human Rights National Action Plans (NAPS). Furthermore, NAPs must also take into account inter-sectional forms of discrimination as established by CEDAW and CERD.</li> <li>• Create an EU Regional Action Plan for Indigenous Peoples and the Extractive Industries, with a commitment to gender equality and women's empowerment.</li> </ul>

## 2. Forced Evictions, Security and Human Rights Violations against Indigenous People

<b>Concern</b>	<p>Across Latin America there are abundant examples of grave human rights violations against indigenous peoples during forced evictions. Furthermore, mining companies engage private security personnel to protect their operations. In turn private security guards threaten and harass indigenous people, and report activists to the police.</p> <p>A number of European security firms have been involved in violations of human rights and collusion with police during evictions, thus undermining democratic institutions.</p>
<b>Impact on Indigenous Peoples</b>	<p>Forced evictions constitute a gross violation of a series of internationally-recognised human rights, including but not limited to the right to adequate housing, food, water, health, and security of the person. For indigenous peoples, displacement processes can also violate their right to land (UN Habitat).</p>
<b>Gender Issues</b>	<p>It is recognised that women are disproportionately affected by the detrimental impacts of forced evictions and land loss (UN Habitat). Forced eviction entails direct and indirect violence against women before, during and after the event. These forms of violence can include psychological, physical and sexual intimidation, harassment and abuse.</p>
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>• For the EU Parliament to examine opportunities to strengthen and extend EU legislation to hold European mining corporations accountable for violations of indigenous peoples' rights in extraterritorial activities through domestic courts</li> <li>• For the EU to engage in discussions at the UN Forum on Business and Human Rights regarding measures to mitigate and prevent the most serious forms of human rights violations of indigenous peoples</li> <li>• For EU member states to request the World Bank and other international financial institutions, including the European Investment Bank, to ensure that the lending policies of the banks reflect and respect the UNDRIP, and are in line with the UNGP, CEDAW and CERD as well as the ILO169 on the right to free, prior and informed consent.</li> </ul>

### 3. Corporate Accountability and Victims' Access to Remedy

<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Concern</b></p>	<p>In line with the UN Guiding Principles for Business and Human Rights (UNGP), states have an obligation to protect human rights, and corporations have a responsibility to respect them. Following from these two premises, both parties share a duty to provide victims of violations with effective and reliable grievance mechanisms. In doing so, states and corporations are to be held accountable in addressing adverse human rights impacts.</p> <p>Nevertheless, indigenous peoples' struggles in the context of natural resource extraction in Latin America demonstrates the breaches in abiding by these standards.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Impact on Indigenous Peoples</b></p>	<p>Failure to respect Human Rights and to provide grievance mechanisms for indigenous peoples affected by corporate activities has resulted in:</p> <ul style="list-style-type: none"> <li>• Criminalisation of indigenous leaders and their communities, especially those engaged in peaceful protests and activism</li> <li>• Systematic failure to investigate crimes committed against Indigenous peoples involved in land struggles</li> <li>• High level of militarisation within indigenous peoples' territories, without prior consultation</li> <li>• Weak democratic institutions proving to be unreliable and unable to protect indigenous peoples and their rights (IACHR).</li> <li>• Lack of legitimate and accessible platforms for dialogue, and lack of information regarding companies' grievance mechanisms</li> <li>• Lack of transparency over companies' role in contributing to human rights violations</li> <li>• Failure to carry out human rights due diligence</li> <li>• Inadequate function (or total lack) of remedy mechanisms for compensation in the event of land loss.</li> </ul>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Gender Issues</b></p>	<p>LAMMP has noted with alarm the criminalisation of women activists, and the increasing gender-based violence in the context of the extractive industries. As indigenous women are increasingly taking to the streets to express their concerns over natural resource extraction and for the right to consultation, they are further exposed to threats and violence that remain in impunity.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>Recommendations</b></p>	<ul style="list-style-type: none"> <li>• For EU member states to establish in their Business and HR National Action Plans a HR framework that guides European corporations in their contacts with indigenous people, and which provides access to reliable grievance mechanism to address indigenous peoples' allegations</li> <li>• To establish an effective, affordable and accessible grievance mechanism in line with the OECD Guidelines, where indigenous peoples can address allegations of EU corporate violations of their rights, with particular attention to the violation of women's rights</li> <li>• To engage in discussions at the UN Forum on Business and Human Rights regarding measures to mitigate and prevent the most serious forms of human rights violations of indigenous peoples.</li> <li>• For the European Union to take steps against the criminalisation of Latin American women environmental defenders, and to meet its duty to ensure that <u>all</u> forms of violence against women are punished.</li> </ul>

## 4. Opportunities for the European Union to promote and protect indigenous peoples' rights on the ground

<b>Concern</b>	<p>Over the last decade, various instruments have been put in place to strengthen commitments towards an engagement which respects rights, but connections between these instruments and indigenous peoples' rights remain unclear at the operational level.</p> <p>The UN Guiding Principles on Business and HR regulate business' extraterritorial activities through the creation of National Action Plans (NAPs)</p> <p>The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (the Guidelines) require adhering countries to create National Contact Points (NCP) to support their implementation and provide stakeholders with a mediation mechanism for resolving conflict issues that may arise in the process.</p> <p>The European Commission is not a formal National Contact Point as such, but has stated its commitment to the success of the Guidelines, and a majority of EU member states have set up National Contact Points.</p> <p>The Extractive Industry Transparency Initiative (EITI) aims to promote open and accountable management of natural resources, and to enhance transparency in the mineral supply chain. To date, the United Kingdom is the only EU member state to have adhered to the EITI.</p> <p>The European Union is a key actor in the international trade of natural resources through various bilateral and multilateral free trade agreements (FTAs).</p>
<b>Impact on Indigenous Peoples</b>	<p>The voluntary and non-binding nature of these instruments as well as the scarce reference to indigenous peoples' rights, or lack thereof, poses the risk of making it a side-issue and dilutes states' obligations in protecting the rights of indigenous peoples. Consequently, these instruments may exacerbate discrimination against indigenous peoples.</p> <p>At LAMMP we have noticed that when reference to indigenous peoples' rights is made, the scope appears narrow and categorise indigenous communities as being "vulnerable groups" as opposed to actors for social change.</p>
<b>Gender Issues</b>	<p>A significant challenge that LAMMP has identified in the implementation of the above initiatives and instruments is the complete absence of gender, and any acknowledgement of the disproportionate impacts of natural resource extraction on women's rights and livelihoods.</p> <p>Accordingly, LAMMP believes it is critical to establish gender discrimination as a cross-cutting theme across EU initiatives to promote and protect indigenous peoples' rights to uphold its vision of non-discrimination and women's empowerment.</p>
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>• Ensure that all Free Trade Agreements by both the EU and by its member states comply with international human rights law, and include provisions designed to protect and promote the rights of indigenous peoples and of women from indigenous communities.</li> <li>• Encourage EU member states to join the EITI, and to uphold standards of transparency in the natural resources supply chain.</li> <li>• Create a EU regional plan to engage with the EITI, taking into account the multitude of impacts of the extractive industries on indigenous men and women, including a mandatory human rights impact assessment and due diligence with support of third-party evaluation.</li> <li>• Establish a forum for dialogue with indigenous peoples' representatives to consider measures to adopt to improve relations between communities and companies in EU jurisdiction.</li> <li>• For the EU Parliament to examine opportunities to strengthen and extend EU legislation to hold EU corporations accountable for violations of indigenous peoples' rights in extraterritorial activities through domestic courts</li> <li>• Recommend to EU member states to request the World Bank and other international financial institutions, including the European Investment Bank, to ensure lending policies of the banks reflect and respect the UNDRIP, and are in line with the UNGP, CEDAW and CERD as well as the ILO 169 on the right to Free, Prior and Informed Consent.</li> </ul>

## 5. Recommendations specific to the EIDHR

Concern	<p>Given their limited organisational capacity, it is very difficult for indigenous communities directly impacted by resource extraction projects to access financial support. In turn, this lack of funds contributes to the dis-empowerment and victimisation of community-based groups.</p>
Indigenous Peoples	<p>Unlike Africa and Asia (where there are many opportunities to access funding), the number of sources providing direct financial resources to indigenous groups in Latin America is small. Furthermore funding tends to concentrate on poverty-reduction programmes. This means that issues linked to the impact of mining activities on civil and political rights are not prioritised, despite the fact that several UN Special Rapporteurs have identified the extractive industries as the most significant threat faced by indigenous peoples in Latin America.</p>
Gender Issues	<ul style="list-style-type: none"> <li>• It is difficult for women activists to obtain funds, not only because their work is perceived as secondary but also because philanthropic trusts tend to favour big issues usually tackled by large, male-dominated organisations</li> <li>• The traditional social context within which indigenous women operate means that when they challenge government policies and irresponsible corporate practices they are also challenging male power and dominance (patriarchy). The fact that women are challenging patriarchy with their activism helps to understand why their work in defence of individual and collective rights frequently triggers gender-based violence.</li> </ul>
Recommendations	<ul style="list-style-type: none"> <li>• Continue to provide direct support through the EIDHR for indigenous peoples and civil society to engage in long-term capacity-building projects. Building women's capacity in HR and economic rights, protection and advocacy should be prioritised.</li> <li>• Support civil society in the protection of indigenous human rights defenders from criminalisation and rights violations in the context of natural resource extraction</li> <li>• Identify rural and indigenous women living in the proximity of a mine as a vulnerable group, and ensure that they are provided with adequate information (in their native language) about the impact of mining activities on their reproductive health, and ensure that women's solutions and priorities are respected.</li> <li>• Support proposals that seek to lobby for women to be recognised as owners of land in their own right, and legally able to manage ancestral lands. Because the law does not protect indigenous women's individual rights, they are traditionally seen as victims. This in turn facilitates that mining projects do not see women as stakeholders, making it almost impossible for women to receive compensation.</li> <li>• Provide financial support to grass-roots organisations that work at the regional level and seek to develop regional platforms working on local issues. Women's groups are less visible, making it more difficult for them to access support from international funders.</li> <li>• Prioritise proposals that are innovative and working at the intersection of environmental justice and women's rights. Women activists face multiple challenges, so often the funding of one specific area (for example, capacity-building) does not address the interaction between individual women's rights, environmental justice and HR.</li> <li>• In LAMMP's experience, it is important not only to support projects that seek to protect women activists, but also to enhance or promote women's rights and freedoms in order to achieve greater social equality.</li> <li>• Prioritise proposals that encourage women's efforts to increase their participation in policy-making at the local, national and international levels. Indigenous women activists are often prevented from travelling because they lack identification documents. As the great majority of them are illiterate, they need support in order to obtain a visa. These basic "gender issues" perpetuate women's exclusion; but when women are included in negotiations this helps to strengthen their voice and raise their profile at local level.</li> <li>• Prioritise proposals that support "integral" protection programmes for women activists, including the development of a media strategy to constantly monitor and document the security of at-risk activists and keep their situations in the public eye.</li> <li>• Protection programmes need to be "tuned" with women's responsibilities for childcare, and therefore security plans need to include children as well. For example, women's emotional well-being is severely compromised during long and protracted legal charges. Relocation programme need to have a transition period in order to facilitate adjustment back into the community.</li> </ul>