

To the President of the General Assembly

To the WCIP Global Coordinating Group

To the advisers of the WCIP

Open letter: Draft outcome document to be adopted by the General Assembly on 22 and 23rd September 2014

We, 51 participants from 14 countries, members and representatives of various indigenous organisations of Africa, indigenous-partner organisations, the United Nations Permanent Forum on Indigenous Issues, the African Commission of Human and Peoples' Rights, and the Global Coordinating Group of the WCIP, have been hosted by Ogiek Peoples' Development Program (OPDP) and the International Land Coalition Africa (ILC) for the first Indigenous People's Conference on Land Policy in Africa from 13th to 14th August 2014 in Nairobi, Kenya.

The conference reviewed the state of indigenous peoples' rights to lands, territories and resources at national and continental levels, and produced a task force group to develop an advocacy agenda for promoting indigenous peoples' land rights in Africa. We analysed the WCIP outcome document (1st draft) and developed a common response, proposing amendments which reflect the minimum standards set out in the UNDRIP and in the Alta Outcome Document, as well as the concerns and realities that we face as indigenous peoples in Africa.

We have taken this opportunity to look at specific provisions that relate to indigenous peoples' rights to land, territories, and resources and we strongly recommend the following proposed amendments to the Draft outcome document to be adopted by the General Assembly on 22-23 September 2014:

Paragraph 14 (formerly OP8 and 9)

The paragraph currently reads:

14. We acknowledge that indigenous peoples' justice institutions can play a positive role in dispute resolution and contribute to harmonious relationships within indigenous peoples' communities and within society, in line with international human rights standards. We commit to coordination and dialogue with indigenous peoples' justice institutions, where those institutions exist. **[OP8 & OP9]**

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We suggest the following amendments:

14. We acknowledge that indigenous peoples' justice institutions can play a positive role in dispute resolution and contribute to harmonious relationships within indigenous peoples' communities and within society, in line with international human rights standards **and norms. All indigenous persons should enjoy full and equal access to these justice mechanisms without discrimination.** We commit to **promote,** coordinate and dialogue with indigenous peoples' justice institutions, where these institutions exist. [OP8 & OP9]

Paragraph 16 (formerly OP22)

The paragraph currently reads:

16. We commit to establish at the national level, where appropriate and necessary and in conjunction with indigenous peoples concerned, fair, independent, impartial, open and transparent mechanisms to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources. [OP22]

We suggest the following amendments:

16. We commit to establish at the national level, ~~where appropriate and necessary~~ and in conjunction with indigenous peoples concerned, fair, independent, impartial, open and transparent mechanisms to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources. [OP22]

Paragraph 17 (formerly OP23)

The paragraph currently reads:

17. We commit to define and where appropriate provide, in conjunction with indigenous peoples, programmes and resources to protect and support indigenous peoples' traditional occupations, economies, livelihoods, and food security. [OP23]

We suggest the following amendments

17. We commit to define and ~~where appropriate~~ provide, in conjunction with indigenous peoples, programmes and resources to protect and support indigenous peoples' traditional occupations, **local and diverse** economies, livelihoods, and food security. [OP23]

Paragraph 18 (formerly OP25)

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The paragraph currently reads:

18. We commit to address the impact or potential impact of major development projects, including extractive industries, on indigenous peoples to ensure transparency and benefit sharing. Where appropriate, the rights of indigenous peoples regarding development of their lands, territories and resources, will be incorporated into law, policies and practice. [OP25]

We suggest the following amendments:

18. We commit to address the impact or potential impact of ~~major~~ development projects, including extractive industries, on indigenous peoples to ensure transparency and benefit sharing. ~~Where appropriate,~~ The rights of indigenous peoples regarding development **exploitation** of their lands, territories and resources, will be incorporated into law, policies and practices ***in accordance with international standards. In cases where they are being or have been removed, displaced and/or dispossessed, States shall provide restitution or when this is not possible, just, fair and equitable compensation.*** [OP25]

Paragraph 19 (formerly OP12 and 26)

The paragraph currently reads:

19. We commit to give effect to indigenous peoples' right to their religious and cultural sites, including access to and repatriation of ceremonial objects and human remains. We will ensure fair, transparent and effective mechanisms are established, in conjunction with indigenous peoples concerned. [OP12, OP26]

We suggest the following amendments:

19. We commit to give effect to indigenous peoples' right to ***the protection, preservation and restitution of*** their religious and cultural sites ***and landscapes,*** including access to and repatriation of ceremonial objects and human remains. We ~~will~~***shall*** ensure fair, transparent and effective mechanisms are established ***to effectively promote the implementation of this right,*** in conjunction with indigenous peoples concerned. [OP12, OP26]

Paragraph 20 (formerly OP33)

The paragraph currently reads:

20. We urge Member States to initiate processes to demilitarize indigenous peoples lands and territories, unless militarization is justified by a relevant public interest. Where militarization exists, we urge Member States to immediately commence effective consultations with the indigenous peoples concerned. [OP33]

We suggest the following amendments:

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20. We urge ~~commit to cease~~ Member States to initiate processes to de **the militarization of** indigenous peoples lands and territories, **oceans and waters,** unless militarization is justified by a relevant public interest. Where militarization exists, we urge Member States to immediately commence effective consultations with the indigenous peoples concerned **in order to ensure the protection of their rights, being aware and sensitive to loss of life and destruction of property.** [OP33].

New OP

Much like current paragraph 3 of the first draft which gives an overarching recognition to free, prior and informed consent, we wish to suggest the following additional operational paragraph (new **OP**), reflecting an acknowledgement of the importance of the right to redress:

We commit to guarantee Indigenous peoples the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

We wish the forthcoming last round of consultations will ensure that indigenous peoples' issues will be properly addressed in the Outcome Document of the WCIP, and the contents of the United Nations Declaration on the Rights of Indigenous Peoples and the Alta Outcome document reflected.

We would like to express our gratitude to the Coordinating Group of the WCIP and also take this opportunity to express the feelings of our highest consideration and esteem to the Presidency of the General Assembly,

On behalf of the participants of the first Indigenous People's Conference on Land Policy in Africa:

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