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# INDIGENOUS PEOPLES, FPIC, BUSINESS & HUMAN RIGHTS

## SUBMISSION TO THE UN WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

Amnesty International is pleased to make a submission to the call by the UN Working Group on Business and Human Rights, for their report on Indigenous Peoples' Free, Prior and Informed Consent (FPIC), Business and Human Rights.

This submission reflects on several questions posed by the Working Group and is organized according to the numbered questions in the call for submissions.<sup>1</sup> It is not an exhaustive account of Amnesty International's concerns. Where responses from companies have been received in the course of Amnesty International's research, these are referenced in the footnotes, where we link to the output in which the response is reflected or included in full.

### [2] WHAT ARE THE MOST COMMON BARRIERS TO EFFECTIVE FPIC PROCESSES THAT YOU HAVE OBSERVED IN YOUR WORK?

The most common barriers to effective FPIC processes Amnesty International observed while working with Indigenous Peoples are weak or absent legal frameworks, with FPIC often treated as consultation rather than consent; economic and political pressures that prioritize fast-tracking projects over Indigenous rights; procedural flaws such as insufficient time, lack of access to information, and delegating consultations to companies with vested interests; exclusionary practices that ignore traditional governance structures, failure to recognize Indigenous status, and lack of enforcement mechanisms. In some contexts, coercion and use of force further erode trust and make genuine consent impossible. These patterns reflect a global trend where states and corporations prioritize resource extraction and infrastructure development over Indigenous Peoples' right to self-determination.

The UN Committee on the Elimination of Racial Discrimination (CERD) regretted that **Canada** views "FPIC and the duty to consult merely as a requirement to engage in meaningful dialogue and guarantee a process, rather than to achieve a specific result".<sup>2</sup> Canada has taken some steps to guarantee FPIC, including passing the UN Declaration on the Rights of Indigenous Peoples Act, which requires harmonization of domestic legislation with UNDRIP.<sup>3</sup> However, in June 2025, the Canadian government passed the Building Canada Act which encourages the fast-tracking of infrastructure projects without safeguarding FPIC rights over development proposals that affect their territories.<sup>4</sup> The legislation gives Cabinet the power to designate projects such as ports, pipelines and dams as being in the "national interest," allowing them to speed through or bypass environmental and consultation regulatory processes.<sup>5</sup> Indigenous leaders have condemned the legislation, stating that the government failed to adequately consult Indigenous Peoples.<sup>6</sup> The Building Canada Act reflects a trend seen in a series of provincial bills across Canada that invoke economic urgency to justify curtailing environmental protections, consultation with Indigenous Peoples, among other human rights protections.<sup>7</sup>

<sup>1</sup> <https://www.ohchr.org/en/calls-for-input/2025/call-inputs-indigenous-peoples-free-prior-and-informed-consent-business-and>

<sup>2</sup> CERD, "Letter to the State of Canada", 24 November 2020, CERD/EWUAP/102nd session/2020/MJ/CS/ks.

<sup>3</sup> Canada, United Nations Declaration on the Rights of Indigenous Peoples Act, 2021. On 21 June 2023, the federal government released the UN Declaration Act Action Plan to implement UNDRIP domestically. According to the UN Special Rapporteur on the Rights of Indigenous People, "the action plan has been criticized by Indigenous Peoples in Canada, who expressed the view that insufficient time had been provided for consultations, and that it lacked detailed implementation measures". Canada, United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan, 21 June 2023; UNGA, *Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples*, José Francisco Calí Tzay, A/HRC/54/31/Add.2, 24 July 2023, para. 12.

<sup>4</sup> Parliament of Canada, *Bill C-5, An Act to enact the Free Trade and Labour Mobility in Canada Act and the Building Canada Act*, 26 June 2025.

<sup>5</sup> *Act to enact the Free Trade and Labour Mobility in Canada*.

<sup>6</sup> Amnesty International Canada, "Amnesty International Canada concerned that passage of Bill C-5 sidelines Indigenous rights", 4 July 2025.

<sup>7</sup> Legislative Assembly of Ontario, *Bill 5, Protect Ontario by Unleashing our Economy Act, 2025*, 5 June 2025; Legislative Assembly of British Columbia, *Bill 14, Renewable Energy Projects (Streamlined Permitting) Act*, [SBC 2025] Chapter 12, 29 May 2025; Legislative Assembly of British Columbia, *Bill 15, Infrastructure Projects Act*, [SBC 2025] Chapter 13, 29 May 2025.

This legal uncertainty has arguably led to businesses misinterpreting their responsibility to respect FPIC. In the case of the Coastal GasLink (CGL) pipeline, Amnesty International's research found that the consultation process did not meet the criteria developed by international human rights standards. Instead of focusing on securing the FPIC of the Wet'suwet'en Hereditary Chiefs and their clans, the process prioritized "relationship-building, mitigation measures, and economic benefits", thereby breaching their collective right to consultation to obtain FPIC and their right to self-determination.<sup>8</sup>

Researching violations of the rights of the Indigenous Maasai people in **Tanzania**, Amnesty International found that Ngorongoro District Council allocated the Loliondo division of Tanzania's northern Ngorongoro district as a hunting concession to tourism businesses without first consulting the Maasai People. In June 2022, the Ministry of Natural Resources and Tourism announced that it was demarcating 1,500km<sup>2</sup> out of 4,000km<sup>2</sup> of Maasai territory for conservation. Government security forces used force, including live ammunition and tear gas, to crush protests by Maasai residents assembled in Ololosokwan village to resist a demarcation exercise. The 1,500km<sup>2</sup> of land, part of which is allocated to tourism businesses - Klein's Camp, a property leased by &BEYOND, Otterlo Business Corporation (OBC) and TAASA Lodge – is within an area that was settled and legally owned by the Maasai. Community members told Amnesty International that OBC representatives known to them and OBC branded vehicles were present, and that the security forces set up camp on OBC property and were accompanied by OBC staff and vehicles into Loliondo villages, during all of the evictions. One of the most significant barriers to the ability of the Maasai to gain recognition of their FPIC rights is the failure of the Tanzanian authorities to recognize the Maasai as an Indigenous People and their right to their ancestral lands in Loliondo. This contributed to a regulatory environment in which the companies involved had no incentive to make provision in their business plans for the accommodation of the rights of the Maasai.<sup>9</sup>

In the **USA**, recent measures introduced under the Trump administration fast-tracked permits and reduced environmental review requirements for mining and critical mineral projects,<sup>10</sup> allowing agencies discretion over whether public review and comment on draft environmental impact statements is necessary – a process previously mandatory.<sup>11</sup>

FPIC is not codified in US law; instead the government relies on consultation with federally recognized Tribes. This framework denies Indigenous Peoples the right to withhold consent and limits engagement to federally recognized Tribal governments, excluding many traditional governance structures.<sup>12</sup> As such, extractive and other projects often advance on Indigenous territories without FPIC, including lands outside reservations that were lost through violent displacement.

Amnesty International's review of project documents for proposed lithium mines in Nevada identified consistent issues: requests by Tribes and advocates for more time to review documentation and provide input were repeatedly denied by government; insufficient time for feedback and lack of access to key information prevented communities from making informed decisions or engaging meaningfully; and none of the documents identified FPIC as the objective of the consultations.<sup>13</sup>

In **Sweden** mining projects have been approved and proceed without the FPIC of the Sámi, and FPIC is not integrated in national mining legislation. For example, the company Nickel Mountain AB, owned by Bluelake Minerals AB, has gained the right to extract nickel in Rönnebäck, Västerbotten. In 2020, CERD established that the Swedish state had violated the rights to property and effective remedy of affected Sámi. Due diligence processes were ineffective in this case, because the licensing process took place before the environmental and social impact assessment and therefore without taking into account its findings; furthermore the state delegated the consultation process to the company concerned, which had a vested interest in the project proceeding; the state exercised no oversight to ensure the rights of the Sámi were respected. Finally the process of awarding of the concession confers the right to extract, overruling the right of the property owner –

<sup>8</sup> Amnesty International, "Removed from our land for defending it": Criminalization, Intimidation and Harassment of Wet'suwet'en Land Defenders (AMR 20/7132/2023), 11 December 2023, <https://www.amnesty.org/en/documents/amr20/7132/2023/en/>, pp. 25-33; please see responses from companies who responded to our communications in the annex of the report; Amnesty International, *Extraction Extinction: Why the lifecycle of fossil fuels threatens life, nature and human rights* (POL 30/0438/2025), 12 November 2025, pp. 94 & 100.

<sup>9</sup> Amnesty International, *Business as Usual in Bloodied Land? Role of Businesses in Forced Evictions in Loliondo, Tanzania*, AFR 56/8320/2024, August 2024, <https://www.amnesty.org/en/documents/afr56/8320/2024/en/>, pp 5-6. For the responses we received to our communications from &BEYOND and TAASA Lodge, please see the annex of the report.

<sup>10</sup> The White House, "Unleashing American Energy", 20 January 2025.

<sup>11</sup> Linklaters, "U.S. Federal Agencies Significantly Modify Environmental Review Regulations and Policies", 15 July 2025.

<sup>12</sup> Provisions in Sections 1501.2 and 1501.7 of the CEQ Regulations that call for the involvement of Tribes that may be affected by a Federal proposal, CEQ issued a Memorandum to the Heads of Federal agencies encouraging more active solicitation of Tribal entities for participation as cooperating agencies in NEPA documents. In addition, Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (November, 6 2000), outlines requirements for consultation with Tribal Governments. Finally, most Federal agencies have policy documents that provide agency-specific provisions for coordination with Tribal entities. All of these requirements are applied, when appropriate, during the NEPA process. See: <https://ceq.doe.gov/get-involved/tribes-and-nepa.html>.

<sup>13</sup> Project documents, including environmental impact statements, on file with Amnesty International.

in this case the Sámi – to withhold consent.<sup>14</sup> The Swedish government continues to fail to act on the CERD recommendations to review the permit and ensure FPIC.<sup>15</sup>

## **[6] HOW SHOULD HUMAN RIGHTS DUE DILIGENCE PROCESSES BETTER INCORPORATE FPIC?**

Amnesty International carried out research into the due diligence policies of electric car manufacturing companies, assessing the extent to which these policies effectively ensure human rights protection throughout the supply chain. The organization found that few carmakers report policies that align with UNDRIP, and there is little evidence of FPIC being implemented in sourcing decisions. Some companies don't mention Indigenous Peoples' rights at all, and others only refer to it in a very general way without explaining how they put it into practice. Many companies don't publish evidence that they map supply chains down to mine level; they therefore cannot clearly show how FPIC is considered. There's also a strong reliance on voluntary third-party audits rather than direct engagement and assessments by the car manufacturers themselves.<sup>16</sup>

## **[7] HOW EFFECTIVE ARE EXISTING GRIEVANCE AND REMEDY MECHANISMS (JUDICIAL AND NON-JUDICIAL) IN ADDRESSING FPIC VIOLATIONS AND ABUSES?**

Amnesty International is currently researching the human rights violations resulting from the construction of the Itaipú hydroelectric dam on the River Paraná, on the border of **Paraguay** and **Brazil**, which caused the forced displacement of several hundred families of the Ava Guaraní Paranaense Indigenous People living in over 30 communities on both sides of the border, starting in 1982, without their consent, and inadequate or absent consultation and compensation.<sup>17</sup> In March 2025, a judicial settlement was reached between the government of Brazil and Itaipú Binacional, a state company set up by the two governments to build and manage the dam, to purchase 3000 hectares for two Paranaense Tekoha's in Brazil, as partial reparation for the harms caused by the building of the dam.<sup>18</sup> This resulted from a lawsuit brought by the Attorney General's Office, representing the interests of the Avá Guaraní Paranaenses, against Brazilian state agencies and Itaipú Binacional. As part of the settlement the government has also offered a formal apology.<sup>19</sup> Despite claims also being brought to the authorities in Paraguay, no similar redress has been offered; the government's position is that all affected people were adequately compensated. The still unfulfilled demands for justice on the Paraguay side, may be explained by the absence of a legislative framework guaranteeing Indigenous Peoples' rights, including land demarcation and FPIC, and reliance on administrative procedures which are entirely arbitrary and depend on political will which has proven to be absent.<sup>20</sup>

In **Norway**, in 2021, the Supreme Court ruled unanimously that the Storheia and Roan wind farm constructions in Fosen violated the Sámi reindeer herders' right to enjoy their culture.<sup>21</sup> Norwegian legislation does not sufficiently guarantee FPIC, and in 2016 the Sámi Parliament stated that the wind farm licenses were issued without obtaining the FPIC of the affected Sámi communities. The Court ruled the licenses and expropriation decisions invalid. However, the Court did not offer any guidance or roadmap for implementation of the judgment. In 2023, a mediation process concluded between the companies and the affected Sámi, but some of the agreed outcomes have yet to be implemented.<sup>22</sup>

<sup>14</sup> Lars-Anders Ågren et al v. Sweden, CERD/C/102/D/54/2013, 18 December 2020, paras 6.17-6.19.

<sup>15</sup> Just Transition Or 'Green Colonialism?': How mineral extraction and new energy projects without free, prior and informed consent are threatening Indigenous Sámi livelihoods and culture in Sweden, Norway and Finland, 1 January 2025, Index: EUR 20/8913/2025, <https://www.amnesty.org/en/documents/eur20/8913/2025/en/>, p 54. For the response from BlueLake Mineral to our communication, please see the annex of the report. The area where the mine would be located is of great natural and cultural importance for the Sámi. Throughout history, local Sámi have made a living in the area through reindeer herding and other livelihoods such as fishing, hunting, small-scale farming, food and herb gathering. More than 6,000 Sámi-owned reindeer currently depend on pasture here. Several Sámi representatives interviewed by Amnesty referred to Rönnbäck as a "core area" for Indigenous culture, including its sacred sites and strong storytelling tradition.

<sup>16</sup> Amnesty International, Recharge for rights: Ranking the human rights due diligence reporting of leading electric vehicle makers, ACT 30/8544/2024, October 2024, <https://www.amnesty.org/en/documents/ACT30/8544/2024/en/>, pp 6-11. For those responses to our communication that we received from companies covered in this research, see pp 82-101 of the report. Note the report reflects what companies disclose in their policies, not actual practice on the ground.

<sup>17</sup> Jorge Servín, Restitución de Tierras para los Indígenas Aváparanaenses: la Deuda que la Itaipu, no puede, ni debe seguir Desconociendo, April 2019.

<sup>18</sup> Tekoha is a concept with a wide complexity of meaning which can be imperfectly translated as "territory of life". The two are Tekoha Guasu Ocoy Jacutinga and Tekoha Guassu Guavira.

<sup>19</sup> Amnesty International, Brazil and Paraguay: Itaipú takes a step towards restoring land to the Avá Guaraní Paranaense People, but integral reparation is still pending, 1 April 2025.

<sup>20</sup> Please see the response from Itaipú Binacional to our communication in Annex 1.

<sup>21</sup> United Nations International Covenant on Civil and Political Rights, Art. 27.

<sup>22</sup> Just Transition or 'Green Colonialism?', pp. 37-40. For responses from the companies involved to our communication, please see the annex of the report. The Sami families on Fosen have been promised replacement winter grazing lands by 2027, but the process is moving very slowly.

## **[8] ARE THERE RISKS OF TOKENISM, MANIPULATION, OR MISREPRESENTATION IN FPIC PROCESSES, AND HOW CAN THEY BE MITIGATED?**

In the course of our research into nickel mining in the **Philippines**, we found that the FPIC procedures disregarded the Pala'wan's customary governance and decision-making systems. Legitimate leaders (Panglima) were largely excluded, while non-customary representatives were validated by authorities. Decisions were made by majority vote rather than traditional consensus-based decision making. Interviewees described bribery, coercion, and intimidation during the FPIC processes in Palawan, including offers of money and threats against opponents. In 2023, the NCIP temporarily suspended INC's FPIC process over bribery allegations. INC said all cases against the company, including the NCIP complaint, have been withdrawn.<sup>23</sup>

## **[12] WHAT ROLE DO NATIONAL HUMAN RIGHTS INSTITUTIONS, OMBUDSPERSONS, OR OTHER OVERSIGHT BODIES PLAY IN MONITORING AND ENFORCING COMPLIANCE?**

Multiple UN bodies have expressed concern regarding human rights abuses by **Canadian** companies operating internationally, abusing the rights of Indigenous Peoples in other countries. Canada continues to rely on ineffective voluntary and reporting measures to regulate corporate activity abroad.<sup>24</sup> Civil society groups and a number of UN experts have called on Canada to adopt mandatory human rights due diligence legislation.<sup>25</sup> Further, the Canadian Ombudsperson for Responsible Enterprise (CORE), a non-judicial grievance mechanism created to investigate allegations of abuse by Canadian companies abroad, has yet to be granted the independent investigatory powers needed to effectively serve impacted rights-holders.<sup>26</sup> Since May 2025, the position of CORE has been left vacant and attempts to contact the government for information have gone unanswered.<sup>27</sup> At least one active complaint concerns alleged violations of FPIC by a Canadian company.<sup>28</sup>

Amnesty International, in its research into nickel mining in the **Philippines**, documented serious irregularities in FPIC processes for nickel projects operated by Iplan Nickel Corporation (INC) and MacroAsia Mining Corporation (MMC), in Palawan – the ancestral home of the Pala'wan Indigenous People. INC began commercial operations in 2022 without the required Certification Precondition from the National Commission on Indigenous Peoples (NCIP), which confirms FPIC compliance. Despite a cease-and-desist order in 2023 and complaints from the Pala'wan, operations continued until the certification was granted two years later. MMC claimed to have obtained FPIC in 2010, yet its certification was delayed until 2023 following a legal settlement with the NCIP and additional FPIC processes with previously excluded communities.<sup>29</sup>

## **[13] PLEASE PROVIDE ANY COMMENTS, SUGGESTIONS, OR ADDITIONAL INFORMATION THAT YOU CONSIDER RELEVANT TO THIS REPORT.**

The Itaipú hydroelectric dam case discussed above raises questions as to how to address historical violations, when human rights standards and the respective states' ratification of treaties was different. UNDRIP and ILO 169 had not been developed at the time the dam was built, and neither state was a party to ICCPR, ICESCR or the American Convention on Human Rights (Paraguay had signed the American Convention in 1969 and Brazil was a party to ICERD). Both states were parties to ILO Convention 107 which allows for exceptions to obtaining "free consent" "in the interest of national economic development".<sup>30</sup> Nevertheless, a progressive, justice-oriented interpretation of the FPIC obligation, would require a recognition that the effects of the displacement of the Ava Guaraní Paranaenses continue to this day in the form of cultural dislocation, poverty, ill health and shattered and dispersed communities, that there is a continuing violation of

<sup>23</sup> Amnesty International, Philippines: What do we get in return? How the Philippines nickel boom harms human rights, Index: ASA 35/8607/2024, 9 January 2025, <https://www.amnesty.org/en/documents/asa35/8607/2024/en/>, p. 10. Both companies denied claims of bribery – their full responses to our communications are available in the annex of the report.

<sup>24</sup> UNGA, *Visit to Canada – Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay*, A/HRC/54/31/Add.2, 24 July 2023, paras. 70 & 72. CEDAW, Concluding observations on the tenth periodic report of Canada, 30 October 2024, CEDAW/C/CAN/CO/10, para. 42(e). Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Visit to Canada, 27 November 2020, A/HRC/45/12/Add.1, paras. 98-99.

<sup>25</sup> CNCA, "Model Legislation", <https://cnca-rcrce.ca/model-legislation/>.

<sup>26</sup> Government of Canada, "CORE-OCRE", <https://core-ombuds.canada.ca/index.aspx?lang=eng>, 14 April 2025; Special Rapporteur on the human rights to safe drinking water and sanitation, Pedro Arrojo Agudo, Visit to Canada, A/HRC/57/48/Add.1, 11 September 2024, para. 132.

<sup>27</sup> CNCA, "Campaign: Empower the C.O.R.E., Latest News, Statements", 22 October 2025, <https://cnca-rcrce.ca/2025/10/22/why-is-core-vacant/>.

<sup>28</sup> University of Toronto International Human Rights Program, Above Ground & Saving Okavango's Unique Life, Complaint filed with CORE, 9 April 2024.

<sup>29</sup> What do we get in return? pp 48-49. INC and MMC both denied all allegations and claim the FPIC processes were carried out in accordance with requirements, in contrast with Amnesty International's findings. Their full responses from the companies can be found in Annex 1 of the report.

<sup>30</sup> International Labour Organization, Convention 107 - Indigenous and Tribal Populations Convention, 1957, Art. 12.1.

the right to FPIC, and that a remedy must be provided.<sup>31</sup> That remedy, in accordance with Article 28.1 of UNDRIP, must be consulted with the affected Indigenous Peoples and their FPIC obtained.<sup>32</sup>

## RECOMMENDATIONS

States should:

- Ensure that companies have a clear and consistent legal framework that guarantees the right to FPIC in full compliance with international human rights law;
- Ensure that any voluntary FPIC guidelines that exist are backed up with legally binding provisions;
- Consult with Indigenous Peoples who have experienced historical violations in order to agree, with their FPIC, adequate and sufficient reparations;
- Engage Indigenous Peoples through their own representative institutions and decision-making processes; consultations must be inclusive of women and marginalized community members and provide adequate time and culturally appropriate information;
- Require companies to conduct due diligence in line with international human rights standards to ensure respect for human rights, including Indigenous Peoples rights, in their supply chains;
- Adopt and enforce regulations to hold transnational corporations accountable for human rights and environmental abuses in their home State, and remove barriers to victims seeking effective remedy in the jurisdiction where the parent company is domiciled;

Companies should:

- Develop FPIC protocols in line with international human rights law, ensure that they are built into all stages of project planning, ensure all staff understand that they are mandatory, and ensure they are known to affected rights-holders;
- Conduct ongoing human rights and environmental due diligence that includes FPIC verification at every stage of the project lifecycle, from exploration to post-closure; ensure due diligence processes identify, prevent and mitigate risks to Indigenous Peoples' rights; where adverse impacts are identified, provide effective remedy;
- Share all relevant project documentation, including environmental and human rights impact assessments, well in advance of consultations. Project proponents should cover the costs of independent technical and legal experts – chosen by the communities themselves – so rights-holders can fully understand the scope and implications of the project. Establish transparent and accessible grievance mechanisms for affected rights-holders.

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<sup>31</sup> The International Labour Organization now interprets ILO 107, in the states where it is not superceded by ILO 169, in line with a contemporary understanding of Indigenous Peoples' rights.

<sup>32</sup> It is nevertheless very important to recognise that whatever the status of the FPIC obligation in the early 1980s, the displacement constituted a series of human rights violations according to standards in force for the two states at the time. The full response of Itaipú Binacional can be found in Annex 1.



## ANNEX 1: RESPONSE FROM ITAIPÚ BINACIONAL



### Respuesta a nota del 25 de marzo de 2025 de Amnistía Internacional.

1. El acuerdo de conciliación de referencia, fue celebrado en el marco de la acción civil originaria N° 3555 presentada ante el Supremo Tribunal Federal del Brasil por la Procuraduría General de la República Federativa del Brasil, en representación de los intereses de las comunidades indígenas Avá Guaraní Paranaenses, contra el Estado de la Unión, el Instituto Nacional de Colonización y Reforma Agraria (INCRA), la Fundación Nacional de los Pueblos indígenas (FUNAI) y la empresa ITAIPU Binacional, por la supuesta violación de derechos humanos, específicamente contra las comunidades de los territorios de Guasu Ocoy-Jacutinga y Guasu Guavirá, causadas por acciones y omisiones imputadas a los demandados; el 08 de marzo de 2023, el Supremo Tribunal Federal determinó la suspensión de la acción judicial para la tentativa de conciliación en el ámbito de la Comisión de Conciliación de la Administración Pública Federal (CCAF). En esta instancia, la empresa ITAIPU Binacional, llegó a un acuerdo parcial, de carácter excepcional y de emergencia, ante la necesidad imperiosa de aplacar el conflicto suscitado entre los propietarios de establecimientos rurales e indígenas de la región oeste del Estado de Paraná, ante la invasión sufrida por catorce propiedades privadas. El acuerdo consiste en financiar la adquisición de 3.000 Has de tierra destinadas a las comunidades indígenas arriba citadas, además de acciones de restauración ambiental de las áreas adquiridas y el subsidio financiero para la disponibilidad de servicios públicos en dicha área mediante convenios específicos.

Conviene precisar que, la transacción es una forma de terminar un proceso judicial o prevenirlo, en la cual a través de la voluntad de las partes se llega a un acuerdo sobre una controversia. En base a ello, resulta oportuno señalar que los términos del acuerdo no implican el reconocimiento legal de ninguna de las premisas que fueron objeto de las negociaciones llevadas a cabo entre las partes y que fueron la base de este acuerdo.

### 2. 2.1 y 2.2.

La Procuraduría General de la República Federativa del Brasil y el Ministerio Público del Brasil han representado los intereses de las comunidades indígenas Ava Guaraní paranaense en el marco de la acción civil originaria N° 3555 ante el Supremo Tribunal Federal; por otra parte, la realización del relevamiento territorial sobre las tierras de interés de todas las comunidades indígenas en el Estado de Paraná, localizadas en la región de Guaíra y Terra Roxa (Tekoha Guasu Guavirá) y en la región de São Miguel do Iguazu, Itaipulândia y Santa Helena (Tekoha Ocoy-Jacutinga) y la respectiva consulta informada a las comunidades indígenas para la concreción del acuerdo, estuvo a cargo de la Fundação Nacional do Índio (FUNAI) y como tal, responden al proceso tramitado en dicho contexto ("Procedimiento de Resolução de Controvérsia" N° 00688.001232/2023-06 en trámite en la "Câmara de Mediação e Conciliação da Administração Pública Federal - CCAF/CGU/AGU"). Dicho esto, las mencionadas instituciones del Estado brasileño tendrían la información y documentación solicitada en los ítems 2.1 y 2.2 de la presente nota.

3. Previamente al inicio de las obras de construcción de la represa, ITAIPU Binacional, margen derecha, encargó un pormenorizado estudio multidisciplinario denominado "Investigaciones históricas, sociales y arqueológicas del área de influencia"; este trabajo técnico y académico desarrollado por etapas, desde el año 1975 al 1979, contó con la participación de científicos, arqueólogos y profesionales renombrados en diversas materias, como el Dr. Bartomeu Meliá, Dr. Gerardo Fogel, Dr. Augusto Fogel, Dr. Mariano Pedrozo, Josefina Plá, Mario Bernal, entre otros; así como expertos del Museo del Hombre de París. Esta investigación presentó informes históricos, económicos sociales, culturales y demográficos pormenorizados de gran utilidad que describen la situación en las zonas que serán afectadas por la construcción de la futura represa y en la cual se encontraban estos grupos indígenas; estos estudios sirvieron posteriormente para el proceso de reubicación de las comunidades afectadas, así como el rescate, protección y salvaguarda de la fauna y flora ubicada en zona del embalse.

ITAIPU Binacional, en abril de 1982, en la margen derecha procedió al reasentamiento conforme a la Ley y a los procedimientos reglados por las Instituciones competentes; la entidad binacional cumplió con el pedido del Instituto Nacional del Indígena (INDI), institución oficial del Estado paraguayo, responsable de las políticas indigenistas, y su vez trabajó de manera coordinada y articulada con organizaciones indigenistas no gubernamentales tales como la Asociación Indigenista del Paraguay (AIP), la Asociación de Parcialidades Indígenas (API) y por la Iglesia Católica, la Conferencia Episcopal Paraguaya (CEP), quienes no fueron solo garantes del proceso sino directamente ejecutantes del mismo.

Además del reasentamiento físico, ITAIPU implementó programas para fomentar el desarrollo socioeconómico y cultural de las comunidades reasentadas, así como otras parcialidades del Alto Paraná. Considerando que la reubicación podría afectar sus formas tradicionales de vida, por ello la empresa promovió iniciativas para que las comunidades se adaptaran a sus nuevos entornos sin perder su identidad cultural.

ITAIPU puso en marcha programas de capacitación en nuevas técnicas agrícolas y de manejo de recursos naturales, con el objetivo de asegurar que las familias indígenas pudieran aprovechar al máximo las nuevas tierras asignadas. Estos programas incluyeron apoyo técnico y financiamiento para proyectos productivos.

La capacitación también abarcó aspectos no agrícolas, como talleres de carpintería, artesanía y pequeñas industrias, con el fin de diversificar las fuentes de ingresos de las familias reasentadas. Este enfoque integral tenía como objetivo proporcionar no solo tierras, sino también oportunidades para que las comunidades mejorasen su bienestar económico.

ITAIPU reconoció la importancia de la cultura indígena y, por ello, promovió proyectos orientados a la preservación de las tradiciones y costumbres de las comunidades reasentadas. La empresa apoyó la creación de escuelas bilingües en las



que se enseñaba tanto en guaraní como en español o portugués, según el lado de la frontera, y fomentó la enseñanza de las tradiciones indígenas.

Además, se crearon espacios dentro de los nuevos territorios para la realización de ceremonias y rituales tradicionales, respetando así la vida espiritual de los pueblos indígenas. Estos proyectos reflejan un compromiso con la salvaguarda del patrimonio cultural de los Avá-Guaraní y otros grupos afectados.

4. 4.1 El acuerdo de conciliación de referencia, fue celebrado en el marco de la acción civil originaria N° 3555, en la cual el Supremo Tribunal Federal del Brasil, determinó la suspensión de la acción judicial para la tentativa de conciliación en el ámbito de la Comisión de Conciliación de la Administración Pública Federal (CCAF). En dicha instancia la empresa Itaipú Binacional, margen izquierda, ha llegado a un acuerdo parcial, de carácter excepcional y de emergencia, que consiste en financiar la adquisición de 3.000 Has de tierra destinadas a las comunidades indígenas Ava Guaraní denominadas Guasu Ocoy-Jacutinga y Guasu Guavirá de la región oeste del Estado de Paraná. Los términos del presente acuerdo no implican el reconocimiento legal de ninguna de las premisas que fueron objeto de las negociaciones llevadas a cabo entre las partes y que sirvieron de base para este acuerdo y, el mismo fue llevado adelante ante la necesidad imperiosa de aplacar el conflicto suscitado entre los propietarios de establecimientos rurales e indígenas de la región oeste del Estado de Paraná, ante la invasión sufrida por catorce propiedades privadas

4.2 En la margen derecha (lado paraguayo), la ITAIPU, en cooperación con instituciones del Estado Paraguayo, como el Instituto Nacional del Indígena (INDI), el Ministerio de Defensa y el Instituto de Bienestar Rural (IBR), con el apoyo de organizaciones civiles, emprendió el proceso de reubicación de grupos indígenas de la parcialidad Ava-Guaraní o Ava-Chiripá, entonces ubicados en propiedades privadas, localizadas dentro de la zona de afectación del embalse, según área expropiada por Ley N° 752/79.

Los trabajos de traslado para el reasentamiento se realizaron en abril de 1982, antes del llenado del embalse, y se enmarcaron en los parámetros del Proyecto "Guaraní", el cual fue delineado por organizaciones indigenistas, cuyos objetivos generales giraron en torno al reasentamiento de las comunidades indígenas afectadas por la obra, de tal modo a mitigar sus efectos negativos.

El proceso de traslado fue ejecutado por representantes del Proyecto "Guaraní": la Asociación Indigenista del Paraguay (AIP), con el apoyo de la Asociación de Parcialidades Indígenas (API) y la Conferencia Episcopal Paraguaya (CEP), con la coordinación del INDI y el apoyo de las FF.AA. En ese contexto, ITAIPU financió la adquisición de 2.000 ha (dos mil hectáreas), que fueron transferidas al INDI a los efectos de la creación de dos comunidades, Ko'ëju e Itabo, para el reasentamiento de los grupos indígenas en cuestión; otros dos inmuebles fueron donados por la Conferencia Episcopal Paraguaya y el Estado Paraguayo, respectivamente, con apoyo





de ITAIPU, para la creación de otras dos comunidades, Kiritó (1.012 hectáreas) y Yukyry (2.000 hectáreas).

En conclusión, en la margen derecha se procedió a un reasentamiento conforme a la Ley y a los procedimientos reglados por las Instituciones competentes; la entidad binacional financió la compra de dos inmuebles para el asiento de las comunidades afectadas y cumplió con el pedido del Instituto Nacional del Indígena (INDI), institución oficial del Estado paraguayo, responsable de las políticas indigenistas, que a su vez trabajó de manera coordinada y articulada con organizaciones indigenistas no gubernamentales como la Asociación Indigenista del Paraguay (AIP), la Asociación de Parcialidades Indígenas (API) y la Conferencia Episcopal Paraguaya (CEP) por parte de la Iglesia Católica.