DECLARATION

On the occasion of the announcement made by the United Nations Working Group on Business and Human Rights, the Regional office for Latin America and the Caribbean (UNDP) and the Government of Colombia regarding a Regional Forum on Business and Human Rights for Latin America and the Caribbean to be held in the city of Medellín, Colombia, from 28 and August 30, 2013:

Latin American communities along with regional and international organizations demand justice against the systematic human rights violations, pollution, exploitation and destruction of our territories and natural heritage perpetrated by national and transnational corporations. We emphasize that voluntary standards such as the United Nation’s Ruggie Guiding Principles are insufficient and incompatible with the protection of human rights and contribute to the impunity enjoyed by corporations who commit such violations on the continent in collusion with nation states.

Around the world transnational corporations (TNC) and their subsidiaries have become economic and political actors with an almost insurmountable ability to impose their interests. Through economic power TNC’s are able to influence legal frameworks and build an architecture of impunity that leaves them outside the realm of human rights regulations, and able to undermine democratic structures.

At the same time, TNCs have influenced policies and agreements to promote and protect investments at an unprecedented rate to the detriment of social security systems, environmental protections and social justice across the continent.

This situation has led to a state of disproportionate impunity and absolute defenselessness for victims of domestic and international policies of commodification of life and nature. In this sense the legitimacy and independence of regional, national and international bodies responsible for defending the primacy of human rights as something urgent and essential are threatened.

Voluntary Standards

The role of the UN is to achieve peace and seek to respect international law. For this purpose actual mechanisms are required to sanction companies and their executives who commit crimes against the population. This mandate should be designed to consolidate and strengthen the regulation and sanction of companies that violate human rights and require states to protect, respect and guarantee rights threatened by these violations.

Therefore, it is wrong that the Working Group on Business and Human Rights focus its efforts on promoting voluntary standards. The Ruggie Principles do not represent legally binding rules for companies and have no real incentive to implement what they themselves recommend. They start from the premise that human rights are negotiable by the business sector.
Considering the gravity of the lack of punishment for crimes, many systematic, that have been and continue to be committed by corporations on the continent and around the world, a Regional Forum of Latin American and Caribbean Working Group should not simply promote corporate social responsibility (CSR) as a moral duty based on social expectations instead of legally binding obligations for corporations. Not only this approach is inconsistent with the underlying rationale for the protection of human rights in the Americas, it actually puts them in danger.

Corporate Capture and Revolving Doors

Transnational corporations enjoy privileged access to the negotiating and multilateral discussion spaces of United Nations. Several of the UN experts in the field of business and human rights have strong linkages with TNCs involved in the violation of human rights. This behavior creates clear conflicts of interest and diminishing confidence in the UN system.

For example, Alexandra Guáqueta was a consultant for the mining company Cerrejón as well as the company’s representative to the Mining and Energy Committee of the Presidential Human Rights and International Humanitarian Law Program of the Colombian government, which brings together corporations, and the armed forces. Guáqueta, who was also a director of the Oxy Petroleum Colombia, has become the Latin American representative on the United Nations Working Group on Business and Human Rights.¹ Both Cerrejón and Oxy Petroleum have been implicated for their role in alleged human rights violations in Colombia.

For his part, John Ruggie left his post as the Secretary General's Special Rapporteur on Business and Human Rights to serve as a special consultant to the Canadian mining company Barrick Gold². This company has been allegedly implicated in multiple crimes against the rights of communities affected by its mining operations in Peru, the Dominican Republic, Argentina and Chile.

Persons holding a mandate in the UN Working Group should be totally independent of any business operation. The revolving doors between functions in states and multilateral organisations and large private companies encourage corruption. Sensitive information available to people in the public sector can be exploited by corporate interests, which usually enjoy supremacy in the public sector without any democratic control.

In the face of this situation we ask the organs of United Nations and especially the Human Rights Council and the Working Group that:

Regarding Compulsory Standards

¹ [http://www.shiftproject.org/profile/dr-alexandra-gu%C3%A1queta](http://www.shiftproject.org/profile/dr-alexandra-gu%C3%A1queta)
1. Progress be made towards the adoption of a binding international instrument on States, Business and Human Rights that will include a mechanism for victims to bring forward cases in order to obtain effective remediation and gain access to international justice.

2. The Working Group promotes compliance with mandatory national and international standards for corporations. These include those related to human rights, the environment, labour and freedom of association, corruption, autonomy and self-determination, among others.

3. The Working Group promotes that those States that have not already done so, incorporate in their legislation the criminal liability of corporations as legal persons. Furthermore, that this liability should be extended internationally.

4. Progress is made to establish an International Court of Human Rights or International Economic Court is established allowing for the investigation and sentencing of international economic actors.

5. States is encouraged to create mechanisms that will force corporations to compensate the victims of their activities recognizing that these states exercise jurisdiction, territorial or extraterritorial, applying the jurisdiction that the victims themselves choose, which will include civil, collective and criminal penalties, among others.

Regarding the corporate capture of States and the United Nations

1. The Working Group refrains from the appointment of corporate actors to positions dealing with the corporate sector and human rights.

2. The Working Group creates a mechanism that will control any interference by people representing business interests in issues and instances of human rights and public policy. Part of this mechanism will create a ‘cooling off’ period for persons entering or leaving the national or international public sector respectively in order to avoid conflicts of interest that are detrimental to society.

3. The Working Group publicizes the biographies of people nominated to such an office.

4. States, intergovernmental organizations and the UN do not allow the participation of corporations in policy making.

Regarding the participation of impacted communities and civil society organizations
1. Real and effective mechanisms for participation are generated in order to ensure that the representatives of the affected communities from various sectors and social movements have the ability to express their views and present their cases in the United Nations Framework.

2. The opinions and views of those communities, movements and organizations are presented in a transparent way and meaningfully taken into account in the construction and implementation of the policies of the United Nations system.

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We call on organizations and communities to redouble their efforts in demanding accountability and morality from States, multilateral organizations and corporations with respect to the rights of and reparations for victims as well as guarantees of non-repetition.

We encourage solidarity, reflection and collaborative efforts with trade unions, indigenous peoples, Afro-descendants and farmers from the region.

America, August 15, 2013

Signed by

CENSAT AGUA VIVA - AMIGOS DE LA TIERRA COLOMBIA
COLECTIVO DE ABOGADOS JOSÉ ALVEAR RESTREPO
FIAN INTERNACIONAL
ILSA COLOMBIA
TRANSNATIONAL INSTITUTE TNI

To sign the declaration, please send an email to a declaraciononucolombia@gmail.com