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To: Beatriz Balbin
Chef
Special Procedures Department
OHCHR

CC: Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

CC: Damilola S. Olawuyi
Chairperson-Rapporteur of the Working Group on the question of human rights and transnational corporations and other business enterprises

CC: David R. Boyd
Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

CC: Mary Lawlor
Special Rapporteur on the situation of human rights defenders

CC: Jose Francisco Cali Tzay
Special Rapporteur on the rights of Indigenous Peoples

CC: Marcos A. Orellana
Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous products and wastes

United Nations Human Rights
Office of the High Commissioner
Palais des Nations, 8-14 avenue de la Paix
CH - 1211 Geneva 10, Switzerland

Your references: [AL OTH 128/2023](#), [AL OTH 127/2023](#), [AL OTH 126/2023](#), [AL OTH 125/2003](#).
[\(07.11.2023\)](#)

18 March, 2024
By email: ohchr-registry@un.org

Solway Investment Group's Supplemental reply to Joint Communication from Special Procedures dated 07 November 2023

Dear Ms. Balbin,

Solway Investment Group (SIG) respectfully acknowledges the receipt of the Joint Communication AL OTH 128/2023 (07.11.2023).

As we conveyed in our previous communication to you on 19 January 2024 we are returning to you to provide further details regarding your inquiries for questions nine and ten based on the conclusion of our independent investigation.

In order to fully address the allegations around Mr. Choc and to determine their veracity we had launched a full and independent investigation in the fall of 2023 which was conducted by a leading US law firm with experience investigating human rights issues. Importantly, the investigation includes evidence-gathering on the ground in Guatemala and reviewing the alleged actions of Solway Investment Group, CGN-PRONICO employees, or any other persons who may have been acting on behalf of these entities or any personnel. Apart from defining the scope, Solway management did not interfere or guide the investigation in any way in order to maintain independence of the investigation.

The investigation could not include review of any actions taken by government officials acting in their official capacities, as Solway does not have a right to investigate government decisions or actions per se. In addition, the investigation team made numerous attempts to reach out to Mr. Choc to get his perspective and understand to what extent he may have evidence of Solway-linked personnel's involvement in any of the alleged acts against him. Unfortunately, the investigators did not receive any responses to the invitations from Mr. Choc and therefore we could not investigate specific allegations which presumably come from Mr. Choc regarding claims of Solway employee involvement.

However, we feel that the report impartially captures many of the issues which are at the heart of your allegations against Solway. We have included as an attachment to this letter the Summary Report of the Findings from the independent investigation which provides additional details and context to the responses in this letter. The report does not include any statements from Mr. Choc who, despite numerous attempts by the investigation team to contact and interview him, did not respond to any of the invitations to provide his side of the story.

We also would like to note that on 31 January 2024, after numerous procedural delays, all charges relating to allegations you have made against Solway and its Subsidiaries were dropped against Mr. Choc by the independent judiciary of Guatemala. As noted in our investigation summary Report, neither Solway or its Subsidiaries played an active role in promoting or continuing the legal action against Mr. Choc.

Please note that this response also should be considered as responses from Solway Investment Group (AL OTH 128/2023) as well Solway Holding Ltd. (AL OTH 127/2023), Compañía Guatemalteca de Níquel SA (CGN) (AL OTH 125/2023) and Compañía Procesadora de Níquel de Izabal SA (PRONICO) (AL OTH 126/2023).

I trust this letter and the supplemental responses to questions nine and ten of the Joint Communication will address the concerns raised. I remain available to answer any further questions or provide clarifications, if necessary.



Denis Gerasev
Management Board Member
Solway Investment Group GmbH

1. Please provide information on interim measures your group can take to suspend CGN and PRONICO activities in the Fénix mine, until the rights and survival of the Maya Q'eqchi indigenous community living on the Fénix concessions are resolved. the company are safeguarded, and until safeguards are put in place to prevent any form of legal action against Mr. Carlos Ernesto Choc, who appears to have been directly targeted for his peaceful and legitimate work as a journalist and indigenous human rights defender.
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In relation to allegations concerning Mr. Choc, Solway Investment Group takes these allegations very seriously. Solway Investment Group has therefore launched an independent investigation into all of the facts which was conducted by a leading US specialized law firm around 7 allegations which had been levied against Solway Investment Group in relation to Mr. Choc.

Our independent investigation reviewed each of seven allegations to the extent possible given the inherent limitations of such reviews, including the passage of time since some the allegations were made, the ability to access documents or contact persons who may or may not have had any involvement in the allegations, and the actions taken by government officials acting in their official capacities.

Solway also would like to remind the Special Rapporteur of the divisions of obligations, rights, and responsibilities between private companies and the State with regards to human rights. Many of the allegations against Solway include acts which Solway legally cannot take and imply a level of influence over independent public bodies and officials in Guatemala which simply does not exist. Indeed, even the United Nations' own Guiding Principles on Business and Human Rights and the Protect, Respect, Remedy Framework makes a distinction as to the respective and distinctive roles and responsibilities between the State and Private companies in protecting human rights.

FIRST ALLEGATION: ANONYMOUS THREATS RECEIVED BY MR. CHOC AIMED AT STOPPING HIS COVERAGE AND COMPLAINT BROUGHT BY CGN

A First Allegation raises concerns related to Mr. Choc's coverage of the protests against the Fénix mine, including alleged anonymous threats against him following such coverage which were allegedly "aimed at stopping his coverage."

The independent Review did not reveal evidence of any threats made or directed by anyone at CGN to or against Mr. Choc. Employees, including former employees, which were interviewed stated that there were no such company-backed efforts, either openly or implied, to threaten or harass Mr. Choc. Despite several efforts to contact Mr. Choc to engage on these allegations, Mr. Choc did not take the opportunity to provide any evidence which is contrary to this finding which would implicate any Solway-directed involvement.

The First Allegation also refers to the complaint brought by CGN on 11 May 2017. The decision to file complaints in 2017 by CGN's legal representative was done as the workers themselves were afraid to do so for fear of reprisals from protesters after being detained themselves after the protests. It had been initially decided that support from CGN's legal representative (and approved by the then General Director of CGN), was an action which would have supported their workers and not done as an attack per se against any specific party. To be clear, although protecting the interests of its workers were at the heart of this matter, this is a situation which can no longer be repeated due to more restrictive guidelines designed and implemented by Solway globally regarding the use of Company legal resources.

It is important to note, that based on the Review of the court filings and discussions with Interviewees, the complaint did not identify Mr. Choc by name. The complaint referenced other individuals and referred to violations of the right to freedom of movement, commerce, and labour, and alleged that the protesters were responsible, amongst other things, of the instigation to commit a crime, threats, illegal detention, and illegal association.

It is possible that the Guatemalan judicial authorities became aware of Mr. Choc's presence during the May 2017 protests as a result of information (mainly photographs) provided by representatives of CGN at the request of Guatemalan authorities, even though the originating CGN complaint did not reference Mr. Choc by name.

SECOND ALLEGATION: ARREST WARRANT ISSUED AGAINST MR. CHOC

A Second Allegation states that an arrest warrant was issued against Mr. Choc in August 2017.

According to the legal representative of Solway's subsidiary, after Mr. Choc (along with others) failed to appear before the judge at the scheduled date and time from the summons citing illness and submitting a medical certificate. The judge, who did not find the medical certificate credible, issued an arrest warrant in accordance with Guatemalan law. As a private company, CGN does not have the power or authority to issue an arrest warrant.

THIRD ALLEGATION: REPORTING OBLIGATIONS IMPOSED ON MR. CHOC

As to a Third Allegation that Mr. Choc was subject to the arrest warrant for over a year and half and then subjected to a court order requiring him to report monthly to the Guatemalan public prosecutor, CGN was not involved in either the criminal court's decision to lift the arrest warrant in January 2019 or the court order requiring Mr. Choc to report monthly to the Guatemalan Public Prosecutor's Office.

FOURTH ALLEGATION: ROLE OF CGN'S LEGAL REPRESENTATIVE

In connection with a Fourth Allegation that CGN's legal representative was joined by the Court in January 2019 as a "co-plaintiff" in the criminal proceedings, the legal representative of Solway's subsidiary is, as the legal representative of Solway's subsidiary CGN, a co-plaintiff in the proceedings against Mr. Choc pursuant to Article 116 of the Guatemalan Criminal Code.

Under Article 116 of the Guatemalan Criminal Code, victims, relatives, and others, such as companies, have the right to "to propose avenues of investigation, participate in proceedings, request certain tests or examinations and seek the intervention of a judge if they disagree with a prosecutor's decision not to carry out a particular line of investigation.

As a co-plaintiff, CGN does not have the power to issue court orders or judicial decisions. On December 7 2023, PRONICO submitted a request to the court to withdraw from the case due to a lack of grounds (where Solway was co-joined by the courts, and not at the request of Solway or its Guatemalan subsidiaries).

FIFTH ALLEGATION: DEFAMATION AND HARASSMENT

A Fifth Allegation alleges that Mr. Choc was subjected to various forms of defamation and harassment.

Regarding this allegation, the Review did not reveal that the Guatemalan Subsidiaries were involved in any defamation campaigns against Mr. Choc. According to Interviewees, the Company appears committed to journalistic freedom and has had an open approach to the media, inviting different media outlets to visit the mine on several occasions as well as addressing journalists' questions through its press office.

Regarding the allegation that Mr. Choc's house has been raided by "persons unknown" and by the Guatemalan police and army, the investigation could not uncover any involvement by the Guatemalan Subsidiaries in these alleged raids or theft. Investigators were only made aware of a raid by the police related to a police investigation of protests in 2021. Interviewees also noted that robbery and theft are common in Guatemala.

Repeated attempts to get Mr. Choc's side of the story on these incidents or to get evidence which may have shown such involvement has not been successful despite repeated attempts to engage with Mr. Choc. We therefore must rely on the representations made by Solway personnel to the independent investigation team that there was no such involvement by Company personnel nor was there a company-sanctioned effort to encourage others to harass or defame Mr. Choc.

SIXTH ALLEGATION: 2021 PROCEEDINGS AGAINST MR. CHOC

As to a Sixth Allegation relating to the 2021 protests at the Fénix mine and the resulting criminal charges that were brought by Mr. Choc by the National Civil Police of Guatemala ("PNC"), these were brought against Mr. Choc by the Guatemalan authorities, not CGN.

According to media reporting at that time, the 2021 protests were again violent, and police officers were injured during them. The police searched Mr. Choc's home pursuant to a court order. Solway's Guatemalan Subsidiaries were not involved in bringing the charges relating to this incident (or the decision to drop the charges in September 2022).

The court had postponed this hearing to January 31, 2024 and had subsequently dismissed all charges against Mr. Choc and any conditions or restrictions that had been put in place because of the pending charges.

SEVENTH ALLEGATION: DELAYS TO MR. CHOC'S PROCEEDINGS AND REPORTING OBLIGATIONS

As described in the investigation Report, it appears that there were various reasons as to why the proceeding against Mr. Choc relating to the May 2017 protests had been delayed, including the Covid pandemic and actions taken by Mr. Choc.

Monthly reporting obligations to which Mr. Choc remained subjected to was not at the request of Solway, but a court-imposed order and taken independently without any influence of Solway.

Additionally, according to Interviewees, the case against Mr. Choc was provisionally closed in October 2019 and that the Guatemalan public prosecutor requested that the Court dismiss the case against Mr. Choc in January 2020. The court officially ended the criminal proceedings against Mr. Choc on 31 January 2024.

2. [Please indicate whether stakeholders affected by the above allegations have had access to legal remedies and detail what steps your company has taken to identify perpetrators of human rights violations and hold them accountable.](#)
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As noted, Solway Investment Group takes these allegations very seriously. Solway Investment Group has therefore launched an independent investigation into all of the facts which is being conducted by a leading US specialized law firm.

Our supplemental response to question 9 (above) lists all findings from the independent investigation as well as details in the Summary Report which has been provided with this response.