

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the human rights of internally displaced persons

REFERENCE:
AL OTH 67/2020

21 September 2020

Ms. Sharif,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 37/8, 41/12, 43/14, 43/16, 42/20 and 41/15.

In this context, we would like to draw your urgent attention to the information we have received about the possible impacts of the so-called Mayan Train Development Project on indigenous communities that could be affected in their territorial rights, their right not to be evicted and their right to health, among others, in the states of Chiapas, Tabasco, Campeche, Yucatan and Quintana Roo. Concerns have been raised over the role assumed by the United Nations Human Settlements Programme (UN-HABITAT Mexico), in the framework of the project, in particular whether adequate human rights due diligence has been exercised in the involvement of the project, and in relation to the allegations made in this communication.

A communication related to the same subject has been sent to the Government of Mexico on 21 September 2020 (AL MEX 11/2020).

According to the information received:

The Mayan Train development project would include a railway line of approximately 1,500 kilometres and the establishment of around 18 stations and other tourist infrastructure that would constitute new population centres and development hubs in the states of Chiapas, Tabasco, Campeche, Yucatan and Quintana Roo.

Consultation process and the right to free, prior and informed consent

The National Fund for the Promotion of Tourism (FONATUR), the National Institute of Indigenous Peoples (INPI) and the Sub-Secretariat for Democratic Development, Social Participation and Religious Affairs of the Ministry of the

Interior (SEGOB) held a consultation process between November and December 2019, simultaneously holding a briefing and a deliberative session of approximately 5 hours each, in 15 locations identified by the government as representative of the indigenous population of the states where the Mayan Train would be built.

According to the information received, the process was imposed in order to legitimise the project, as the decision had already been taken independently of the consent of the communities. It would not have been culturally appropriate, due to the limited time available, the lack of prior agreements on how the consultation process should be carried out, and the creation of regional assemblies that do not correspond to the way in which the communities organise themselves.

The information received indicates that, during the consultation, complete, adequate and impartial information on the project and its potential impacts was not presented, as the necessary environmental and social impact studies were not carried out. It is alleged that the assemblies would have focused on the benefits that the project would bring to the population of the southeast region, a population that has historically suffered from serious deficiencies in the enjoyment of its economic, social and cultural rights. According to public information, most of the participants in the consultative assemblies, which included community, municipal and agrarian authorities, expressed a favourable opinion of the project and a Commission was established in each assembly to monitor and verify the agreements reached there. According to the information available, one of the main agreements was to carry out specific consultations in those cases where lands, territories and natural resources could be affected, or where there would be a significant impact on the communities in the region.¹

The Office in Mexico of the United Nations High Commissioner for Human Rights, which has accompanied the consultation process as an international observer, has noted some violations of the right to consultation and to free, prior and informed consent, and has expressed its concern in this regard.²

Given the lack of information, several organisations have sent requests for information on the characteristics of the project and its impacts through the National Platform for Transparency, whose responses by the federal and state authorities have been that they do not have the information requested and that they are not competent authorities in the matter.

For the previous studies and the conceptual and basic engineering design related to the construction of the railways, as well as for matters related to the contracting of works, environmental, social and archaeological management, among others, the National Fund for the Promotion of Tourism has counted on

¹ See, Gobierno de México, *Consulta Libre, Previa e Informada sobre el Proyecto de Desarrollo Tren Maya: Presentación de resultados*. Disponible en: <https://www.gob.mx/cms/uploads/attachment/file/518708/presentacion-resultados-consulta-tren-maya-diciembre-2019.pdf>

² https://www.hchr.org.mx/index.php?option=com_k2&view=item&id=1359:onu-dh-el-proceso-de-consulta-indigena-sobre-el-tren-maya-no-ha-cumplido-con-todos-los-estandares-internacionales-de-derechos-humanos-en-la-materia&Itemid=265

the advice of the United Nations Office for Project Services (UNOPS), with which it signed a framework agreement.

In the same way, it is reported that the authorities in charge of the Project would have requested and obtained an exemption to the presentation of the socio-environmental impact studies of the first three sections before the Secretariat of Environment and Natural Resources under the argument that it would be a matter of rehabilitation and improvement of the railway and road service, "since that road was built before the entry into force of the General Law of Ecological Equilibrium and Environmental Protection in 1988", which would exempt it from the obligation to submit any project to an ecosystem impact assessment.³

On June 1, 2, 3, and 4, 2020, the President of the Republic gave the green light for the Mayan Train works, initiating the construction of the three sections of Phase 1, from Palenque, Chiapas, to Izamal, Yucatan, which would also pass through the states of Tabasco and Campeche.

On 16 June 2020, the National Fund for the Promotion of Tourism reported that it had presented an Environmental Impact Statement (Manifestación de Impacto Ambiental in Spanish, the term used in Mexico for environmental impact assessments) for the first three sections corresponding to phase 1 to the Ministry of the Environment and Natural Resources, reiterating that "it is not obliged to request an environmental authorisation, since this is not a new project, but rather one of rehabilitation and maintenance to improve operational safety".⁴

The Ministry of the Environment and Natural Resources reportedly gave communities, civil society organisations and academia insufficient time until 30 June to submit comments on the document, which consisted of 1900 pages, without access to all the annexes. It is reported that there was neither a reduced and simplified, culturally appropriate version, nor a translation into indigenous languages.

From the information available, it is not clear whether the Government plans to consult the indigenous communities once the Secretariat of the Environment and Natural Resources analyses these studies, taking into account the comments received, and once the studies corresponding to the other sections and the social impact studies have been carried out, in order to obtain their informed consent.

With regard to cultural heritage, the National Fund for the Promotion of Tourism has signed a Framework Agreement for Collaboration with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Office in Mexico, to provide support for the conservation of cultural heritage, sustainable management of biodiversity, free access to information and development of communication, among others.

On 24 August 2020, the head of the National Fund for Tourism Development presented the first progress report on the construction of the Mayan Train.

³ <https://www.gob.mx/fonatur/prensa/nota-aclaratoria-244692>

⁴ <https://www.gob.mx/fonatur/prensa/tren-maya-presenta-estudios-ambientales-para-los-tramos-1-2-y-3-ante-semamat>

The documentation received alleges that the indigenous communities have not yet been informed of the possible environmental, social and cultural impacts of the project. In addition, information has been received indicating that certain indigenous communities have received information emphasising the multiple benefits of the project, which, considering the lack of guarantees of several of their economic, social and cultural rights, could be conditioning the free nature of their responses.

In this regard, it was reported that in May 2020, UN-HABITAT published on its website an infographic report analysing the impacts of the Mayan Train, in which only the benefits of the project were presented, without mentioning the possible negative impacts, including the relocation of indigenous peoples and non-indigenous communities. Furthermore, the conclusions presented were not accompanied by the corresponding study or supported by public data. Requests addressed to UN-HABITAT by communities and civil society through email and social networks have reportedly not have been answered, leaving the rigour of the study and the veracity of the information in question.

Socio-environmental and human rights impacts

According to the information received, the environmental impact assessment was analysed by researchers and academics from various institutions and academic centres, who indicated that the procedure carried out for the identification, characterisation and evaluation of environmental impacts was inadequate, and that the results it presented were unfounded, as their theoretical and technical justification lacked methodological and scientific soundness. In particular, they was observed that the characterisation and delimitation of the regional environmental system was insufficient and incorrect, fragmenting the environmental system, minimising damage and impeding a correct assessment of the socio-environmental impacts. They also pointed out the lack of adequate and accurate information on the generation, management and final disposal of solid waste, on the negative impacts on threatened or endangered species of flora and fauna, on the generation of wastewater and the impact of the project on water availability.

The omission of fundamental information in order to determine the impacts of the project (in particular the screening matrix and impact assessment matrix) and the lack of studies, such as the geological study in critical points of the karst zone, in section 3, where the "ring of cenotes" and the Chicxulub Crater are located, was noted. In addition, the Environmental Impact Statement repeatedly states that no damage is expected, for example, to archaeological zones, historical monuments, wetlands or mangrove vegetation, cenotes, etc., as long as the activities are carried out within the existing right of way of the existing train line.

It is argued that although there is a rights of way on part of the Mayan Train sections, the project is new in that it will involve the removal and replacement of hundreds of kilometres of rail and sleeper tracks, suitable for a train which is approximately ten times faster, heavier and with more intense traffic. The

current train moves around 12-15km/h and runs once a day. The Mayan Train would move at 160 km/h for passengers and at 100-120 km/h for freight. There is a lack of information on the frequency of passenger and freight trains, which makes it impossible to determine the impact in terms of noise, vibration and pollution. In addition, the project includes the construction of stations, urbanisations and development hubs, which would not be covered by the Environmental Impact Statement.

According to the information received, the socio-cultural impacts are even more underestimated: there is a lack of studies on the flow of internal migration, including an assessment of the displacements and evictions due to the construction work and the attraction of populations to other centres, among other impacts, as well as no assessment of the risks of cultural and historical loss for the indigenous peoples. Finally, the risks of uprooting and the decline of traditional productive activities are questioned, as are the quality and quantity of jobs that are presented as benefits of the project.

The studies and evaluations for the elaboration of the Environmental Impact Statement were carried out quickly and without the participation of the indigenous peoples and communities potentially affected by the project.

Territorial rights of indigenous peoples

Another area of concern on which we have received information is the acquisition of the land for the installation of the project, which would involve a change in the land tenure and ownership regime that could prejudice the rights of indigenous peoples over their traditional lands.

According to the information available, the 'ejido' lands where the railway lines and development hubs would be installed will be obtained through a mechanism called Infrastructure and Real Estate Trust, which is a financial instrument subject to the stock market, used to finance real estate investments. The National Fund for Tourism Promotion is considering the incorporation of the 'ejidatarios' as partners, through the contribution of their lands, to the Mayan Train trust. This would imply that the land becomes the property of the trust, individual or community owners become shareholders, and the land would be used by investors to build the infrastructure related to the project.

The landowners will reportedly be able to obtain the income derived from the use of the land and also maintain the ownership of their land. However, this issue has not been developed in the informative session of the consultation process and it is not clear whether members of affected indigenous communities have been provided with clear and accurate information on the Infrastructure and Real Estate Trusts and the nature of the risks that could be involved for individuals and communities participating in them, including the privatisation of communal properties and the factors that could impact on the expected profits, their ability to recover their lands and to withdraw from the trust, if they so wish.

There are also concerns about land speculation caused by the project. It has been reported that for some years now, political and business sectors with knowledge of the project have been acquiring land at very low prices which would allegedly be used for the project.

Imminent evictions

According to the information received, the implementation of the project would lead to the displacement of several families and communities settled along the rail road, some of whom have not agreed with their eviction and resettlement and are at risk of forced displacement.

According to public information, the National Fund for the Promotion of Tourism assured that there would be no forced evictions or expropriations and for this purpose, among other objectives, it would count on the advice of UN-HABITAT Mexico, which would elaborate a Protocol for the Consensual Relocation of the Population from the Standpoint of Human Rights.

However, information indicates that indigenous communities located near the rail road or where the construction of the development hubs are planned have not received information on what will happen to them and that several families from historic neighbourhoods in the city of Campeche have not agreed to the resettlement, and have therefore tried to prevent an eviction which, in their case, would be "imminent" by exercising their legal defence. These families have faced obstacles in filing legal suits due to the limitation of judicial activities imposed by the covid-19 contingency

According to the information received, the resettlement process in these neighbourhoods has been suspended until there are conditions for holding meetings and resuming dialogue with the families, however, it is not clear what housing alternatives would be provided to the families who oppose leaving their homes.

In particular, it is unclear what role UN-HABITAT is playing in this situation and whether UN-HABITAT continues to be associated with it, in light of the reluctance and the lack of free, prior and informed consent of several affected indigenous communities to leave their homes.

Contingency for covid-19 and access to justice

According to the information received, on 31 March 2020, the General Health Council recognised the epidemic generated by the SARS-CoV-2 virus as a public health emergency and agreed on extraordinary measures throughout the country, including the suspension of non-essential activities in order to mitigate the spread and transmission of the virus. However, the project has been classified as essential and activities aimed at implementing have continued.

In this regard, on 8 May 2020, indigenous communities in Chiapas obtained a provisional suspension of the first part of the project in order to safeguard the health of the Maya Ch'ol people, a suspension which was not respected by the

government agency in charge of the project, even though the same court granted a definitive suspension to the communities.

Likewise, the National Fund for the Promotion of Tourism refused to adopt the precautionary measures issued by the National Human Rights Commission on 14 May 2020, which urged the suspension of non-essential activities related to the project as a matter of urgency, in order to protect the rights to health, personal integrity and life of the inhabitants of the Yucatan Peninsula. The same position has been maintained even after a second appeal by the National Human Rights Commission.

According to the information received, indigenous communities and human rights defenders have encountered greater obstacles in the exercise of their rights due, on the one hand, to the limitations and closures of the judicial bodies imposed by the covid-19 emergency and, on the other, to the lack of compliance by the authorities with the decisions taken by the competent courts, as well as the institutional favouring of the construction of the work.

Possible militarisation

On April 17, 2020, the President of the Republic announced that the sections of the Tren Maya railway project from Tulum, Quintana Roo to Escarcega, Campeche, crossing the Calakmul Biosphere Reserve will be built by the Secretary of National Defence. In this regard, there are concerns and doubts over the appropriateness of the Armed Forces participating in a public work that is not an emergency.

Human rights defenders

Information has also been received about acts of harassment against those who demand more information about the project, more time for their decision whether to agree to relocate, or express their disagreement with the development of the project, as well as about attacks on human rights defenders who have taken legal action. This includes the naming and shaming of opponents of the project, denial of their indigenous identity, and discrediting the work of human rights defenders including their criminalisation, such as direct attacks against them, spreading a growing state of fear of possible acts of violence against them and their judicial persecution.

These acts are reportedly extended against civil society organisations that are providing communities with support and legal advice in their claims, and there have been complaints over attempts to use criminal law to obstruct the legitimate right to promote and protect human rights and to make use of available legal remedies.

Without prejudging the accuracy of the information received, we would like to point out our serious concern about the possible impacts of the so-called Maya Train Development Project on the indigenous communities that could be affected in their territorial rights, their right not to be relocated against their consent and their right to health, among others, in the states of Chiapas, Tabasco, Campeche, Yucatan and

Quintana Roo. We are also concerned about information indicating that the environmental impact assessment has been inadequate, leading to risks of environmental damage from the activities of the Maya Train Development Project caused by contamination and other negative impacts on biodiversity and water by this project.

We wish to recall that consultation processes with indigenous peoples must ensure the due representation of indigenous peoples and communities. In the report on her visit to Mexico in 2017, the former Special Rapporteur on the Rights of Indigenous Peoples expressed concern, that in many cases the *ejido* and agrarian authorities do not necessarily coincide with the representative authorities of the indigenous communities and may come into conflict with them. This causes uncertainty and conflict when State agents allegedly consult *ejido* authorities for the approval of measures or activities affecting indigenous lands in *ejidos*. Therefore, project-related indigenous consultations should be carried out with the representative structures identified by the indigenous communities themselves, and not be limited to existing agrarian and *ejido* structures. Such consultation processes must also ensure the participation of indigenous women.

The importance of consultations providing all necessary information, including the results of environmental impact studies must be reiterated. Consultations should not proceed without full disclosure of all relevant information. The right to consultation and free, prior and informed consent is established in Article 6 of ILO Convention 169 and Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples. According to Article 7.3 of Convention 169, the conduct of social, spiritual, cultural and environmental impact assessments is a state obligation. They must be developed in cooperation with the peoples concerned and their results must be considered as fundamental criteria for the implementation of the above-mentioned activities. Such studies should provide independent and impartial, culturally appropriate and accessible information, translated if necessary, on all impacts that may be generated, so that indigenous peoples can make informed decisions and give or withhold their consent to measures or projects that may affect their rights.

The International Covenant on Civil and Political Rights (Art. 2.3, a), as well as the Universal Declaration of Human Rights (Art. 8) guarantee the right to an effective remedy and access to justice, without discrimination. Similarly, the United Nations Declaration on the Rights of Indigenous Peoples protects the right of indigenous peoples to equitable and fair procedures for the resolution of conflicts and disputes with States or other parties (Art. 40). In connection with this, we understand that restrictions on the judicial system have been imposed due to the pandemic, effectively excluding or limited access to justice. In addition, the Special Rapporteur on the Rights of Indigenous Peoples has pointed out in a statement issued on 18 May 2020, that emergencies measures imposed have limited the freedom of expression of indigenous peoples and resulted in the suspension of consultation processes and environmental impact assessments in order to force through megaprojects relating to agribusiness, mining, dams and infrastructure, on the lands and territories of indigenous peoples.⁵

⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25893&LangID=E>

Finally the previous Special Rapporteur on the Rights of Indigenous Peoples observed after her visit to Mexico in 2017, that the use of the military for civilian tasks in indigenous territories has resulted in an increase of human rights violations.

With regard to the above-mentioned allegations, please find attached an **Annex of references to international human rights law**, which summarises relevant international instruments and principles.

It is our responsibility, in accordance with the mandates given to us by the Human Rights Council, to seek to clarify the allegations brought to our attention.

We bring to your attention the need to address any impact on the human rights of indigenous peoples in the states of Campeche, Chiapas, Quintana Roo, Tabasco and Yucatan caused by the development of the Maya Train project.

We wish to recall that respect for human rights is a core principle enshrined in the United Nations Charter. While recognising that the Mexican State has the primary obligation to ensure that any development project is planned and implemented in full compliance with international human rights norms, including the UN Declaration of the Right of Indigenous Peoples and the right to adequate housing, UN agencies and programmes should set an example when it comes to human rights compliance.

In this context we would like to refer you as well to the [UNDSG Guidance Note for Human Rights for Resident Coordinators and UN Country Teams](#), and related operational guidance underlining the need of all programmes and agencies of the United Nations to respect, protect and promote human rights on the ground and providing a framework for system-wide human rights mainstreaming.

We call on UN-HABITAT to consider carefully the implications of promoting a project where several concerns have been raised that its implementation may violate the rights of indigenous peoples, in particular their right to free, prior and informed consent, their right not to be relocated against their consent, and their right to health, among others. In order to promote access to information, we encourage UN-HABITAT to provide information on the methodology applied for the analysis of the project's impacts.

We furthermore urge UN-HABITAT to use their relationship with the Mexican Government and other project partners to ensure that the Mayan Train project complies with all relevant human rights standards and norms.

We would appreciate if UN-HABITAT could share in relation to the facts described above and the concerns expressed in this communication all relevant information and observations within 60 days.

This communication and any response received by Mexico or UN-HABITAT will be made public via the communications reporting [website](#) within 60 days. They will also be made available subsequently in the report to be submitted to the Human Rights Council.

We will publicly express our concerns in the near future, as we consider that the information received is sufficiently reliable to indicate that there is a matter warranting immediate attention. Furthermore, we consider that the public should be informed about the potential implications related to the above-mentioned allegations.

We look forward to receiving information on the issues addressed in this communication and would like to express our readiness to engage in a constructive dialogue on the measures necessary to achieve our common objective of ensuring full respect for the rights of indigenous peoples.

Please accept, Ms. Sharif, the assurances of our highest consideration.

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Balakrishnan Rajagopal

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay

Special Rapporteur on the rights of indigenous peoples

Cecilia Jimenez-Damary

Special Rapporteur on the human rights of internally displaced persons

Annex

Reference to international human rights law

We would like to draw attention to the obligations set out in the International Labour Organisation (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Mexico on 5 September 1990, in particular Articles 6, 7, 14, 17 and 18, which state, among other things, that the obligation to consult freely and in good faith, to guarantee effective protection of the property and possession rights of indigenous peoples over their lands, territories and natural resources and to ensure that indigenous peoples participate in the formulation, implementation and evaluation of national and regional development plans and programmes which may affect them directly.

In addition, Governments should ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of the above-mentioned activities (Art.7).

Similarly, the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on 13 September 2007. In particular, we would like to refer to Article 7.1 on the right to life, physical and mental integrity, liberty and security of indigenous people and Article 21 on the right of indigenous peoples, without discrimination, to the improvement of their economic and social conditions, including in the areas of sanitation, health and social security, and the responsibility of States to take effective measures and special actions to ensure continuing improvement of their economic and social conditions. Article 23 also states that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development.

Article 32 affirms the obligation to obtain their free and informed consent prior to the approval of any project affecting their territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources, and article 28 on the right to redress by means that can include restitution or, where this is not possible, fair and equitable compensation for land that has been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

With regard to the displacement of indigenous individuals and communities, Article 16 of Convention 169 and Article 10 of the Declaration provide that peoples shall not be removed from their lands unless with their free and informed consent. Only if relocation and resettlement are necessary, i.e. if the limitations to indigenous peoples' substantive rights meet the criteria of necessity and proportionality in relation to a valid public purpose, defined within a general framework of respect for human rights, should they proceed by ensuring participation, full compensation and the option of return.

The Guiding Principles in Internal Displacement state in Principle 6 that every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. Principle 7 adds that prior to any decision

requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects.

The International Covenant on Civil and Political Rights (Article 2.3(a)), ratified by Mexico in 1981, and the Universal Declaration of Human Rights (Article 8) guarantee the right to an effective remedy and access to justice, without discrimination. Similarly, the United Nations Declaration on the Rights of Indigenous Peoples protects the right of indigenous peoples to equitable and fair procedures for the resolution of conflicts and disputes with States or other parties (Art. 40).

With regard to the environment, Article 29(1) of the UN Declaration on the Rights of Indigenous Peoples clearly states that 'indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources'. Furthermore, as detailed in the Framework Principles on Human Rights and the Environment (A/HRC/37/59), annex), which summarise the main human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment, States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Framework Principle 1). In addition, States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2). States should also ensure the effective enforcement of their environmental standards against public and private actors (Principle 12), and should take additional measures to protect the rights of those most vulnerable to environmental harm or at particular risk of such harm, taking into account their needs, risks and capabilities (Principle 14).

Furthermore, in this context, we refer to the fundamental principles set out in Article 19 of the Universal Declaration of Human Rights, and Article 19(2) of the International Covenant on Civil and Political Rights which guarantee the right to "seek, receive and impart information" as part of the right to freedom of expression. Access to information is a prerequisite for the protection of human rights from negative environmental impacts, for public participation in decision-making and for monitoring government and private sector activities. Public participation in decision-making is based on the right of those who may be affected to speak out and influence the decision that will impact on their basic human rights.

We would like to remind of obligations under the various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights and, more specifically, article 11.1 which recognizes the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions. This article should be read in conjunction with Article 2.2 of the Covenant, which states that States Parties undertake to guarantee that the rights set forth in the Covenant will be exercised without discrimination.

In this regard, we would like to draw the attention to general comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights which defines seven fundamental features of the right to adequate housing, which the Government must guarantee. Focusing on social groups living in conditions of vulnerability, these

characteristics include the guarantee of: (a) legal security of tenure; (b) availability of services, materials and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. In this regard, the Committee on Economic, Social and Cultural Rights has been emphatic in pointing out that legal security of tenure is an essential element of the right to housing, and that "whatever the type of tenure", all persons should enjoy a degree of security of tenure that guarantees them legal protection against eviction.

Furthermore, the Committee on Economic, Social and Cultural Rights has indicated in its General Comment No. 7 (1997) on forced evictions that it is essential to comply with the strictest procedure for forced evictions, including essential procedural guarantees such as a genuine opportunity to consult with affected persons; sufficient and reasonable notice prior to the planned date of eviction; legal remedies and assistance; and the establishment of a contingency plan, resettlement and housing alternatives in good time. The Committee has furthermore clarified that forced evictions should never result in people becoming homeless, roofless or exposed to violations of the right to adequate housing or of other human rights.

Reference is also made to the recent report of the Special Rapporteur on the right to adequate housing, which outlines the particular legal framework applicable when any consideration is made to relocate indigenous peoples from their land or place of residence (A/74/183). Furthermore, we would like to alert you that the Special Rapporteur on the right to adequate housing has called for a global moratorium on evictions during the COVID-19 pandemic and its aftermath, in order to ensure that no one is left without shelter and everyone is adequately protected from the virus.⁶

In relation to the rights to water and sanitation, we would like to draw your attention to the fact that the International Covenant on Economic, Social and Cultural Rights, includes human rights obligations linked to access to drinking water and sanitation. The Committee on Economic, Social and Cultural Rights also states that a people cannot be deprived "of its own means of subsistence" and States Parties should guarantee sufficient access to water for subsistence agriculture and to ensure the subsistence of indigenous peoples. While the right to drinking water applies to everyone, States parties should pay special attention to those individuals and groups of individuals who have traditionally faced difficulties in exercising this right, including women, children and indigenous peoples. States parties should take measures to ensure that indigenous peoples' access to water resources on their ancestral lands is protected from unlawful encroachment and pollution. States should provide resources for indigenous peoples to plan, exercise and control their access to water.

We would also like to remind you of the duty of the State to protect human rights defenders, as set out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Both the UN Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples have been able to verify the alarming increase in attacks and criminalisation

⁶ See COVID-19 Guidance Note on the prohibition of evictions, available at: https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_evictions.pdf and the press statement for 18 August 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26170&LangID=E>

against indigenous defenders especially in the context of large-scale development projects and defence of their lands and territories (A/HRC/37/51/Add.2, A/HRC/39/17). On this issue, the former Special Rapporteur on the rights of indigenous peoples, Ms. Victoria Tauli-Corpuz, has recommended States to ensure that indigenous communities affected by development projects and those who defend their rights are not stigmatised, and that "their concerns are recognised as legitimate components of a process aimed at achieving sustainable development".

We would like to recall that article 22 of the International Covenant on Civil and Political Rights guarantees the right to freedom of association and that an association refers to any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests (A/HRC/20/27, para 51). This provision must be read in conjunction with article 2 of the Covenant that stipulates that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" Furthermore, States have a negative obligation not to unduly obstruct the exercise of the right to freedom of association and it is the duty of the State to ensure that all persons can peacefully express their views without any fear, even through associations embracing minority or dissenting views or beliefs (A/HRC/20/27 para 64)

Finally, we remind you that the United Nations Declaration on the Rights of Indigenous Peoples states that no military activities shall take place in the lands or territories of indigenous peoples unless justified by a relevant public interest reason or freely agreed to by, or at the request of, the indigenous peoples concerned (Art. 30).