

**Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; 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 right to food; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on extreme poverty and human rights**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; 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 right to food; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 45/17, 37/8, 32/8, 42/20 and 44/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged violations of the human rights of the affected communities and indigenous peoples in East Nusa Tenggara in the context of the 2009 Montara Oil Spill in the Timor Sea.**

According to the information received:

PTT Exploration and Production Australia Ashmore-Cartier Pty Ltd (PTTEPAA) is a wholly owned subsidiary of Thai state-owned company PTT Exploration and Production Public Company Limited (PTTEP). PTTEPAA owned and operated the well at Montara Oilfield, within Australian jurisdiction.

According to the information received, on 21 August 2009 around 5.30 a.m., workers on the wellhead platform observed a blowout of fluid coming from the H1 Well into the Timor Sea. The workers activated emergency response procedures and notified the Australian Maritime Safety Authority (AMSA). Once it became apparent that the efforts to stop the flow were not effective, personnel aboard the rig and wellhead platform safely evacuated.

The AMSA responded by spraying over 180,000 litres of dispersants onto the oil's surface from 23 August 2009 to 1 November 2009. It is alleged that the Government provided no public information at the time of the decision to use dispersants. It is further alleged that the use of dispersants departs from Australia's preferred mechanical recovery method, adding to the toxicity level of the water.

On 14 September 2009, work commenced on drilling a relief well. A fire broke out on 1 November 2009 on the West Atlas and the Montara Wellhead Platform after a relief well successfully intercepted the leaking well on its fifth attempt. 75 days later, on 3 November 2009, well-kill operations extinguished

the fire and contained the oil leak. During that time, it is alleged the well leaked at least 400 to 1500 barrels of oil per day, and unknown amounts of gas, condensate, and water.

### The Montara Commission of Inquiry

Two days after the leak stopped, in accordance with Part 9.10A of Australia's Offshore Petroleum and Greenhouse Gases Storage Act 2006, the Australian Government's Minister of Resources and Energy established the Montara Commission of Inquiry, giving it powers of a Royal Commission to report on the uncontrolled release of hydrocarbons at the Montara Well Head platform and the subsequent events. The Commission submitted its final report on 17 June 2010.<sup>1</sup>

The Montara Commission of Inquiry report concluded that the direct and proximate cause of the blowout was the defective installation by PTTEPAA of a cemented shoe in the 9½" casing of the H1 Well on 7 March 2009. The Commission found that actions and omissions of PTTEPAA personnel, both on-rig and onshore, were directly responsible for the creation and non-detection of the defective cemented shoe casing.

PTTEPAA personnel (on-rig and onshore) failed to recognize that a wet shoe had been created after the cementing operation of 7 March 2009, which was intended to operate as the primary barrier against a blowout. These failures allegedly occurred at each of two stages: first, during the course of preparation, on-rig PTTEPAA personnel should have been alerted to the dangerous state of the cement casing shoe on 7 March 2009; and secondly, onshore personnel failed to ensure a test of the cemented shoe – contrary to "sensible oilfield practice". PTTEPAA additionally failed to properly investigate the circumstances and causes of the blowout after it occurred.

Additionally, the Montara Commission of Inquiry report found that Australia's Northern Territory Department of Resources should not have approved the Phase 1B Drilling Program for the oilfield in July 2009 due to PTTEPAA's failure to adhere to "sensible oilfield practices". The Department of Resource failed to properly regulate the company, which served as a cause for the spill.

While the Montara Commission of Inquiry acknowledged sightings of sheen and weathered oil in Indonesia reaching the island of Palau Roti through the ocean's currents, the Commission notes there is a lack of information on how the dispersants affected the travel of the oil by pulling the oil below the water's surface.

The Montara Commission of Inquiry's report made 100 findings and 105 recommendations on the main issues of the oil spill, including: the circumstances and likely causes of the blowout; the adequacy of the regulatory regime of the offshore petroleum industry and the inadequacy of the implementation of those laws; issues with arresting the blowout; the environmental response; and a review of PTTEPAA's permit and license at Montara and other matters. In its report on the implementation of these

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<sup>1</sup> Report Montara Commission of Inquiry (2010), <https://www.industry.gov.au/sites/default/files/2018-11/montara-commission-of-inquiry-report-june-2010.pdf>

recommendations, the Australian Government accepted 92 recommendations, 2 recommendations “in principle”, noted 10 recommendations, and did not accept 3 recommendations.

The Australian Government accepted all of the environmental response recommendations. These centered on increasing oversight and approval of corporations’ environmental plans for oilfields, monitoring Commonwealth waters, increasing enforcement of the polluter pays principle, and improving training programs on the effects of oil spills on the environment.

The final report highlights that “[t]he information provided to the Inquiry indicates that the dispersant/oil mix could have had an adverse effect on coral spawn and fish larvae and other shallow subsurface species” and these points were known and acknowledged at the time by the Australian Maritime Safety Authority.<sup>2</sup> Furthermore, despite the Montara Commission acknowledging the sighting of weathered oil in Indonesia’s Exclusive Economic Zone near West Timor and the potential health effects of prolonged exposure to dispersants, the Commission made no recommendations on monitoring the effects of the spill outside the Commonwealth. The Australian Government did not address the issue on its own.

According to the information received, the President and Chief Executive Officer of PTTEP, PTTEPAA’s parent company, sent a letter to the Minister of Resources and Energy. This letter included the Montara Action Plan on reforms to PTTEPAA’s offshore petroleum operations. The Department of Resources, Energy and Tourism (DRET) commissioned two independent reviews at the instruction of the Minister of Resources and Energy to look into the Montara Action Plan’s compliance with industry standards. These reviews did not consider the legal implications, the environmental impacts of the spill, or the quality of PTTEP’s activities outside of Australia.<sup>3</sup>

Civil society organizations, legal groups, indigenous peoples, and human rights defenders have raised various concerns related to Australia’s handling of the oil spill, urging Australia to provide redress for damage caused to the affected communities and indigenous peoples in East Nusa Tenggara. Reports of these groups allege that the oil spill caused extensive damage to the fishing and seaweed industries, which serve as a primary source of livelihood for the affected communities and indigenous peoples in East Nusa Tenggara. The damage reportedly led to widespread hunger, loss of income, the reduction in children’s education due to financial pressures, and the death of mangroves and marine life. Many people within the community also reported health conditions after the spill, including skin conditions, cysts, and some instances of food poisoning.<sup>4</sup>

The affected Indonesian communities have sought redress from Australia and PTTEPAA. In 2016, approximately 15,000 Indonesian seaweed farmers whose livelihoods were destroyed due to the oil spill brought a class action lawsuit

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<sup>2</sup> Report of the Commission of Inquiry, p. 23.

<sup>3</sup> Noetic Solutions PTY Limited, Review of PTTEP Australiasia’s Response to the Montara Blowout, <https://www.industry.gov.au/sites/default/files/2018-11/review-of-pttep-australiasias-response-to-montara-blowout.pdf>

*After the Spill*, Investigating Australia’s Montara oil disaster in Indonesia”, Australian Lawyers Alliance, July 2015, p.45-59, <https://www.lawyersalliance.com.au/documents/item/412>

against PTTEPAA in the Federal Court of Australia. The case is ongoing and a judgement by the Court is currently pending. There are concerns that there is little information on the Australian Government's actions to monitor or remedy the effects of the oil spill outside of Australian territory, following the Montara Commission of Inquiry report. The affected communities and indigenous peoples in East Nusa Tenggara also seek a remedy from Australia for its role and responsibility in the damaging effects of the oil spill.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the alleged damage to the environment and human rights of the affected communities and indigenous peoples in East Nusa Tenggara. Specifically, we express concern regarding the threats to human rights to a healthy environment, life, health, bodily integrity, water, food, and the failure to provide a remedy for the alleged harm resulting from the oil spill. We further express concern that this event disproportionately affected populations in vulnerable situations who rely heavily on the natural resources in and around East Nusa Tenggara.

We wish to express our concern that the handling of the spill allegedly disregarded and continues to disregard the human rights of those affected. It emerges that the affected communities and indigenous peoples in East Nusa Tenggara bore long-term costs resulting from the oil spill and use of dispersants to clean it. The spill threatens the health and safety of the affected communities and indigenous peoples in East Nusa Tenggara, whose livelihoods are at risk of destruction on the premise of economic development. We also remain concerned about the lack of public information available regarding follow up into the oil spill's impact on the health and economic well-being of these peoples, which is problematic regarding the right of access to information and the positive duty of States to proactively place information of general interest in the public sphere.

Serious concern is expressed over reports that your Excellency's Government is failing to meet its international and extraterritorial human rights obligations, to protect the aforementioned human rights and provide effective remedy. This is underscored by your Excellency's Government's duty to protect against human rights abuse within its territory and/or jurisdiction by third parties, including business enterprises. The requirement includes taking appropriate steps in relation to business enterprises to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication.

We wish to appeal to your Excellency's Government to take all necessary measures to ensure that those affected by the Montara oil spill have access to an effective remedy.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate measures taken by your Excellency's Government to ensure the victims of the alleged human rights violations committed by PTTEPAA and federal authorities have access to an effective, adequate and timely remedy, including reparation and adequate compensation.
3. Please provide updated and comprehensive information on the impacts and damages of the oil spill on the environment and local communities, particularly those outside of the Commonwealth's territory.
4. Please indicate measures taken by your Excellency's Government to ensure PTTEPAA complies with Australian as well as international environmental laws and human rights standards, including the right to life, health, right to a safe, clean, and healthy environment, and the right to food.
5. Please advise about the steps taken by the Government to ensure that business enterprises such as PTTEPAA respect human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.
6. In September 2017, the Australian Government published its report on the implementation of the recommendations from the Montara Commission of Inquiry. Please describe any additional efforts the Australian Government made to implement the Montara Commission's recommendations since it submitted the 2017 report.
7. Regarding all of the above, please provide information on any specific measures that have been put in place since the alleged incident to prevent similar human rights and environmental outcomes, such as the enforcement of the polluter pays principle.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that a letter on the same subject has also been sent to the Governments of Thailand and Indonesia, as well as to other companies involved in the above mentioned allegations.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

David R. Boyd

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

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## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include the:

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child;
- UN Declaration on the Rights of Indigenous Peoples;
- UN Declaration on the Rights of Peasants and other People Working in Rural Areas;
- UN Guiding Principles on Business and Human Rights
- Framework Principles on Human Rights and the Environment

We would like to particularly bring your Excellency's attention to the human rights obligations under international human rights instruments and under customary international law binding on Australia.

We wish to draw the attention of your Excellency's Government to obligations under international human rights instruments, to which Australia is party, recalling article 3 of the Universal Declaration of Human Rights (UDHR) and article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Australia on 13 August 1980, which guarantee the right of every individual to life, liberty and security. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. As highlighted by the Human Rights Committee in General Comment no. 36, duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para 26). Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para 62). In addition, article 6 of the Convention on the Rights of the Child (CRC) recognizes that every child has the inherent right to life and requires States parties ensure to the maximum extent possible, the survival and development of the child. It further requires State parties to take all effective and appropriate measures to diminish infant and child mortality. Further, article 7 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the

General Assembly in 2007 states that indigenous individuals have the rights to life as well as physical and mental integrity.

We would also like to draw your attention to article 12 of the ICESCR. The article enshrines the right to the highest attainable standard of physical and mental health, which is also guaranteed as a part of the UDHR, article 25 read in terms of the individual's potential, the social and environmental conditions affecting the health of the individual, and in terms of health care services. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information". Accordingly, States have a duty to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. The Committee also affirms that "vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected"; and that "development related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health." (para 27). Furthermore, to comply with their international obligations in relation to article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law.

The United Nations Declaration on the Rights of Indigenous Peoples also provides that indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health (article 24.2) and also provide for their collective right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals (article 24.1). Furthermore, article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health, and the concomitant duty of the State to provide adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

In addition, article 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples reiterate the right of Indigenous peoples to self-determination. article 32 of the Declaration also recognizes the right of indigenous peoples "to determine and develop priorities and strategies for the development or use of their lands or territories and other resources" and to be consulted in good faith "through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources." Also, article 29 provides that States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples provides for the rights of indigenous peoples to redress for actions



that have affected the use and enjoyment of their traditional lands and resources. In that regard, article 28 states that ‘indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.’

Moreover, we would like to recall the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. As per article 1.2, the Declaration applies to any person engaged in artisanal or small scale agriculture, crop planting, livestock raising, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of peasants. In addition, article 18.1 of the Declaration states that “peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their lands, and of the resources that they use and manage”. Further, article 18.2 provides that “States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment.”

Also, we would like to refer your Excellency’s Government to article 11 (1) of the ICESCR, which recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” In interpreting this provision, the CESCR stressed in its General Comment No. 12 that the core content of the right to adequate food implies, inter alia, both economic and physical accessibility of food (para. 7). The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. In addition, article 27 of the CRC acknowledges the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. Article 24 of the CRC provides measures that States Parties should take in order to protect the right to food of every child, including “through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”.

We wish to appeal to your Excellency’s Government to take all necessary steps to secure the right of access to information under article 19 (2) of the ICCPR, which in turn enables the implementation of the rights to meaningful participation, prior informed consent, among many others. The freedom of information is one of the rights upon which free and democratic societies depend (E/CN.4/2000/63, para. 42). The right of access to information includes “access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production” (Human Rights Committee, General Comment no 34, paras. 18 and 19). The importance of the right to information about hazardous substances to the general

public, was emphasized in the Report of the Special Rapporteur of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the Human Rights Council (A/HRC/30/40) in paragraphs 7, 8 and 48, as well as in the Human Rights Committee's General Comment No. 34 concerning Freedoms of Opinion and Expression (para.19). In order to fully realize the right of access to information, and to ensure accountability of decision-making, the State must implement frameworks for measuring, monitoring, reporting and verifying information. In this regard, States should ensure collection and proper management of information on exposure levels, contamination, and long-term health implications of exposure to chemicals, especially with regard to affected communities.

Moreover, the CESCR stated that “corporate activities can adversely affect the enjoyment of Covenant rights”, including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the “obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities” (E/C.12/2011/1, para. 1).

CESCR Recommendation N.24 (2017) also states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective”.

Also, we would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly (A/74/480). This obligation derives implicitly, but clearly, from any number of rights and duties enshrined within the global human rights framework, under which States are obligated to respect and fulfil recognized human rights, and to protect those rights, including from the implications of exposure to toxics. Those rights include the human rights to life, health, safe food and water, adequate housing, and safe and healthy working conditions. The duty to prevent exposure is further reinforced by the national and regional recognition of the right to a safe, clean, healthy and sustainable environment, including clean air. The existence of the State's duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the person, which helps to provide context to the extent to which every person should have the right to control what happens to their body (see A/HRC/39/48). Read together, international human rights clearly establish a duty of the part of your Excellency's Government to prevent exposure to hazardous substances and wastes.

Furthermore, the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8). In accordance with these legal obligations, Guiding Principle 1 reiterates that the State has a duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” Moreover, Guiding Principle 3 reiterates that States must take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In addition, this requires, *inter alia*, that a State should “provide effective guidance to business enterprises on how to respect human rights throughout their operations”. Lastly, in accordance with the right recognized in treaty and customary international law (see for example ICCPR article 2 (3)), the Guiding Principles reiterate that States must ensure that victims have access to effective remedies, also in instances where adverse human rights impacts linked to business activities occur.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. Principles 11 to 24 and Principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. The commentary of Guiding Principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. (...) Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Moreover, where business enterprises “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

The Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 10 provides, for instance, that “States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment”. In this regard, as highlighted by the principle’s comments “States should ensure that individuals have access to judicial and administrative procedures that meet basic requirements, including that the procedures: (a) are impartial, independent, affordable, transparent and fair; (b) review claims in a timely manner; (c) have the necessary expertise and resources; (d) incorporate a right of appeal to a higher body; and (e) issue binding decisions, including for interim measures, compensation, restitution and reparation, as necessary to provide effective remedies for violations. The procedures should be available for claims of imminent and foreseeable as well as past and current violations. States should ensure that decisions are made public and that they are promptly and effectively enforced”.

In addition, principle 12, provides that States should ensure the effective enforcement of their environmental standards against public and private actors, while principle 13 states that they should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights. As per principle 14, States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.