

**Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Working Group of Experts on People of African Descent; the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Working Group of Experts on People of African Descent; Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 43/36, 45/24, 44/15, 37/8, 42/16 and 45/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of environmental racism in Louisiana, specifically the industrialization of an area known by its residents as "Cancer Alley." The development of new petrochemical facilities and methanol complexes by Louisiana registered company FG LA LLC, (subsidiary of Taiwanese-based Formosa Plastics Group) in a predominantly African American district poses serious threats to the enjoyment of several human rights of its residents, including the right to equality and non-discrimination, the right to life, the right to health, the right to housing, the right to a healthy environment, and cultural rights.

According to the information received:

Originally called Plantation Country where enslaved Africans were forced to labour, "Cancer Alley" refers to the petrochemical corridor along the lower Mississippi River between New Orleans and Baton Rouge, encompassing thirteen parishes, or counties, in Louisiana. With the first plastics boom in the 1960s, more than 150 petrochemical facilities now operate on this land that historically used to be sugarcane plantations. Since the 1980s, local residents began to call this area "Cancer Alley," where today, seven of the ten census tracts (administrative areas) with the highest rates of cancer in the United States are located. Federal air and water quality regulations, such as the Clean Water Act of 1972 and the Clean Air Act of 1963, have failed to protect the people residing in "Cancer Alley". Notwithstanding environmental pollution and adverse health effects to local residents, construction of three more petrochemical complexes is underway in the predominantly African American Fifth District of St. James Parish.

## **Environmental Racism in Cancer Alley: Targeted Demographic**

In 2014, despite the already high concentration of industry in St. James Parish, the Parish Council changed the land use plan for the Fifth District, whose residents are 86.3% black, from “residential” to “residential/future industrial” without meaningful notice to the residents. That same year, the Parish Council barred chemical companies Wolverine and Petroplex from constructing new facilities in the Third District, whose residents are 78.4% white.

In December 2018, the St. James Parish Council approved Formosa Plastics’ “Sunshine Project,” which would be one of the largest plastics facilities in the world. The Council also approved plans to build methanol complexes by YCI Methanol One and South Louisiana Methanol. All three plants are to be located in the predominantly African American Fifth District.

### **Ancestral Gravesites**

In December 2019, civil society groups communicated to St. James Parish Council that the site on which Formosa proposed—and the Council approved—to build the Sunshine Project contains at least four burial grounds of enslaved people. Residents believe these burial grounds may hold the remains of their ancestors. While Formosa has known the existence of these historic cemeteries since July 2018, it withheld this information from both the residents and the Council. Because Formosa did not disclose what it knew from its cultural resource surveys in July 2018, the Council granted Formosa’s land use permits without consideration for these sacred sites. The Parish Council has not reconsidered these permits despite civil society appeals in December 2019.

On 15 January 2020, a law suit was filed by a group of organisations against the US Army Corps Engineer about Formosa Plastic’s wetland permit alleging that the environmental and public health impacts were not properly disclosed to the population. It also put forward the potential cultural negative consequences of the project on burial sites of importance.

In June 2020, Formosa opposed a memorial ceremony on Juneteenth when residents sought to honour their ancestors at the burial location. They were forced to go to court, which ultimately compelled the company to allow residents access.

On 4 November, the re-evaluation of Formosa Plastic’s wetland permit for the Sunshine Project was announced by the US Army Corps of Engineers and the court decision was halted.

### **Health and Life Threatening Effects of Formosa’s Sunshine Project on St. James Parish Residents**

Under its proposals, Formosa will vastly expand the petrochemical footprint in “Cancer Alley”, constructing fourteen plants across 2,300 acres (approximately 9.3 square kilometers) of land. These facilities will be dangerously close to St. Louis Academy, a local elementary school, and less than a few hundred feet away from residential homes.

Formosa Plastics' planned petrochemical complex will more than double the cancer risks in St. James Parish, which are already higher for African American residents than for white residents. Predominately white districts in St. James Parish have a cancer risk ranging from 60 to 75 per million. The cancer risk in Fourth and Fifth Districts which are predominately inhabited by African American is 104 and 105 per million, respectively.

Formosa's planned petrochemical complex would be permitted to release 1.6 million pounds (approximately 725.7 metric tons) of toxic air pollutants in St. James. This is in addition to the 1.4 million pounds (approximately 635 metric tons) of toxic air pollutants that existing plants currently produce in the parish annually. Formosa would release 15,400 pounds (approximately 7 metric tons) of ethylene oxide, a highly carcinogenic gas linked to breast and lymphatic cancer, each year. This would amount to the fourth largest release of ethylene oxide in the United States. According to a 2016 study by the Environmental Protection Agency, acute, or short-term, effects of inhaling ethylene oxide include central nervous system depression, as well as irritation of the eyes and mucous membranes. Chronic, or long-term, exposure to ethylene oxide increases the risk of life-threatening diseases such as leukemia, breast cancer and cancer of the lymphoid tissue.

Additionally, Formosa would emit 189,700 pounds per year of other known carcinogens: benzene, 1,3-butadiene, acetaldehyde and formaldehyde. Other emissions include nitrogen oxides, which may cause or exacerbate respiratory diseases and can aggravate existing heart disease, leading to premature death. Exposure to particulate matter, specifically PM2.5, ozone and sulfur dioxide, may weaken lung function and worsen respiratory symptoms. Taken together, the respiratory effects of these toxic emissions would further exacerbate vulnerability to COVID-19, which disproportionately affects African American populations in Louisiana. Inhaling carbon monoxide may intensify heart conditions and even cause death.

### **Global impact on climate and fragile ecosystems**

The proposed facilities by Formosa Plastics, South Louisiana Methanol and YCI would emit massive amounts of carbon dioxide, which combined would exceed the emissions of 113 different countries. The authorities have not assessed the environmental impact of these facilities. Cancer Alley's petrochemical facilities are a major factor in the unsustainability of the environment of the Gulf Coast. Formosa has been declared as a "serial offender" for water pollution by a federal judge in Texas. Formosa's plant in Baton Rouge has violated the Clean Air Act, the Resource Conservation and Recovery Act and the Clean Water Act. YCI has planned to dump treated processed water into the Mississippi River, threatening the drinking water of nearly 24,000 people. YCI is also seeking approval to expand waste disposal into the wetlands.

Although we do not wish to prejudge the accuracy of the information made available to us, we wish to express our serious concern over the construction of three new petrochemical complexes in the "Cancer Alley", which will exacerbate the environmental pollution and the disproportionate adverse effect on the rights to life, to

an adequate standard of living and the right to health of African American communities in breach of international human rights law as codified in the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on Civil and Political Rights.

As highlighted by the Special Rapporteur on human rights and the environment in his report on clean air (A/HRC/40/55), air pollution not only impacts a range of human rights, including the rights of the most vulnerable such as children, but the right to breath clean air is also an essential component of a right to a healthy environment. In this connection, we are concerned about the increased exposure to petrochemical footprint, having dire effects on human rights enjoyment of the community and that will more than double African Americans' risk of contracting a life-threatening illness such as cancer, respiratory and heart diseases, leading to premature death and exacerbating their already increased vulnerability to COVID-19.

We are further concerned about this form of environmental racism that disproportionately impacts African American communities, as has been noted by the Working Group of Experts on People of African Descent.<sup>1</sup> In 2016, the Working Group called on the United States to “increase its efforts to address environmental threats to human rights, amid the recent outrage over lead-contaminated water in the town of Flint, Michigan.”<sup>2</sup> In its 2019 Report to the Human Rights Council, the Working Group concluded that “[t]he ability to exercise and enjoy key human rights is dramatically curtailed by racial bias in decision-making.”<sup>3</sup> St. James Parish Council's different treatment of majority black Fifth District and majority white Third District in deciding whether to permit or prohibit further industrialisation raises serious concerns of such racial bias. We are also concerned about the lack of participation and consultation of African American residents and communities affected.

Exposing residents living in the “Cancer Alley” to additional and continued environmental pollution would result in a continued violation of the right to adequate housing, which includes at its core the right to live in safety and dignity in a home, that is habitable and located in an area not exposing their residents to life-threatening and health risks. We are further concerned by the legacy of colonialism in “Cancer Alley”. The African American descendants of the enslaved people who once worked the land are today the primary victims of deadly environmental pollution that these petrochemical plants in their neighbourhoods have caused. Indeed, over the past few decades, special procedure mandate holders have concluded that colonialism and the slave trade have entrenched racial discrimination and continue to be a root cause of contemporary manifestations of racism and racially discriminatory violations of human rights.<sup>4</sup>

Additionally, we are concerned at the possible violations of the cultural rights of the affected African American communities in “Cancer Alley”, where at least four ancestral burial grounds of enslaved Africans are at serious risk of destruction by the construction of the Sunshine Project. In this regard, recognition of and reparations for the centuries of harm to Afro-descendants rooted in slavery and colonialism need to be urgently addressed as a human rights imperative.

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<sup>1</sup> A/71/297; A/HRC/42/59

<sup>2</sup> A/71/297

<sup>3</sup> A/HRC/42/59

<sup>4</sup> A/74/321; E/CN.4/1995/78/Add.1; A/HRC/33/61/Add.2

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 appreciate your responses to the information and concerns we have listed above, as well as to the following requests:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information and concerns.
2. Please provide detailed information concerning federal and local initiatives to address African Americans' exposure to life-threatening diseases and environmental racism and to regulate corporate industrialization of residential areas. Please indicate the anticipated timeline for the enactment of the proposed Environmental Justice for All Act (S. 4401, 116<sup>th</sup> Congress, HR. 5986, 116<sup>th</sup> Congress)?
3. Please provide information on the measures adopted at the local level, in particular the St. James Parish Council to revert land use plan for the Fifth District from "residential/future industrial" to "residential", as well as to reconsider and rescind land use permits approved for Formosa Plastics. Please indicate how the participation of African American communities has been promoted and ensured in these decisions.
4. Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to ensure that business enterprises domiciled in your territory and/or jurisdiction, such as FG LA LLC, respect human rights throughout their operations. This may, for example, include requiring such businesses to conduct effective human rights due diligence, in line with the UN Guiding Principles on Business and Human Rights, to identify, prevent, mitigate and account for how they address their impacts on human rights and the environment throughout their operation.
5. Please provide information on measures adopted to undertake independent environment and human rights impact assessments with the participation of the communities affected, and investigations of all cases of environmental pollution and its health and life-threatening effects, ensuring that victims have access to effective remedies without discrimination as to race, colour or national or ethnic origin;
6. Please provide information on measures to provide victims with compensation for damages of environmental pollution and with access to medical care to address health-related effects.

7. Please indicate the concrete measures adopted to protect and respect the cultural rights of African American communities in “Cancer Valley”, where ancestral burial grounds are at risk of destruction.
8. Please indicate the steps that your Excellency’s Government has taken, or is considering to take, to ensure that business enterprises domiciled in your territory and/or jurisdiction establish or participate in effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to

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

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 would appreciate if this communication can be transmitted to the relevant local authorities, in particular St. James Parish Council.

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 note that letters expressing similar concerns were sent to the companies involved in the abovementioned allegations.

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

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xenophobia and related intolerance

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management and disposal of hazardous substances and wastes

## **Annex**

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

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards:

Firstly, we would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of Racial Discrimination, ratified by the United States on 21 October 1994. Article 2, paragraph 1 c) asserts that State party has the obligation to take effective measures to review governmental, national and local policies, and to amend or rescind any laws and regulations that have the effect of creating or perpetuating racial discrimination. In addition, Article 5 of ICERD stipulates that States parties have the obligation to prohibit and eliminate racial discrimination in all its forms. States also shall guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of the rights to housing, public health and medical care, as well as to participation in cultural activities.

We would like to refer to the Concluding Observations on the combined 7<sup>th</sup> to 9<sup>th</sup> periodic reports of the United States of America of the Committee on the Elimination of Racial Discrimination (CERD), adopted in 2014. In paragraph 10, the Committee expressed its concern at the disproportionate negative impact of pollution caused by the extractive and manufacturing industries in individuals belonging to racial and ethnic minorities. The Committee called upon the State party: (a) to ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels; (b) to undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected communities; bring those responsible to account; and ensure that victims have access to appropriate remedies; and (c) to clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date.

We would also like to recall the obligations of your Government under the International Covenant on Civil and Political Rights (ICCPR), ratified on 8 June 1992. Article 6, paragraph 1 of ICCPR states that every human being has the inherent right to life. This right shall be protected by law. In its General Comment N° 36 on Article 6, the Human Rights Committee has stated that States' obligation to protect the right to life by law includes the adoption of laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities. The obligation of States to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life. In this connection, 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. These general conditions may include degradation of the environment and the prevalence of life-threatening diseases.



In this regard, the Committee considers that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. For the Committee, the obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. 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. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.

We would like to draw the attention of your Excellency's Government to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), signed by the United States on 5 October 1977. While the United States is yet to ratify the ICESCR, as a signatory, it has the responsibility to refrain from any acts which would defeat the object and purpose of the Covenant prior to its entry into force. Article 25 of the UDHR states that everyone has the right to a standard of living adequate for the health and well-being. Articles 11 and 12 of the ICESCR recognize the rights to an adequate standard of living, the right to adequate housing and the right to the enjoyment of the highest attainable standard of physical and mental health.

In its General Comment No. 4 on the right to adequate housing (article 11.1 of ICESCR) the Committee on Economic, Social and Cultural Rights (CESCR) has stated that "the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head [...]. Rather it should be seen as the right to live somewhere in security, peace and dignity." In addition adequate housing means as well that housing "must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well." In relation to the location of housing, States have to ensure that housing is not "built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants."

Furthermore States are obliged to ensure that the right to adequate housing and the right to the highest attainable standards of health and the right to safe drinking water "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" in accordance with article 2.2 of the ICESCR. This includes not only addressing formal discrimination, but as well substantive or de facto discrimination that results in unequal living conditions and unequal hazardous exposure to pollution.

In its General Comment No. 14 on The right to the highest attainable standard of health (article 12 of ICESCR), the Committee on Economic, Social and Cultural

Rights (CESCR) has stated that “the improvement of all aspects of environmental and industrial hygiene” (art. 12.2 (b)) comprises the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. The Committee, in its General Comment No. 15 on the right to water, defines the obligation of the States parties to prevent third parties from interfering in any way with the enjoyment of the right to water. States have the obligation to adopt the necessary and effective legislative and other measures to restrain, for example, third parties from polluting and inequitably extracting from water resources.

We recall the explicit recognition of the human rights to safe drinking water by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, *inter alia*, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

With regard to the allegations in relation to the enjoyment of cultural rights, including the right to access and enjoy cultural heritage, and the right to engage in one’s own cultural practices, we would like to refer to article 27 of the Universal Declaration of Human Rights; article 15 of the International Covenant on Economic, Social and Cultural Rights and article 27 of the International Covenant on Civil and Political Rights. In its General Comment N°21 on the Right of everyone to take part in cultural life (art. 15, para. 1 (a), of ICESCR, the Committee asserted that States have the obligation to protect minority cultures and that minorities have the right to manifestations of their cultural identity and membership. Article 15 also enshrined the right to scientific progress as a human right. States’ Parties should recognize to everyone the right to enjoy the benefits of scientific progress and its applications and take steps to achieve the full realization of this right, including those actions necessary for the conservation, the development and the diffusion of science and culture. This includes the protection of any ethical and material interests resulting from a person’s scientific, literary or artistic works, and the promotion of international technical cooperation and the development of science and culture as benefits for everyone.

The United Nations Committee on Economic, Social and Cultural Rights (CESCR) recently published the General comment No. 25 (2020) on science and economic, social and cultural rights, a new interpretation and guidance on the relationship between science and the enjoyment of economic, social, and cultural rights. In interpreting Article 15 of the ICESCR, the Committee defines the scope of States’ obligation to promote and gather scientific research and the advances it makes possible, with regard to everyday life and in crises such as pandemics. The Committee also recognizes that “science is one of the areas of the Covenant to which States parties give least attention in their reports and dialogues.” As pointed out in the General Comment, States’ obligations with respect to the right to enjoy the benefits of scientific progress and its applications encompass the conservation, development, and diffusion of science, the freedom to engage in scientific research and the promotion and cooperation in the scientific field. The General Comment also stipulates that a clear benefit of scientific progress is that scientific knowledge is used in decision-making and policies, which should, as far as possible, be based on the best available scientific evidence. States are therefore expected to endeavour to align their policies

with the best scientific evidence available.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. 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.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

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).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”. States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.