

**Mandates of the Special Rapporteur on the rights of indigenous peoples; the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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**

Ref.: AL GUY 1/2022

(Please use this reference in your reply)

10 June 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples; Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 42/20, 44/15, 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 **a large-scale mining operation by Canadian-based Golden Shield Resources, in the absence of good faith consultation and without the free, prior and informed consent of the Wapichan indigenous peoples of South Rupununi, Guyana.** The gold mine is located on the Marudi Mountain, an area sacred to the Wapichan at the headwaters of the rivers that sustain the ecosystem the Wapichan people depend on.

According to the information received:

On 2 December 2021, Golden Shield Resources received a prospecting license to mine Mount Marudi, valid for three years, with two year-long renewals.<sup>1</sup> This follows the Government of Guyana approving an expansion agreement with Aurous Mining Inc., the Rupununi Miners Association, and Romanex Guyana without informing the Wapichan represented by the South Rupununi District Council ("SRDC") or its constituent communities, who learned of expansion plans from a Ministry of Natural Resources announcement on social media. According to reports, the SRDC sent a letter to the Ministry of Natural Resources on 19 November 2021, to express its objection to the project and asked the Government to revoke the agreement. Meetings were then held with the indigenous community allegedly after the agreement was signed. Copies of the agreement have not been provided to the community.

The information received alleges that the agreement was entered into without an environmental permit from the Environmental Protection Agency (EPA) despite evidence that the gold mining is leading to water pollution, mercury spills and deforestation. A previous draft environmental impact assessment report for mining in Marudi was rejected by the EPA, in part due to the lack of

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<sup>1</sup> Angela Harmatas, "Golden Shield Resources is putting the spotlight on Guyana's mineral potential with its Marudi Mountain gold project," *Proactive*, 23 Feb. 2022, <https://www.proactiveinvestors.com/companies/news/974777/golden-shield-resources-is-putting-the-spotlight-on-guyana-s-mineral-potential-with-its-marudi-mountain-gold-project-974777.htm>

consultation and participation by the Wapichan. The EPA required that a new impact assessment be conducted and allegedly promised community visits to ensure that the rights of the Wapichan people would be respected in decision-making surrounding the mining activities at Marudi Mountain moving forward. The affected indigenous peoples have expressed their fears over environmental harms caused by the expansion of mining activities, as the Marudi Mountain is not only culturally sacred to them but is the source of four major river systems on which they and the surrounding ecosystem depend on as a natural water source.

The information received alleges that several reports, including by Government agencies and environmental NGOs, indicate that mining activities in the Wapichan territory, especially around the Marudi Mountain area, are causing the release of toxic substances which are having adverse impacts on the environment and human health. There is documented evidence that mining activities often do not adhere to environmental or mining laws or regulation. One report from an inspection carried out by the Environmental Protection Agency in 2019<sup>2</sup>, in response to complaints by the SRDC, found that “small scale unauthorised mining was being conducted in a precarious manner with little or no concern for mining safety and the environmental impacts from their activities. Discharges from the various mill crushers are being emitted directly on land with no containment or settling ponds.”

The SRDC has a monitoring program that regularly tests pH, turbidity, conductivity, and temperature in creeks and rivers at sites both upstream and downstream from mining activity. Samples taken in 2021 at sites downstream from mining activity have shown pH and turbidity levels significantly over the WHO reference limits. The samples from the water upstream of mining sites is, at least by these two indicators, cleaner or safer to drink than the water downstream of mining sites.

Further, a study<sup>3</sup> undertaken in 2017, with support from the World Wildlife Fund and published in 2020, documented that the mercury level in hair samples from residents of four villages in Wapichan territory all exceeded tenfold the reference limit set by the WHO/FAO<sup>4</sup>. This study found that the average mercury levels were highest in the three villages closest to the Marudi mining area. These results are consistent with those of other studies done on mercury levels in indigenous villages in Guyana: higher mercury levels were associated with the consumption of contaminated fish. The information received also alleges that, despite numerous calls for it to do so, the Government has thus far undertaken minimal mercury testing and monitoring, and has not provided any support for local residents to undergo clinical evaluation for mercury contamination.

Concerns have been raised that the Government has failed to legally recognize the land rights of the Wapichan people, Aishalton village in particular, that formally requested recognition of their ownership rights over Marudi Mountain beginning in 1967. According to the information received, the

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<sup>2</sup> Environmental Protection Agency, Environmental Management Division : Inspection Report – Complaint Investigation, 2019.

<sup>3</sup> Watson, C., Hurtado-Gonzales, J., Chin, C., Persaud, J., Survey of Methylmercury Exposures and Risk Factors Among Indigenous Communities in Guyana, South America, Journal of Health and Pollution, 2020.

<sup>4</sup> World Health Organization, Guidelines for Drinking-water Quality, Fourth Edition.

domestic legislation does not protect indigenous peoples' right to free, prior and informed consent (FPIC) as per international human rights standards. The Amerindian Act (2006) restricts FPIC primarily to titled lands thereby permitting mining concessions to be issued over untitled land without prior consultation and consent of the affected communities. While the Wapichan wait for their lands to be formally recognized by the Government, Marudi Mountain remains unprotected under the Act. Further, the law appears to discriminate against indigenous peoples that have had traditional occupation, tenure and use over those lands and territories.

Finally, the information indicates that the State's inclusion of mining in its list of "essential services,"<sup>5</sup> incentivised mining expansion. As a result of the Government's action, the Wapichan territory has seen an influx of miners from within Guyana and Brazil, increasing the risk of exposure to COVID-19, and of exhaustion of Waipchan's natural resources and livelihoods.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed as to the lack of prior consultation and the exclusion of the Wapichan people from the decision-making process with respect to the mining expansion. The consultation with the affected indigenous peoples was reportedly conducted retrospectively, after the signing of the agreement. Such practice appears to be contrary to international human rights standards including the United Nations Declaration on the Rights of Indigenous Peoples. Mining projects in the Marudi Mountain have been associated with mercury spills and a wide range of potential adverse human health and societal risks that could potentially contaminate natural water sources used by the Wapichan indigenous peoples as sources of safe drinking water for human consumption as well as for their animals and farming. It is important to highlight that the Wapichan have a holistic approach to nature, that connects water to forests and lands, and seeds and animals. Therefore, affecting any natural resource has a deep consequence on their physical and mental health. Our preoccupations also extend to alleged State measures that support the expansion of mining activities at the expense of indigenous peoples' health and safety, particularly the rights of indigenous peoples to control entry and access to their territories during the COVID-19 pandemic.

We express particular concern that an environmental impact assessment has not been undertaken despite the serious environmental, cultural and social impact of mining activities and potential human rights abuses related to the right to a safe and healthy environment. We are also concerned with the lack of legal and institutional framework that guarantees indigenous peoples are consulted with the view to obtaining their free, prior and informed consent on all projects that would affect them. Deep concern is also expressed towards the continued existence of the discriminatory distinction between titled and untitled land in the 2006 Amerindian Act.

We would like to recall that in 2018, the Committee on the Elimination of Racial Discrimination in its Concluding Observations<sup>6</sup> urged the State of Guyana to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from other legislation and urged the State party to "recognise and protect the rights of all indigenous communities to own, develop and

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<sup>5</sup> A list of services essential to preserving life, health, safety and basic societal functioning that were permitted to operate during national COVID-19 lockdowns.

<sup>6</sup> [CERD/C/GUY/CO/14](#) paras.15, 16 and 19.

control the lands which they traditionally occupy, in accordance with the Committee's General Recommendation No. 23 (1997) on the rights of indigenous peoples. Moreover, the Committee requested the State party, in consultation with the concerned indigenous peoples, to demarcate or otherwise identify the lands which they traditionally occupy or use, and further asked Guyana to undertake environmental impact assessments and seek the free and informed consent of the concerned indigenous peoples prior to authorising any mining or similar operations which may threaten the environment in areas inhabited by these communities.

The Committee also reiterated its previous recommendation that the State party "refrain from approving projects and granting mining concessions that affect the lands, territories or resources of Indigenous Peoples without obtaining their free, prior and informed consent, and revoke such projects in Tassarene and Kangaruma villages and on Marudi Mountain to which the Indigenous Peoples did not consent"<sup>7</sup> and encouraged the State party to "Conduct an environmental and social impact assessment with the full participation of all indigenous peoples affected by the mining project on Marudi Mountain."<sup>8</sup>

We would also like to recall that in 2015, the Committee on Economic, Social and Cultural Rights, in its Concluding Observations<sup>9</sup>, noted its concern at the broad range of exceptions that allow mining and logging activities by external investors without the free, prior and informed consent of the affected indigenous peoples.

We wish to refer to the report of the Special Rapporteur on the rights of indigenous peoples to the General Assembly in 2020. The Special Rapporteur recommended that States should support, and when requested assist in the enforcement of, any decision by indigenous communities to restrict access to their territories to prevent virus spread; given the new pandemic-related risks, the resumption or continuation of business activity occurring on indigenous territory should take place only with the renewed consent of concerned indigenous peoples. States should consider a moratorium on all logging and extractive industries operating in proximity to indigenous communities. Neither State authorities nor businesses should be permitted to exploit the situation to intensify activities to which indigenous peoples have objected; refrain from introducing legislation or approving extractive or similar projects in the territories of indigenous peoples in any circumstance where measures against COVID-19 prevent proper consultation and consent. States should equally refrain from proceeding to or threatening indigenous peoples with eviction of from their lands and seek to demilitarize indigenous lands.<sup>10</sup>

We would like to recall the report of the Working Group on the Universal Periodic Review for Guyana in 2020<sup>11</sup>, which included recommendations to: strengthen measures to combat the negative effects of the economic activities of companies on the environment and biodiversity; take all steps to respect and protect the constitutional rights to a healthy environment; strengthen the protection of the rights of Amerindian peoples through the revision of the Amerindian Act and other relevant laws to align them with the United Nations Declaration on the Rights of Indigenous Peoples; continue to take further steps to ensure the protection of land rights of Guyana's indigenous peoples; and establish a national human rights

<sup>7</sup> [CERD/95th/EWUAP/SK/ks.](#)

<sup>8</sup> [CERD/EWUAP/Guyana/2018/JP/ks.](#)

<sup>9</sup> [E/C.12/GUY/CO/2-4](#)

<sup>10</sup> [A/75/185.](#)

<sup>11</sup> [A/HRC/44/16](#)

institution, among others.

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 the legal basis for the mining activities being carried out. Please provide detailed information on the measures taken to prevent and, if appropriate, punish illegal mining.
3. Please provide information on whether the State has considered suspending mining activities in Wapichan territory until the Wapichan have given their free, prior, and informed consent, particularly for the duration of the COVID-19 pandemic.
4. Please indicate what steps the State has taken or will take to undertake a comprehensive human rights, environmental, health, cultural and social impact assessment with the inclusive, transparent, consultative and full participation of all indigenous peoples affected by mining projects on or near Marudi Mountain.
5. Please indicate what steps have been taken by your Excellency's Government to protect indigenous peoples against human rights abuses by illegal mining, including regarding pollution and its negative consequences on the right to food, health, the availability of safe drinking water, and the right to a clean, healthy and sustainable environment.
6. Please specify what measures have been taken or will be taken to promulgate regulations, in consultation with indigenous peoples, to facilitate the participation of indigenous peoples that may be affected by mining activities, as provided by the Environmental Protection Act.
7. Please provide information on actions taken, with the participation of indigenous peoples, to effectively incorporate the right to free, prior and informed consent into Guyana's domestic legislation.
8. Please provide information on the measures taken to address CERD's recommendation to amend the Amerindian Act, with a view to repealing the discriminatory distinction between titled and untitled lands.
9. Please advise on the status of the petition submitted by Aishalton village to the Amerindian Lands Commission in 1967, and any efforts

made to accelerate the land titling process so as to legally protect all lands traditionally used and occupied by indigenous peoples.

10. Please indicate how your Excellency's Government respects the decisions of the Wapichan, Village Councils and SRDC to monitor entry and control access to their territory to contain the spread of COVID-19 and to protect their communities.
11. Please indicate what measures have been taken to ensure health care and health care services to indigenous peoples, including indigenous children, contaminated by mercury.
12. Please indicate what studies your Excellency's Government has undertaken, or plans to undertake, in relation to potential mercury pollution in the Marudi Mountain.
13. Please provide information on whether your Excellency's Government has conducted mercury biomonitoring or evaluations of mercury poisoning in affected communities in the Marudi Mountain.
14. Please provide updated and comprehensive information on the impacts and damages of water pollution, mercury contamination and deforestation on the Marudi Mountain, and the health of local communities and indigenous peoples, in particular the availability of safe drinking water and access to adequate food.
15. Please provide information on any measures planned to prevent negative human rights impacts from mercury contamination on the Marudi Mountain, including mechanisms for just and fair redress and appropriate measures to mitigate adverse environmental, health, economic, social, cultural or spiritual impacts on the Wapichan indigenous peoples.
16. Please indicate whether your Excellency's Government envisages the elaboration of a National Action Plan pursuant to article 7.3 of the Minamata Convention, and whether the Action Plan is intended to tackle the issue of illegal mining, and if yes, in which ways.
17. Please provide information on any steps that your Excellency's Government has taken, or is considering taking, including policies, legislation and regulations to protect against human rights abuses by business enterprises within its territory and/or jurisdiction, and to ensure that business enterprises conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights (UNGPs).
18. Please provide information about the measures that your Excellency's Government has taken, or is considering taking, to ensure that affected local communities and indigenous peoples have access to effective remedies, including adequate reparation, in line with the UNGPs.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

Please be informed that a letter on this subject matter has been also sent to the Government of Canada and the mining company, Golden Shield Resources, with regard to the allegations raised above.

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

José Francisco Cali Tzay  
Special Rapporteur on the rights of indigenous peoples

Elżbieta Karska  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Marcos A. Orellana  
Special Rapporteur on the implications for human rights of the environmentally sound 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 its obligations under binding international human rights instruments. The Republic of Guyana has ratified international treaties relevant to the rights of indigenous peoples, including the International Covenant on Civil and Political Rights (hereinafter, "ICCPR") on 15 February 1977, and the International Covenant on Economic, Social and Cultural rights (hereinafter ICESCR) on 15 February 1977.

In this regard, we would like to remind your Excellency's Government that the human right to water is enshrined in articles 11 and the right to everyone, including indigenous peoples, to the enjoyment of the highest attainable standard of physical and mental health, in article 12 of the ICESCR, coupled with its article 2(2) and its non-discrimination principle and that in its General Comment No. 15 (2002), the Committee on Economic, Social and Cultural Rights (CESCR) established that the human right to water is the right of everyone "to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." In addition, General Comment No. 14 adopted by the Committee stresses that the right to health is defined not only as the right to timely and appropriate health care, but also to "the underlying determinants of health, such as access to safe and potable water [...] and environmental conditions [...]" (para.11). This paragraph also emphasizes the important aspect of "the participation on the population in all health-related decision-making at the community, national and international levels". WHO defines social determinants of health, as the non-medical factors that influence health outcomes, that is "the conditions in which people are born, grow, work, live, and age<sup>12</sup>". In her last report presented to the General Assembly (A/76/172), while referring to the social determinants of health, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, also refers to the fact that "the COVID-19 pandemic has further underscored the health impacts of social inequalities" (para 11).

It also establishes that water is necessary to fulfil the right to food, health and enjoy certain cultural practices; the priority should always be given to accessing water for personal and domestic issues, and that the States should devote particular attention to the ones that usually face difficulties in exercising their right to water, among others, women, indigenous peoples, farmers and children (CESCR, General Comment No. 15, para. 16). In this line and in the same paragraph, the Committee establishes that States should take steps to protect indigenous peoples water sources from encroachment and pollution and promote and allocate resources to design, deliver, and control their access to water.

Other significant milestones are the 2010 General Assembly and Human Rights Council's resolutions, which "recognized the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights" and that the right to water is derived from the right to an

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<sup>12</sup> World Health Organization, "Social determinants of health", available at: [www.who.int/health-topics/social-determinants-of-health#tab=tab\\_1](http://www.who.int/health-topics/social-determinants-of-health#tab=tab_1).

adequate standard of living.

We wish to also recognize that Your Excellency's Government has also voted in favour of the adoption of, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on 13 September 2007. By its very nature, the Declaration on the Rights of Indigenous Peoples is not legally binding, but it is nonetheless an extension of the commitment assumed by United Nations Member States – including the Republic of Guyana – to promote and respect human rights under the United Nations Charter, customary international law, and multilateral human rights treaties to which the Republic of Guyana is a Party.

As a universal framework setting out the minimum standards of protection of indigenous peoples' rights, the Declaration establishes, at article 18, the rights of indigenous peoples to participate in decision-making in matters which would affect their rights and at article 19, mandates a state to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 26 of UNDRIP asserts the rights of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and that States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. Article 32 affirms that indigenous people have the right to 'determine and develop priorities and strategies for the development or use of their lands or territories and other resources' and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned 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'. With regards to the situation related to the environment, its article 32(3) requires that States 'provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact'.

Although not ratified by your Excellency's Government, we urge Guyana to consider article 7(1) of the ILO Indigenous and Tribal peoples Convention that affirms the right of indigenous peoples 'to decide their own priorities for the process of development' and to 'participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly'. The Convention further stipulates that States shall ensure that studies are carried out, in co-operation with the people concerned, to assess the social, spiritual, cultural and environmental impact that planned development activities may have on these peoples. The results of these studies shall be considered as fundamental criteria for the implementation of the above-mentioned activities (article 7). ILO Convention 169, article 14(1) implores states to recognize indigenous peoples 'rights of ownership and possession' over the lands they 'traditionally occupy'. This includes 'lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. The Convention also establishes, at article 6, that Governments shall: 'consult the peoples concerned, through appropriate procedures and in particular

through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them'; and that 'the consultation carried out in application to the circumstances, with the objective of achieving agreement or consent to the proposed measures'.

In addition, we wish to draw the attention of your Excellency's Government to obligations under international human rights instruments, to which Guyana is party, recalling the article of the Universal Declaration of Human Rights (UDHR) and article 6(1) of ICCPR that guarantees the right of every individual to life, liberty and security. As highlighted by the Human Rights Committee in General Comment No. 36, the duty to protect life also implies that States parties should take appropriate measures to address the general condition 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 the 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).

Furthermore, as detailed in the Framework Principles on Human Rights and the Environment ([A/HRC/37/59](#), [annex](#)), which outline 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 effective enforcement of their environmental standards against public and private actors (principle 12) and should take additional measures to protect the rights of the most vulnerable to or at particular risk of environmental harm, taking into account their needs, risks and capacities (principle 14).

In relation to the human right to safe drinking water and sanitation, we wish to draw the attention of your Excellency's Government to the General Comment No. 15 of CESCR ([E/C.12/2002/11](#)), which affirms that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

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 human rights implications of the environmentally sound management and disposal of hazardous substances and wastes to the United Nations General Assembly (A/74/480). This obligation derives implicitly, but clearly, from a range of rights and duties enshrined in the global human rights framework, under which States are obliged to respect and fulfil recognized human rights, and to protect those rights, including from the consequences of exposure to toxic substances. These rights include the human rights to life, health, food and drinking water, adequate housing and safe and healthy working conditions. The duty to prevent exposure is reinforced by 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 individual, which contributes to a context in which everyone should have the right to control what happens to his or her body (see A/HRC/39/48). Read together, international human rights clearly establish the duty of Your Excellency's Government to prevent exposure to hazardous substances and wastes.

Furthermore, on October 8, 2021, the Human Rights Council adopted resolution 48/13 recognizing the right to a healthy environment. In this regard, we would like to draw Your Excellency's Government's attention to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The Principles provide that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2); and States should ensure effective enforcement of their environmental standards against public and private actors (Principle 12).

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. 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 of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The Guiding Principles clarify that under international human rights law, “States must protect against human rights violations committed in their territory and / or their jurisdiction by third parties, including business enterprises” (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).

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” This obligation requires that a State takes 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 “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3).

The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. 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 do occur.

Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed. 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 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 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.