

Mandates of the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Ref.: AL AUS 3/2022
(Please use this reference in your reply)

22 September 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights in the context of climate change; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur in the field of cultural rights; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the rights of indigenous peoples 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 A/HRC/48/14, 44/15, 46/9, 46/7, 42/20 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 fossil fuel project causing damage to indigenous sacred art and songlines in Murujuga and a further expansion of the use of fossil fuels contrary to obligations under the Paris Agreement on climate change.**

According to the information received:

The Burrup Peninsula in Western Australia, known as Murujuga to traditional custodians, is the site of the Burrup Hub, which includes Australia's largest new fossil fuel project, Woodside Energy's Scarborough gas project and Pluto LNG facility.

The project

Woodside Energy, the largest Australian natural gas producer, is currently working on an expansion of its gas infrastructure in the Burrup Peninsula as part of the \$16.5bn Scarborough gas project. The Scarborough gas resource, located approximately 375 km off the Burrup Peninsula, is estimated to contain 11.1 trillion cubic feet (100%) of dry gas. The proposed development of Scarborough occurs in Commonwealth waters off the northwest coast of Western Australia (WA), within the North-west Marine Region (NWMR) (Integrated Marine and Coastal Regionalisation of Australia).

The Scarborough gas resource will be developed through new offshore facilities connected by an approximately 430 km pipeline to a second liquefied natural gas (LNG) train (Pluto Train 2) at the existing Pluto LNG onshore facility. In addition to the development of the Scarborough and North

Scarborough fields, Woodside Energy is considering an expansion to the nearby Thebe and Jupiter gas fields in the future. The Scarborough Joint Venture comprises Woodside Energy Scarborough Pty Ltd (73.5%) and BHP Petroleum (Australia) Pty Ltd (26.5%). In August 2022, Woodside announced that construction had commenced on the Pluto Train 2 Project.

Perdaman, a multinational group based in Western Australia which works inter alia in the area of fertilizer production, is planning to build a \$4.5bn fertilizer plant which will rely on a portion of the gas produced by Woodside Energy. Perdaman's Burrup plant is set to produce 2 million tonnes of fertilizer grade urea per year.

Impact on climate change

More than 750 individual appeals have been lodged against the state Environment Protection Authority (EPA)'s recommendation that Woodside Energy's may continue processing gas on the Burrup peninsula up to 2070.

A 2021 study shows that the Scarborough gas project would result in a substantial increase in Western Australia's greenhouse gas emissions. Woodside's proposed "Greenhouse Gas Abatement Plan" is alleged to do little to reduce emissions in any substantive sense and instead will contribute to increasing emissions. According to the study, the Scarborough gas project will cause an estimated 1.37 billion tonnes of cumulative emissions by 2055.¹

In June 2022, Environmental Defenders Office (EDO), on behalf of the Australian Conservation Foundation (ACF), sought an injunction in the Federal Court against Woodside's Scarborough Gas Project. The injunction, under section 475 of the Environment Protection and Biodiversity Conservation (EPBC) Act, relates to the offshore project, and is sought on the basis that the greenhouse gas emissions of the Scarborough offshore gas project are likely to have a significant impact on the Great Barrier Reef.

EDO is arguing that the project should not be allowed to commence unless it is approved under Australia's national environmental legislation, the EPBC Act. Under federal law, a blanket approval applies to all offshore gas and oil projects, which allows projects to be assessed under a streamlined process by the offshore regulator, NOPSEMA. However, this approval does not apply to projects that are likely to significantly impact the heritage values of the Great Barrier Reef.

While Woodside Energy has stated that it has ensured that proposed controls and impact and risk levels are consistent with national and international standards, law and policies, including Australia's implementation of the Paris Agreement², there are concerns that the project is not compliant with the Paris Agreement. The emissions are significantly larger than either Woodside Energy or the state government estimates indicate, and the Scarborough project will result in massive domestic emissions increases.

¹ [Warming Western Australia - Nov 2021 \(climateanalytics.org\)](https://climateanalytics.org/warming-western-australia-nov-2021)

² Scarborough Offshore Project Proposal section 6.2.3

Impact on Aboriginal rock art

Murujuga is a deeply sacred place that contains the largest, oldest collection of Aboriginal rock art in the world. Murujuga is home to over a million petroglyphs and rock art engravings which are more than 70,000 years old. It is currently nominated for UNESCO world heritage listing.

According to expert advice and traditional knowledge, the sacred songlines and stories contained in petroglyphs and rock art engravings are being damaged by emissions from the Burrup Hub and face total destruction within decades. Traditional custodians have voiced their opposition to further development on Murujuga but have been silenced by ‘gag clauses’ in industrial agreements with the Western Australia Government. Government and industry have acquired land under duress, creating division and chaos. Sections of the Burrup and Maitland Industrial Estates Agreement (BMIEA), created by the Western Australia government in 2003, stops traditional owners from objecting to developments on their land.

Traditional custodians applied for protection under sections 9 and 10 of the Aboriginal and Torres Strait Islander Heritage Protection Act. Section 9 is an emergency power, under which they sought to prevent the removal of the three rock art sites, and impact to the 8 others. Section 10 is permanent protection, under which they are seeking to prevent damage to the remaining sites from the emissions of existing and proposed industry on the Burrup Peninsula. On 22 August 2022, the emergency declaration was refused, and it is expected that Perdaman will commence construction imminently, resulting in irreparable damage to Murujuga rock art.

While both Woodside Energy and Perdaman have engaged with some traditional owners and custodians of Murujuga, others are concerned about the damage the expansion of the gas development and the fertilizer plant will do to their cultural heritage. They have already suffered loss of traditional livelihoods, traditional indigenous knowledge and spiritual relationship with the land. The project has also caused displacement and ecological degradation.

Without prejudging the accuracy of these allegations, we express our most serious concern regarding the human rights and environmental impacts of this project. The burning of fossil fuels constitutes one of the human activities that has the largest impact on the Earth’s climate. In this context, we remain preoccupied by the impact of fossil fuels exploitation in general, and this project in particular, on greenhouse gas emissions, contributing to the current climate crisis. Climate change is having a major impact on a wide range of human rights today, and could have a cataclysmic impact in the future unless ambitious actions are undertaken immediately. Among the human rights being threatened and violated are the rights to life, health, food, water and sanitation, a healthy environment, an adequate standard of living, housing, property, self-determination and development. In this respect, we wish to recall the Paris Agreement, ratified by Australia on 9 November 2016. It provides, in its preamble, that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, including the rights of indigenous peoples.

We are also concerned about reports that your Excellency's Government is failing to meet its international human rights obligations to protect the human rights of indigenous peoples and indigenous communities against the human rights abuses by business enterprises operating in its territory, including those involved in the development of the Burrup Hub. These allegations would have especially serious, long-standing and irreversible effects on the cultural rights of indigenous peoples as they would lead to the loss of cultural elements.

We also share the concern expressed by the Committee on the Elimination of Racial Discrimination that extractive and development projects are carried out on lands owned or traditionally used by indigenous peoples without seeking their prior, free and informed consent.³ In this respect, we wish to underline that the local indigenous community has the right to free, prior and informed and consent, or refusal of consent, regarding the gas activities in its lands. They have the right to determine their development in accordance with their own needs and interests. They have the right to the protection of the environment in their traditional lands, territories and resources.

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 provide information on the environmental impact studies carried out prior to the approval of and/or during the development of Woodside Energy's Burrup Hub project and whether these studies were prepared with a human rights-based approach, taking into account the environmental impacts, as well as the social and cultural impacts on the indigenous communities located in the area of the project.
3. Please provide information on the measures that have been taken to obtain the free and informed consent of indigenous peoples and communities prior to the approval of the development of this project on their traditional lands.
4. Please provide information about the measures that have been taken to protect the cultural rights of indigenous peoples that are affected by these actions.
5. Please indicate measures taken to ensure Woodside Energy, BHP and Perdaman comply with Australian as well as international environmental laws and human rights standards.

³ Concluding observations on the eighteenth to twentieth periodic reports of Australia, CERD/C/AUS/CO/18-20, para 21

6. Please advise about the steps taken by the Government to ensure that business enterprises 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.
7. 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.

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 sent to Woodside Energy, BHP and Perdaman.

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

Ian Fry

Special Rapporteur on the promotion and protection of human rights in the context of climate change

Fernanda Hopenhaym

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

Alexandra Xanthaki

Special Rapporteur in the field of cultural rights

David R. Boyd

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

José Francisco Cali Tzay

Special Rapporteur on the rights of indigenous peoples

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, wish to draw the attention of your Excellency's Government to obligations under international human rights instruments, to which Australia is party. We wish to recall article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Australia on 13 August 1980, which guarantees the right to life.

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 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). 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. 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).

We would also like to remind your Excellency's Government of its obligations under article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Australia is a party, relating to the right of everyone to take part in cultural life. The Committee on Economic, Social and Cultural Rights, in its 2009 General Comment 21 on the right to take part in cultural life (E/C.12/GC/21), stressed that States parties should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by indigenous peoples. The strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity. States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources (para. 36). Furthermore, States parties must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life (para. 49 d).

General Comment 21 (2009) also recalls that States have the obligation to respect and protect cultural heritage in all its forms. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among

others (E/C.12/GC/21, para.50).

In its resolutions 33/20, 37/17 and 49/7 on cultural rights and the protection of cultural heritage, the Human Rights Council noted that “the destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights.” Cultural heritage is also a critical resource for safeguarding, questioning and transmitting historical knowledge and narratives of the past, and as such, are resources to ensure the right to education and training without any discrimination, as recognized in article 13 of the ICESCR. The Special Rapporteur in the field of cultural rights has underscored that States have a duty not to destroy, damage or alter cultural heritage, and to take measures to preserve and safeguard cultural heritage from destruction or damage by third parties (A/HRC/17/38, and A/HRC/31/59). The obligation to preserve and safeguard cultural heritage is also inscribed in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, stressing the responsibility of States not to intentionally destroy their own heritage.

We also wish to refer to Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 29 July 2022, which recognize the right to a clean, healthy and sustainable environment as a human right, noting that guaranteeing a “safe climate” constitutes one of the substantive elements of this right.

We would also like to bring to the attention of your Excellency’s Government the Framework Principles on Human Rights and the Environment as detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The Principles state 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 the effective enforcement of their environmental standards against public and private actors (Principle 12).

We also wish to highlight the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which sets out international human rights standards relating to indigenous peoples’ rights. Article 26 of UNDRIP asserts the right of indigenous peoples to ‘the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’. Article 32 affirms that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and 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’. UNDRIP furthermore underlines that States shall 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.

With regard to the environment, article 29(1) of the UN Declaration on the Rights of Indigenous Peoples clearly states that ‘indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources’. Furthermore, as detailed in the Framework

Principles on Human Rights and the Environment (A/HRC/37/59), annex), which 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 those most vulnerable to or at particular risk of environmental harm, taking into account their needs, risks and capacities (principle 14).

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. 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.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The 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 cause or contributed to adverse impacts. Moreover, the commentary of the Principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. 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".

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" (Guiding Principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

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).