

**Mandates of 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 right to development; 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 promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

Ref.: AL OTH 104/2022  
(Please use this reference in your reply)

19 October 2022

Mr. Laurence Douglas Fink,

We have the honour to address you in our capacities as 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 right to development; 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 promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 44/15, 46/9, 42/23, 46/7, 43/4, 50/17, 43/14, 43/16, 44/8, 51/L.31 and 43/36.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.<sup>1</sup> Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

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<sup>1</sup> Further information about the communication procedure is available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

In this regard, we would like to bring to the urgent attention of your company the information we have received regarding the **alleged continuing actual and potential human rights impacts of the Mayan Train Development Project (the Project) and the lack of substantive measures from the Mexican Government and involved businesses to prevent, mitigate and redress them.** In September 2020, several of the UN experts who address this letter to you had already expressed their concern regarding the possible impacts of the Project on Indigenous Peoples and communities.

*According to the information received:*

The Mayan Train Development Project (the Project) is an infrastructure project developed by the National Government of Mexico that contemplates a 1460 kilometre railway, along with real estate works, development poles, energy works, including renewable energy, marinas, and agricultural production projects, among others, with the purpose of boosting socio-economic development in the southeast of Mexico, particularly in the states of Chiapas, Tabasco, Campeche, Yucatan and Quintana Roo, in accordance with the National Development Plan 2019-2024 .

The Project is led by the National Fund for Tourism Development (FONATUR in Spanish) , with the active participation of the Ministry of Interior, the National Institute of Indigenous Peoples, the Ministry of Environment and Natural Resources (SEMARNAT in Spanish), the Ministry of National Defence (SEDENA in Spanish) and the Ministry of Territorial Development. The construction, operation and exploitation of the Train Maya railway is the responsibility of the state-owned company FONATUR Tren Maya S.A. de C.V. The army also plays an increasing role in the implementation of the project, as described below.

The development of the railway is divided into 7 sections that have been awarded to different national and international companies, consortiums of companies and other public institutions, under tender or direct award. The construction of Section 1 -Palenque/Escárcega- has been awarded to Mota-Engil Mexico, in agreement with the Chinese state-owned company China Communications Construction Company, Ltd. (CCCC), and three Mexican companies -Gavil Ingeniería, Eyasa and Grupo Cosh. BlacRock, Inc. and JPMorgan Chase & Co. are investors in the Chinese company CCCC. Section 2 -Escárcega/Calkiní- has been awarded to the consortium formed by the Mexican company Operadora Cicsa and the Spanish company FCC Construcción. Control Empresarial de Capitales and Carlos Slim Helú are shareholders of the Spanish company FCC. Section 3 -Calkini/Izamal- has been awarded to the consortium made up of the Mexican business group, Gami Ingeniería e Instalaciones S.A. de C.V. -a subsidiary of the Mexican business group Grupo Indi, and the Spanish group Azvi S.L. and its Mexican subsidiary, Construcciones Urales. Section 4 - Izamal/Cancún - has been awarded directly to the Mexican Grupo ICA because it holds the concession for the 180D motorway. Section 5 - North-Cancun Airport/Puerto Morelos and Playa del Carmen - has been awarded to the Ministry of National Defence. Section 5 South - Playa del Carmen/Tulum Airport - was awarded to Grupo Mexico, together with Acciona, although the contract was recently terminated

early by the Mexican State. Finally, Sections 6 and 7 -Tulum/Bacalar and Bacalar/Escárcega- were awarded to the Ministry of National Defence.

*Declaration of the Mayan Train Development Project as a national security | project and the executive branch agreement of 22 November 2021*

In July 2022, the President of the Republic declared the Mayan Train Development Project as a "national security project", based on the Executive branch Agreement issued on 22 November 2021 (Agreement). This Agreement instructs the agencies and entities of the Federal Public Administration to grant provisional authorisation to submit and/or obtain the necessary rulings, permits or licences to initiate projects or works considered by the Government of Mexico to be of public interest and national security, and thereby guarantee their implementation. To this end, the Agreement provides that projects and works of public interest and national security will receive provisional authorisation for their execution within 5 days of the submission of the request for the permits or licences necessary to initiate the project. The provisional authorisation is valid for 12 months while the permit is being processed under the terms established by the regulations in force. This means that, during those 12 months, the execution of such projects, and in this case, the Mayan Train Development Project, would be executed despite the provisions of the general federal, state and municipal regulations that define the necessary permits in terms of authorisations and licences required for its execution.

Consequently, the Agreement provides for the derogation of the application of environmental and social safeguards provided for in the legislation, and thus facilitates various human rights abuses. The Agreement also undermines the right of access to information by classifying all information originating from these so-called public interest and national security projects as classified - in advance, in a generalised and definitive manner - as confidential. In fact, the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI in Spanish) filed an action of unconstitutionality regarding the Agreement for the restriction of the right of access to information. This, according to the INAI, fosters a regime of opacity and secrecy of the information produced by the implementation of such projects that is not in line with the guidelines established for the application of exceptions to the right of access to information. In this regard, INAI ordered SEMARNAT to provide information related to the construction of section 4 of the Mayan Train, which had been denied to a private individual who made a request for information, on the grounds that it was classified as national security information. Similarly, it had requested the same entity to make public the authorisation of the Environmental Impact Assessment for the construction of section 5 South of the Mayan Train, which had also been classified as national security information.

*Environmental impacts of the project*

In a study requested by the National Council of Science and Technology (Conacyt in Spanish), a group of researchers warned that the Project would impact the high jungles, swamps and savannahs in several municipalities of Chiapas and Tabasco; in the Yucatan Peninsula, the largest and best preserved

jungle massifs in Mexico and Mesoamerica, mangrove areas and other wetlands. These ecosystems would suffer alterations - degradation, fragmentation and deforestation - associated with the construction, circulation and development proposed by the Project. Impacts to species, flora and fauna, and wastewater generation and availability will be significant, including from the construction and operation of the railway. Because of the zone it is planned in, the project will change hugely the environment, including the morphology of caves. Ongoing construction has already caused impacts to the Mayan forest, the aquifer, caves and cenotes located along the train route.

Regarding the environmental, social and cultural impact assessment processes of the Mayan Train Development Project, there is no comprehensive assessment of the impacts that the Project will cause. Likewise, multiple changes have been made to the route of the railway, which means that it is not possible to have a global perspective of the cumulative impacts of the development and operation of the Project.

For now, we are only aware of the completion of environmental impact studies for the railway line, submitted to SEMARNAT between June 2020 and August 2022. It is alleged that the assessment of the impacts was done in a fragmented manner for each section, without having a global perspective of the impacts for the entire construction of the railway.

Furthermore, the environmental impact studies would have been submitted after the tendering and construction of each section had already begun and after the indigenous consultation process for the Train Maya Development Project had been completed in 2019. Indeed, in June 2020, the President of the Mexican Republic gave the go-ahead for the start of the railway works on sections 1, 2 and 3 of the Project, while SEMARNAT only approved Phase 1 of the Environmental Impact Assessment of the Regional Mayan Train Project, comprising sections 1, 2 and 3 of the Project in December 2020, and despite the fact that the Federal Supreme Audit Office had determined in early 2020 that in 2019 the actions aimed at determining the environmental impacts of the Project had not been adequately planned.

Recently, it is alleged that the construction of sections 4, 5, 6 and 7 would have started despite not having final environmental impact authorisations, in application of the Agreement of the executive branch of 22 November 2021. Regarding section 5 of the project - one of the most questioned sections due to its environmental impact - SEMARNAT approved a conditional authorisation, which was classified as national security information and published only after the intervention of the INAI.

#### *Impacts on the territorial and cultural rights of Indigenous Peoples.*

As pointed out extensively in the communication AL MEX 11/2020, the acquisition of land for the installation of the railway, which would entail a modification of the land tenure and ownership regime, will harm the rights of Indigenous Peoples over their traditional lands.

In 2021, the Mexican State abandoned the mechanism called the Infrastructure and Real Estate Trust Fund (Fideicomiso de Infraestructura y Bienes Raíces)

for obtaining the lands where the railway lines and development poles would be installed and opted for the use of prior land occupation contracts subject to expropriation between the ejidos where indigenous peoples live and the Mexican State, through mediation of businesses. One of these mediating companies - Barrientos y Asociados - has been involved in embezzlement and fraud to the detriment of the indigenous ejido authorities. For this reason, in autumn 2021, the contract with Barrientos y Asociados was cancelled and the company was criminally denounced.

In January 2022, FONATUR and SEDENA reportedly began to make direct agreements with the communities to allow the construction of the railway and for the expropriation of land and compensation for damages in exchange for payments, which in some cases has had an intimidating effect on the people of the communities, as well as community divisions and conflicts.

Although there is a process of territorial reorganisation of the area where the Mayan Train would pass through, there is no knowledge of a process of free, prior and informed consultation, with the view of obtaining the consent of indigenous peoples according to their procedures as required by the United Nations Declaration on the rights of Indigenous Peoples (UNDRIP), and in order to manage the various changes and significant impacts on the population. However, the risk of speculation, dispossession and land grabbing of indigenous lands has been pointed out.

The Mayan Train Development Project, as it is proposed, crosses the Mayan jungle where several Indigenous Peoples live, and directly impacts several protected natural areas in the region, including the biosphere reserve of Calakmul, included in the UNESCO World Heritage List as a site of cultural and natural importance. It is also being developed in areas with buildings of archaeological and cultural value for the Indigenous Peoples who have inhabited the area since time immemorial.

#### *Consultation and free, prior and informed consent of indigenous peoples*

As pointed out extensively in the communication AL MEX 11/2020, the consultation processes for the Mayan Train Development Project carried out by the Government with Indigenous Peoples in November and December 2019 were not in accordance with the standards of free, prior and informed consent of the indigenous peoples, as required by the UNDRIP, as documented by the Federal Superior Audit Office and the Office of the High Commissioner for Human Rights. Furthermore, when the consultation process was carried out, at the end of 2019, the environmental impact studies for the railway had not been finalized, which were published between June 2020 and August 2022. In addition, considering that the project later changed, other consultation processes should have been held with a view to obtain their consent to those changes.

Therefore, in practice, the Project does not have the free, prior and informed consent of the Indigenous Peoples potentially affected by the Project. In this context, the indigenous communities do not yet have sufficient information on the impacts and benefits of the Project, including the impacts on sacred sites, the risks of commercialisation of cultures, knowledge, ancestral memories and

artisanal products. On the other hand, it is not known whether additional consultations have been carried out for specific works such as the development poles as planned.

### *Impacts on the territorial rights of peasant farmers*

Many peasant communities (rural, agricultural and fishing communities) live in the area where the project is being built, which are being and will be directly impacted by the railway and by the various activities planned in the regional development project.

According to the information received, no specific public participation process was carried out by the Mexican State for the peasants of the affected area regarding the Mayan Train project; likewise, peasant communities of Campeche, Yucatan and Quintana Roo were allegedly subject to embezzlement and fraud during the negotiation for the release of the right of way for the construction of the railway, with the Mexican State and/or private companies contracted specifically for this purpose.

In August 2022, 1,093,118.93 m<sup>2</sup> of private property was expropriated for the execution of section 5, northern and southern sub-sections of the Mayan Train Project.

Despite the start of construction, the rural communities do not have complete information on the impacts and benefits of the project. In addition, some peasant farmers have reported the collapse of their homes due to the construction of the railway, the impact of the construction of the project on their social and environmental surroundings, as well as the fear they experience due to the presence of military forces in their territories and their involvement in the project.

### *Human rights defenders*

In addition to the information in the communication AL MEX 11/2020, extortion, fraud and threats allegedly persist in various ejidos in the 5 states; in April 2021, information was received about the alleged murder of a family member of an indigenous ejido authority who was asking questions about the Project.

It is also alleged that legal actions have been brought against individuals, civil society organisations and judges for defending affected rights in relation to the Project. In particular, the Committee for the Defence of the Mayan Train filed a lawsuit against 19 indigenous people who filed an injunction against the Project and another against a judge in Campeche who had granted the suspension of the Project in the Calakmul Biosphere Reserve at the beginning of 2020.

There has also been a smear campaign by the Government against organisations and individuals expressing concerns about the project. In particular, following protests of discontent at the beginning of the construction of section 5 in the State of Quintana Roo by environmental defenders, scientists, artists and human rights organisations, the Mexican State made

stigmatising statements towards these people. For example, in March 2022, a press release was published defining the people who are now questioning the Mayan Train as "pseudo-environmentalists" and in various morning press conferences the Presidency of the Republic has referred to activists and actors/actresses as "our adversaries".

#### *Access to justice*

There are various actions for legal protection (amparo) and complaints filed by people living in indigenous, peasant and urban communities, along with civil society organisations due to the impacts they are suffering and will suffer. The few lawsuits that have been admitted were admitted after complex procedures and various irregularities.

By circular SECNO/23/2021, dated 9 July 2021, the Plenary of the Federal Judiciary Council, at the request of Nacional Financiera S.N.C., ordered the concentration of the amparo proceedings related to all acts and consequences of the planning, construction, development and/or refurbishment of the Project. Consequently, during these months, the various amparo actions were concentrated before the First District Court in the state of Yucatan, and the appeals were sent to the Collegiate Court in Labour and Administrative Matters of the Fourteenth Circuit. Since the concentration of the amparo lawsuits, most of the provisional and definitive suspensions of the construction of the Mayan Train have been revoked.

In addition, it is alleged that several judicial suspensions have not been duly complied with. It has also been reported that some indigenous people have withdrawn injunctions filed in exchange for financial resources, allegedly offered by the staff of a political party.

#### *Active involvement of military forces in the Train Maya project*

As noted in AL MEX 11/2020 on the possible militarisation of the Mayan Train Development Project, information has been received on the recent assignment to the military of civilian tasks in the framework of the Project, such as the construction of infrastructure works and the administration of ports and customs. In March 2020, it was announced that the army would build some sections of the Train Maya, explicitly sections 5 north, 6 and 7; and operate sections 1, 6 and 7. In March 2021, the head of FONATUR stated that the Army would be the owner of the Train Maya, responsible for the operation of the Railway and would receive benefits from the operations for its employees' pension funds. However, except for this general information, communities and organisations on the peninsula claim not to have clear and complete information about the role of the army in the project, but have observed since April 2021 an increase in the presence of army and National Guard elements and trucks.

#### *Alternatives to the development model*

Although the proposed Regional Development Project for the Mayan Train seeks socio-economic development and sustainable development in the Yucatan Peninsula, there has been no public participation process for the

visions and opinions of the people residing in those places - indigenous, peasant and fishing communities - to be included in the design of the Project. Having such visions inform the development of the area is at the core of their cultural rights. If they do not lead the development they choose, this Project would not contemplate effective measures to prevent and mitigate the negative impacts that projects with a massive development scheme of the tourist industry can cause, such as land dispossession, land grabbing of indigenous and peasant territories and lands, loss of livelihoods, loss of cultural traditions, commercialisation of cultures and artisanal products, usurpation of sacred sites, of ancestral knowledge and memories, without benefit for the people living in those places.

Without prejudging the accuracy of these allegations, we express our deep concern regarding the current impact that the project appears to have, and will continue to have, on human rights and the environment, including the rights of indigenous and rural communities due to the lack of a process of consultation and free, prior and informed consent.

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.

It is our responsibility, in accordance with the mandates given to us by the Human Rights Council, to seek to clarify the information brought to our attention. In this regard, we would be very grateful to have your cooperation and comments on the following matters:

1. Please provide any additional information or comments that may be relevant.
2. Please provide information on the human rights due diligence policies and processes established by your company to identify, prevent, mitigate and account for how they address their human rights impacts, in accordance with the UN Guiding Principles on Business and Human Rights, in particular in its supply chain. Please clarify how you company requires suppliers to conduct human rights due diligence in order to respect human rights.
3. Please provide information on the remedial measures your company has taken, or plans to take, to address the negative human rights impacts caused by its activities, including across its supply chain.

This communication and any response received from your company 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.

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



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

Please note that a letter expressing similar concerns will also be sent to the Governments of Mexico, China, United States and Spain, as well as the other involved businesses - Mota Engil Mexico, Operadora Cisca, JPMorganChase&Co, FCC Construcción, China communications construction company, Grupo Indi and Grupo Azvi.

Please accept, Mr. Douglas Fink, the assurances of our highest consideration.

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

Saad Alfarargi  
Special Rapporteur on the right to development

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

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

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

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

José Francisco Cali Tzay  
Special Rapporteur on the rights of Indigenous Peoples

E. Tendayi Achiume  
Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance

## **Annex**

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

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

- International Covenant on Economic, Social and Cultural Rights (ICESC);
- International Covenant on Civil and Political Rights (ICCPR);
- International Convention on the Elimination of all Forms of Racial Discrimination;
- UN Declaration on the Rights of Indigenous Peoples;
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms;
- UN Guiding Principles on Business and Human Rights.
- UN Framework Principles on Human Rights and the Environment.

We would like to highlight the UN Guiding Principles on **Business and Human Rights**, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultation with governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These Guiding Principles are based on the recognition of:

- a. "The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms";
- b. The role of business enterprises as specialised bodies or corporations performing specialised functions, which must comply with all applicable laws and respect human rights;
- c. The need for rights and obligations to be matched by appropriate and effective remedies when they are violated".

The Guiding Principles also make clear that companies have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to companies on how to meet their responsibility to respect human rights and to provide remedies where they have caused or contributed to adverse impacts. The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require "business enterprises to:

- (a) Prevent their own activities from causing or contributing to adverse human rights impacts and address those impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided through their business relationships, even where they have not contributed to those impacts" (Guiding Principle 13). (Guiding Principle 13).

The commentary to Guiding Principle 13 notes that companies can be affected by adverse human rights impacts, either through their own activities or as a result of

their business relationships with other parties (...) The 'activities' of business enterprises are understood to include both actions and omissions; and their 'business relationships' include relationships with business partners, entities in their value chain and any other non-State or State entities directly linked to their business operations, products or services".

To meet their responsibility to respect human rights, companies should have in place policies and procedures appropriate to their size and circumstances:

- (a) A political commitment to uphold their responsibility to respect human rights;
- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impact;
- c) Processes to redress any adverse human rights impacts they have caused or contributed to (Guiding Principle 15)

According to Guiding Principles 16-21, human rights due diligence involves:

- (a) Identifying and assessing actual or potential adverse human rights impacts that the enterprise has caused or contributed to through its activities, or that are directly related to the operations, products or services provided by its business relationships;
- (b) Integrate the results of impact assessments into relevant business functions and processes, and take appropriate action in accordance with their involvement in the impact;
- (c) Monitor the effectiveness of the measures and processes adopted to address these adverse human rights impacts in order to know whether they are working;
- (d) Communicate how adverse effects are addressed and demonstrate to stakeholders - particularly those affected - that appropriate policies and processes are in place to implement respect for human rights in practice".

This process of identifying and assessing actual or potential adverse human rights impacts should include substantive consultation with potentially affected groups and other stakeholders (Guiding Principle 18).

Where an enterprise causes or is likely to cause an adverse human rights impact, it should take the necessary steps to end or prevent that impact. "The establishment of operational-level grievance mechanisms for those potentially affected by corporate activities can be an effective means of redress provided they meet certain requirements listed in Principle 31 (Guiding Principle 22).

In addition, the Guiding Principle 18 and 26 underline the essential role of civil society and human rights defenders in helping to identify potential adverse human rights impacts related to business. The Commentary to Principle 26 underlines how States, in order to ensure access to remedies, must ensure that the legitimate activities of human rights defenders are not obstructed. In its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It explains, for States and companies, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights

defenders.

We would also like to draw your attention to the United Nations Declaration on the **Rights of Indigenous Peoples**, which reflects existing legal obligations arising from international human rights treaties. In particular we would like to refer to article 7.1 on the right to life, physical and mental integrity, liberty and security of indigenous individuals and article 21 on the right of indigenous peoples, without discrimination, to the improvement of their economic and social conditions, including, inter alia, sanitation, health and social security. Furthermore, Article 23 states that indigenous peoples have the right to determine and develop priorities and strategies for the implementation of their right to development. The Article 26 recognises the right of indigenous peoples to the lands, territories and natural resources which they have traditionally owned, occupied or used and that States shall ensure the legal recognition and protection of these lands, territories and resources with due respect for their customs, traditions and land tenure systems.

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

We would also like to draw your attention to Article 14 of the International Covenant on Civil and Political Rights (ICCPR) states that everyone shall be entitled to a **fair and public hearing by a competent, independent and impartial tribunal** established by law in the determination of his rights and obligations in a suit at law.

Article 19 of the same Covenant enshrines the right of everyone to **freedom of expression**, which includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print or in the form of art.

We would like to emphasise article 21 of the ICCPR which guarantees the **right to freedom of peaceful assembly**. The article also stipulates that any restriction on this right must be strictly governed by the principles of legality, necessity and proportionality. Related to this, we would also like to refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on the exercise of these rights for the promotion of climate justice, which indicates that States should "take all necessary measures to ensure that individuals, organisations and individuals' organizations are able to exercise their right to freedom of peaceful assembly and of association in accordance with the principles of legality, necessity and proportionality". Related to this, we would also like to refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on the exercise of these rights for the promotion of climate justice, which indicates that "(S)tates should (a)dopt all necessary measures to ensure that individuals, organizations, communities and indigenous people exercising their rights to freedom of peaceful assembly and of association in support of climate justice are not subjected to attacks, harassment, threats and intimidation (...); recognise and provide spaces for civil disobedience and non-violent direct action campaigns, (...)" (A/76/222, para. 90 (b) and (d)). The Rapporteur proceeds to urge that States should "(G)uarantee that

their legal systems do not provide possibilities through which corporations and other public and private entities can intimidate, criminalize and repress climate justice activists with legal processes, including strategic lawsuits against public participation, binding orders and injunctions (...)" (A/76/222, para. 90(e)).

We would also like to remind you the rights of the **Human rights defenders**, as enshrined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Both the United Nations Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples have noted an alarming increase in attacks and criminalisation against indigenous defenders, especially in the context of large-scale development projects and the defence of their lands and territories (A/HRC/37/51/Add.2, A/HRC/39/17).

We also wish to draw your attention to obligations under article 27 of the International Covenant on Civil and Political Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, concerning, respectively, the right of everyone to **enjoy his or her own culture and to take part in cultural life**. As the UN Committee on Economic, Social and Cultural Rights makes clear in its General Comment No. 21 that indigenous peoples' cultural life has a strong communal dimension that 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. The Committee has stressed that "the cultural values and rights of indigenous peoples associated with their ancestral lands and their relationship with nature must be respected and protected, in order to avoid the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity".

The Special Rapporteur in the field of cultural rights recalled that the right to take part in cultural life includes the right to access and enjoy cultural heritage, and to contribute to the development and implementation of heritage preservation/safeguarding policies and programmes.

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.

We would also like to bring to your attention 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); States should establish a safe and enabling environment in which individuals, groups of individuals and organs of society concerned with human rights or environmental issues can operate free from threats, harassment, intimidation and violence (Principle 4) and States should ensure the effective enforcement of their environmental standards against public and private actors (Principle 12).

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