

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 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 the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women and girls, its causes and consequences

Ref.: AL NLD 6/2022
(Please use this reference in your reply)

13 January 2023

Excellency,

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 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 the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 44/15, 46/9, 46/7, 43/4, 50/17, 43/16, 51/16, 50/10 and 50/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning serious risks posed to Indigenous Peoples' rights in the context of oil and gas projects in British Columbia, Canada. Of particular concern are allegations of ongoing violations and abuses against Wet'suwet'en Indigenous Peoples and communities related to the development of the Coastal GasLink pipeline project, as well as the human rights violations of land rights defenders peacefully demonstrating against the Coastal GasLink (CGL) pipeline under construction that was approved in 2018 without the consent of the impacted Indigenous Peoples represented by the Wet'suwet'en Hereditary Chiefs.

According to the information received:

The CGL pipeline under construction passes through the unceded traditional territory of the Wet'suwet'en Indigenous Peoples in British Columbia, Canada with the aim of delivering natural gas extracted in Canada from the Dawson Creek area to a liquified natural gas (LNG) facility near Kitimat, British Columbia, and to provide gas supply to Asian markets. The LNG facility, which is owned by the joint venture LNG Canada, is currently under construction. Transportation service on the pipeline is underpinned by 25-year transportation service agreements (with additional renewal provisions) between the five LNG Canada participants: Shell, Petronas, Petrochina, Mitsubishi and Kogas. TC energy currently holds a 35 per cent ownership interest in Coastal GasLink pipeline and has been contracted to develop and operate the pipeline. Two investment firms, KKR & Co. and Alberta

Investment Management jointly hold the remaining 65 % of the stakes. The various sections of the Coastal GasLink are contracted to be constructed by the Canadian companies Surerus Murphy Joint Venture, SA Energy Group, AECON Group Inc., Pacific Atlantic Pipeline Construction Inc., O.J. Pipelines Canada, Macro Spiecapag Joint Venture, and Ledcor Group.

In 1997, the Supreme Court of Canada ruled that Wet'suwet'en rights and title to its territory had not been extinguished.¹

On May 14, 2020, the Wet'suwet'en Hereditary Chiefs signed a memorandum of understanding (MOU) with the federal and provincial governments recognizing Wet'suwet'en title and rights throughout the traditional territory and outlining a process to negotiate agreements on the implementation of Wet'suwet'en title and rights. This MOU does not address nor provide consent to the pipeline, and the Canadian government has indicated that the CGL project is not included in the negotiations.

Work on the CGL pipeline is now more than 50% complete, and the developing company has started drilling under the Wedzin Kwah river, a site regarded as sacred to the Wet'suwet'en people. Construction has allegedly resulted in the destruction of an archaeological and cultural heritage site of great significance to the Wet'suwet'en people at Ts'elkay Kwe Creek. It has also resulted in an increase of industrial traffic creating dangerous driving conditions, and the deployment of law enforcement who are allegedly harassing indigenous residents. According to the information received, these conditions have made hunting, an important traditional activity of the Wet'suwet'en people, virtually impossible and have restricted Wet'suwet'en access to their territories.

The CGL route infringes upon Wet'suwet'en territory and disrupts traditional food and water gathering and hunting practices, all important parts of their culture. The threat of a pipeline leak creates an even greater risk of harm, including at the environmental level as crossing about 625 streams, creeks, rivers and lakes, including vital fish habitat. The exploitation of fossil fuels in general and the establishment of the 670-kilometres long pipeline in particular, would also impact climate change and threatens the completion of Canada's obligations in this regard, as outlined in the Paris Agreement. Upon completion, the expected capacity of the pipeline will be of up to five billion metric feet of natural gas per day.

Criminalization of indigenous land defenders

The use of injunctions and Royal Canadian Mounted Police (RCMP) exclusion zones around CGL worksites have led to the criminalization of indigenous opposition to the pipeline. In Wet'suwet'en territory, injunctions are allegedly being used by public and private corporations to obtain police control over indigenous territory, effectively removing Indigenous Peoples from their homelands to make way for pipeline construction and criminalising Wet'suwet'en hereditary leadership.

¹ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

Reportedly, the CGL obtained a series of injunctions against the Wet'suwet'en people in 2018 and 2019. Despite the Committee on the Elimination of Racial Discrimination's (CERD) decision urging Canada to cease forced evictions of Wet'suwet'en people from their lands, in early February 2020, the RCMP conducted a series of raids on Wet'suwet'en encampments, deploying over 100 tactical officers armed with semi-automatic rifles and police dogs. Unarmed Wet'suwet'en land rights defenders and peaceful supporters were forcibly removed from the territory and sent to prison. During the raid, the RCMP created an "exclusion zone" 17 kms away from the injunction area, blocking public access. Hereditary Chiefs, journalists, and a Member of Parliament were prohibited from entering the area to witness the arrests, while non-indigenous people were allowed to pass through the blockade without showing identification.

No criminal or civil charges were filed by the British Columbia Prosecution Service following the arrests; however, a recent decision of the British Columbia Supreme Court on 6 December 2021 allowed for the possibility of criminal charges to be filed privately, ruling that "failing to maintain the possibility of a finding of criminal contempt may undermine the administration of justice" and finding that for three unnamed arrestees "the matter can continue to assess whether they engaged in either criminal or civil contempt."²

The information received also describes racially motivated harassment, violence and discrimination by local non-indigenous residents. In one incident two Wet'suwet'en cabins were set afire by non-Indigenous assailants appearing intoxicated and shooting weapons in the air. Charges were laid but there were no convictions.

In September 2021, the RCMP and the Community-Industry Response Group (C-IRG) established a new police checkpoint and exclusion zone within Wet'suwet'en territory. It is alleged that officers have continued to raid Wet'suwet'en encampments, dumping drinking water and violating COVID safety measures by not wearing masks or observing safe social distancing practices.

In November 2021, the RCMP expanded their exclusion zone, and allegedly employed helicopters, snipers, assault weapons, and police dogs to arrest unarmed Wet'suwet'en people and journalists, subjecting them to intimidation and inhumane conditions while in detention. It is further reported that in June and July 2022, Crown prosecutors charged a total of 19 people with criminal contempt, following the arrests of November 2021.

It is important to note the increased threats faced by Indigenous Peoples across Canada, as legislation is introduced that could further target and criminalize land rights defenders opposing infrastructure projects. Most recently, in June 2020, the Province of Alberta passed Bill 1, the *Critical Infrastructure Defence Act*, that "protects essential infrastructure from damage or interference caused by blockades, protests or similar activities." There is a danger that these bills introduced to protect against "critical infrastructure sabotage" may suppress the growing anti-fossil fuel movement, in which Indigenous Peoples

² *Canadian National Railway Company v. Doe*, 2021 BCSC 2469

play a central role, by silencing dissent against planned or existing projects.

Work camps increase risk of Covid-19 exposure and violence against indigenous women, girls and two-spirited members

According to the information received, as construction of the CGL pipeline accelerates during the pandemic, indigenous communities have been increasingly at risk from COVID-19 exposure. The fact that reporting of COVID-19 cases in the camps is based on workers' home provinces means that local communities are not informed of positive cases in their proximity. The presence of law enforcement and private security threatens to exacerbate the COVID-19 crisis, creating fear of an outbreak in communities with limited health facilities and resources to deal with the pandemic. It is reported that there are at least five private security companies currently deployed in Wet'suwet'en territory.

In addition to the heightened risk of COVID-19 exposure, Indigenous Peoples have raised concern over the threat posed by work camps to the security of indigenous women, girls, and two-spirited members. It is well documented that indigenous women are impacted to a much greater degree by pipeline construction.³ Currently there are work camps in Wet'suwet'en territory near the "highway of tears," an area infamous for high numbers of missing and murdered indigenous women. The rapid influx of non-local workers in Wet'suwet'en territories has also brought an increase in murder rates, drug use, sexual harassment and gang activity in nearby communities. Indigenous women are reportedly at the forefront of the Wet'suwet'en struggle and may therefore face increased threats of violence, harassment, and discrimination.

Canada's duty to consult and obtain free prior and informed consent

The Wet'suwet'en were allegedly not consulted prior to the decision to route the pipelines through their unceded traditional territory. A proposal by the Hereditary Chiefs to meet with CGL to discuss an acceptable route for the pipeline project was rejected. With respect to permits for drilling under the Wedzin Kwa, it is alleged that the Hereditary Chiefs received documents which were password protected, and they were unable to review them within the prescribed timeframe for public consultation. Construction has proceeded in the face of ongoing opposition by the community and numerous concerns raised by leadership. The alleged practices do not conform neither with the domestic law nor with international human rights standards.

According to the information presented, consent cannot be based solely on the agreements that the oil company signed with band councils. The band council system imposed by the *Indian Act* attempts to displace traditional forms of governance, political institutions and legal systems. According to the *Indian Act*, band council jurisdiction applies only to the reserves. Under Canadian law, consultation must take place with the proper representatives of rights holders adversely impacted by development projects. Therefore, Canada must "consult and reasonably accommodate,"⁴ not the band councils but the

³ See *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, 3 June 2019: <https://www.mmiwg-ffada.ca/final-report/>

⁴ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 para. 27.

collective, traditional and hereditary governance structures of the First Nations as a whole.

Concern raised by UN treaty bodies

International law standards go beyond the obligation to consult; it establishes the need for free, prior and informed consent of the Indigenous Peoples who are directly affected by the relevant project. This is what the UN Declaration on the Rights of Indigenous Peoples clearly prescribes. In December 2019, CERD issued a decision under its early warning and urgent action procedures⁵ calling upon Canada to cease construction of the CGL pipeline, and suspend permits until it obtains the free, prior, and informed consent of the Wet'suwet'en. In November 2020, CERD followed up on its 2019 decision with a letter,⁶ expressing regret that Canada had, to that date, furnished CERD with no information on measures taken to address the concerns raised in the 2019 decision. CERD requested updated information on measures taken in Canada's periodic report, which was expected on 15 November 2021. That report has not yet been received.

Furthermore, the UN Committee on Economic, Social and Cultural Rights (CESCR) also requested information about measures taken to address the concerns raised in the 2019 CERD decision and about how the legislative, policy and procedural framework relating to the rights of indigenous people has been applied in practice in its list of issues prior to the reporting of Canada's 7th periodic report - which was expected on 30 June 2021 and has not yet been received.⁷

According to reports received, construction on the project has intensified since the release of the CERD decision, despite risks posed by the COVID-19 pandemic. Canadian courts have denied First Nations' legal challenges⁸ while granting additional permits and injunctions to the project proponents.⁹ Reportedly, land defenders have been forcibly removed from their territories, and continue to face profiling, surveillance, and violent and arbitrary arrest by police, as well as escalations of violence, harassment, and discrimination by nonindigenous citizens.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed as to the criminalization and alleged use of excessive force against Indigenous Peoples defending their rights to lands and resources, right to self-

⁵ CERD, Decision 1(100), 13 December 2019.

⁶ CERD/EWUAP/102nd session/2020/MJ/CS/ks
https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_9296_E.pdf

⁷ E/C.12/CAN/QPR/7

⁸ The British Columbia Civil Liberties Association filed a complaint on behalf of the Wet'suwet'en Hereditary Chiefs with the Civilian Review and Complaints Commission for the RCMP challenging the use of exclusion zones. MEDIA ADVISORY: Legal Complaints Filed Against RCMP Exclusion Zone in Wet'suwet'en; Indigenous, Civil liberties, Human Rights & Labour Groups Condemn Exclusion Zone," January 14, 2020 A number of civil lawsuits have also been filed against CGL and its subcontractors. The Wet'suwet'en Hereditary Chiefs are currently challenging the extension of CGL's Environmental Assessment Certificate arguing that it did not address the impact of man camps on murdered and missing indigenous women. The Canadian Press. "B.C. Supreme Court hears petition for judicial review of Coastal GasLink certificate," October 1, 2020

⁹ Since CERD's decision, on the Trans Mountain Pipeline alone, a total of 40 permits have been granted and 22 were in progress as of August 15, 2020.

determination, right to free prior and informed consent, and rights to free expression and to peaceful assembly, as well as cultural rights. Our concerns over continued allegations of undue monitoring of the activities of indigenous organisations and arrests of land rights defenders peacefully opposing large-scale infrastructure projects, raised in the communications of 7 November 2013 (CAN 4/2013) and 27 November 2014 (CAN 1/2014) remain. Deep concern is also expressed over the alleged use of excessive force and mass arrests against Indigenous Peoples seeking to defend their lands, resources, and culture and rights to freedom of opinion and expression, freedom of peaceful assembly and right to take part in decisions that have an impact on their cultural life. The spiritual relationship of Indigenous Peoples with their lands is part of their culture and hence, the allegations severely affect the right to take part in cultural life.

Deep concern is also expressed with regards to the risks associated with work camps spreading COVID-19 and threatening the security of indigenous women, girls and two-spirited members. In this respect, we refer you to the Special Rapporteur on the rights of Indigenous Peoples' report on COVID-19 and Indigenous Peoples of 20 July 2020 (A/75/185) where it is recommended that: "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".

We are concerned about the 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 the above-mentioned Canadian and foreign business enterprises operating in its territory and/or under its jurisdiction, involved in the development of the Coastal GasLink pipeline.

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 the establishment of the pipeline 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, development and cultural rights.¹⁰ In addition, guaranteeing a "safe climate" constitutes one of the substantive elements of the right to a clean, healthy and sustainable environment, as recognized by the Human rights Council on 8 October 2021 (Res. 48/13) and the General Assembly on July 28 (A/76/L.75).

The lands where this project takes place have a spiritual bond to the indigenous nation in question and hence any negative effect on this relationship would be a violation of the Wet'suwet'en people's cultural rights. Disruption of the Wet'suwet'en's way of life, including disruption of their traditional food practices, water gathering and hunting practices would also be violations of their cultural rights.

¹⁰ A/74/161.

We remind that States have both to abstain from such violations and to take positive measures to ensure that these rights are respected and materialised. Furthermore, any balancing of such rights would have to take into account the vulnerability of Indigenous Peoples and prioritise the respect of their rights, also taking into account other norms of international human rights law, particularly legality, legitimacy and proportionality.

Finally, we express particular concern with regards to the apparent correlation between the lack of formal recognition of Indigenous Peoples' title to their lands and these large-scale energy projects.¹¹ We wish to highlight our preoccupation with the failure of the Government of Canada to respect the self-determination of indigenous communities over their lands and peoples, as well as the failure to adequately consult indigenous communities impacted by their decisions and obtain their free, prior and informed consent.

We are encouraged by the steps the Government of Canada has taken towards domestic implementation of the UNDRIP with the passage of the *Declaration on the Rights of Indigenous Peoples Act*¹² in British Columbia and the passage of the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*.¹³ In this respect we urge the province to fulfil its commitment to "take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration," in particular, the obligation to obtain free, prior and informed consent before taking action that would impact Wet'suwet'en rights. According to the information received, the provincial government has yet to announce an action plan and continues to attempt to pass legislation without indigenous consultation or engages in *ad hoc* consultations with select advisory committees and groups. Reportedly, the provincial government has repeatedly referred to the bill as "forward looking," and "not retrospective," in order to exclude existing projects from its application.

We note with appreciation the Government of Canada's efforts to ensure that laws and policies are guided by "Principles respecting the Government of Canada's relationship with Indigenous peoples"¹⁴ and would like to highlight the opening principle that "The Government of Canada recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government".

We further commend the Government of Canada on the publication of the "2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQQIA+ People"¹⁵ and reiterate that special attention should be paid to indigenous women, girls, and two-spirited members and the increased risks of violence that they face in connection to pipeline construction and work camps.

¹¹ See CERD's expressions of concern in relation to Site C Dam and the TransMountain Pipeline in CERD, Decision 1(100), 13 December 2019, CERD/EWUAP/102nd session/2020/MJ/CS/ks

¹² Bill 41 – 2019: Declaration on the Rights of Indigenous Peoples Act, November 2019 <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/first-reading/gov41-1>

¹³ S.C. 2021, c. 14: United Nations Declaration on the Rights of Indigenous Peoples Act, assented 21 June 2021, <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html>

¹⁴ Department of Justice Canada, 14 February 2018, <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

¹⁵ See 2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan: Ending Violence Against Indigenous Women, Girls, and 2SLGBTQQIA+ People, 3 June 2021: https://4c3tru4erdnui9g3ggftji1d-wpengine.netdna-ssl.com/wp-content/uploads/2021/06/NAP_Report_EN.pdf

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 what steps your Excellency's Government has taken or is considering to take, including policies, legislation, and regulations, to uphold its obligations to protect against human rights abuses by Shell plc, ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct human rights due diligence to identify, prevent, mitigate, and account for how they address their impacts on human rights and the natural environment throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.
3. Please describe the guidance, if any, that your Excellency's Government has provided to Shell plc, on how to respect human rights throughout its operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human rights due diligence, consulting meaningfully potentially affected stakeholders, and remediating any negative impacts. In particular, please also indicate whether any guidance was provided with regards to the duty to obtain free and informed consent of Indigenous Peoples prior to the approval of the project on their traditional lands, as per the UN Declaration on the rights of Indigenous Peoples' rights.
4. Please kindly provide information on how your Excellency's Government ensures that business enterprises under its jurisdiction do not impact negatively the work of human rights defenders, specifically in light of the recommendations provided to States in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the adverse impact of business activities on human rights defenders (A/HRC/47/39/Add.2) recalling for States and business the normative and practical implications of the Guiding Principles on Business and Human Rights in relation to protecting and respecting the vital work of human rights defenders.
5. Please provide information regarding the measures that your Excellency's Government is taking or considering to ensure that those affected by the overseas activities of Shell plc, have access to effective remedies, as per the UN Guiding Principles.

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. Please send your Government's reply to ohchr-registry@un.org.

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 those business enterprises that are involved in the development of the Coastal GasLink pipeline, including the Government of Canada, the owners of the pipeline (TCenergy, KKR & Co., Alberta Investment Management), the owner of the LNG Facility (LNG Canada Joint Venture, and its members Royal Dutch Shell, Petronas, Petrochina, Mitsubishi, Kogas), the contracted construction companies (Surerus Murphy Joint Venture, SA Energy Group, Aecon Group Inc., Pacific Atlantic Pipeline Construction Inc., O.J. Pipelines Canada, Macro Spiecapag Joint Venture, and Ledcor Group), as well as to the home-States of all involved non-Canadian companies (the Governments of China, Japan, Malaysia, the Republic of Korea and the United States of America).

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

Pichamon Yeophantong
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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Reem Alsalem
Special Rapporteur on violence against women and girls, its causes and consequences

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 the following binding international human rights instruments that the Netherlands has ratified:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)

In addition to these binding treaties, other applicable international human rights norms and standards apply including:

- UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- UN Declaration on Human Rights Defenders (UNHRD)
- UN Guiding Principles on Business and Human Rights (GPBHR)
- Statements of UN Special Procedures to the Human Rights Council
- Statements of the Universal Periodic Review Working Group

ICCPR

We call to the attention of your Excellency's Government the international standards regarding the right to liberty and security of all persons and the right to freedom of expression, enshrined in article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19 (2) of the ICCPR upholds the right of everyone to freedom of expression, including the freedom to seek, receive and impart information of all kinds.

We wish to appeal to your Excellency's government to take all necessary steps to secure the right to culture under article 27 of the ICCPR. Article 27 of the Covenant provides that, "In those states in which ethnic, religion or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language". The Committee recognized that culture can manifest itself in many forms including use of lands and resources. (General Comment No. 23 (50) CCPR/C/21/Rev.1/Add.5 26 April 1994 para.7). In

this respect, States have a duty not only to refrain from violating human rights, but to “take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities” (General Comment No. 31 (80) CCPR/C/21/Rev.1/Add. 13, 26 May 2004 para. 8).

In addition, we would like to draw your Excellency’s Government attention to articles 21 and 22 of ICCPR, which guarantees and protects the right to freedom of peaceful assembly and association. Restrictions on this right must strictly abide by the principles of legality, proportionality and necessity, i.e. “(...) which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.

On the same note, we would like to bring your Excellency’s Government attention to the report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association on the mentioned rights in the digital age, which, among others, establishes that “States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards.” (A/HRC/41/41, para. 13). He proceeds by stating that FoAA rights must be enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status (Ibid.).

We would like to bring to your Excellency’s Government’s attention that in his report to the General Assembly on the exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, the Special Rapporteur calls States to: “Adopt 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, including conducting thorough, prompt, effective and impartial investigations into killings and violence against civil society actors, ensuring that perpetrators are brought to justice” (A/HRC/76/222, para 90 (b)). In this report, the Special Rapporteur stressed that pursuant to international human rights law, States have the duty to “Ensure that law and practice illegitimately restricting the place where and manner in which protests may take place, including laws criminalizing protests at or near business worksites (...), in order to ensure full access to and enjoyment of the right to freedom of peaceful assembly” (A/HRC/76/222, para 90 (d)).

ICESCR

Article 1 of the ICCPR and ICESCR recognize the right of all peoples to self-determination, including the right to manage their own resources.

Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions. General Comment No. 12 of the Committee on Economic Social and Cultural Rights defines the obligations of States to implement the right to adequate food and water and details that “The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires

measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.” (E/C.12/1999/5, 12 May 1999, para. 15).

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

The Committee defines forced eviction in General Comment No. 7 (E/1998/22, 20 May 1997, para. 3) as, "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." Furthermore, evictions must be fully justified, authorized by law, compatible with the Covenant, and subject to legal recourse and remedy. (para. 11)

Under article 15 of ICERSC, States recognize the right of everyone to take part in cultural life. As expressed by the Committee on Economic, Social and Cultural Rights in its General Comment 21 (2009) on the right of everyone to take part in cultural life, this right is understood as comprising the rights to participate, access and contribute to cultural life, including by taking part freely, in an active and informed way, in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights (E/C.12/GC/21, para. 15 and 49). The Committee also affirms that “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, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories” (E/C.12/GC/21, para. 36).

In addition, the Committee on the Economic, Social and Cultural Rights has indicated that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.” (General Recommendation 24 (2017)).

ICERD

Article 5 of the ICERD establishes that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of”... “b) the right to security of the

person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”.

In its General Recommendation No. 23 (1997) on Indigenous Peoples, the Committee on the Elimination of Racial Discrimination calls on States to “Ensure that members of Indigenous Peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.” (para. 4 (d)) The Committee further urges States to “protect the rights of Indigenous peoples to own, develop, control, and use communal lands, territories, and resources.” (para. 5)

CEDAW

CEDAW prohibits discrimination against women, including gender-based violence and requires States to pursue a policy of eliminating discrimination against women and to implement measures to prevent, investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women (article 2).

In its General Recommendation 35 on Gender-based violence against women, the Committee stated that “discrimination against women was inextricably linked to other factors that affected their lives. The Committee, in its jurisprudence, has highlighted the fact that such factors include women’s indigenous or minority status,” “and the stigmatization of women who fight for their rights, including human rights defenders. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.” (CEDAW/C/GC/35, 14 July 2017, para. 12) “The Committee recommends to develop and implement effective measures, with the active participation of all relevant stakeholders, such as representatives of women’s organizations and of marginalized groups of women and girls, to address and eradicate the stereotypes, prejudices, customs and practices set out in article 5 of the Convention, which condone or promote gender-based violence against women and underpin the structural inequality of women with men” (para. 30 (b)).

CRC

In its General Comment 11 on Indigenous Children, the CRC has stated, “In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture. States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children’s right to life, survival and development to the maximum extent possible.” (para. 35) “States parties should pay particular attention to the risks indigenous children face in hostilities and take maximum preventive measures in consultation with the communities concerned. Military activities on indigenous territories should be avoided to the extent possible” (para. 66)

UNDRIP

Your Excellency's government endorsed the United Nations Declaration on the Rights of Indigenous Peoples in 2007. As a universal framework setting out the minimum standards of protection of Indigenous Peoples' rights, the Declaration reflects existing legal obligations sourced in international human rights treaties.

The Declaration recognizes the right of Indigenous Peoples to self-determination. "By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development," (art. 3) and "have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions" (art. 4).

Article 10 of the Declaration states that Indigenous Peoples shall not be forcibly removed from their lands or territories and that relocation shall not take place without their free, prior and informed consent.

The Declaration also establishes, at article 18 that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions".

Article 19 provides 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, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." Article 23 states that "Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development".

The Declaration underlines the importance of Indigenous Peoples giving their free, prior and informed consent before the development of extractive industries or other development project on their ancestral homelands. Specifically, article 29 (2) provides that "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous Peoples without their free, prior and informed consent." Article 32 (2) recognizes the right of Indigenous Peoples "to determine and develop priorities and strategies for the development or use of their lands or territories and other resources" and to be consulted in good faith "through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources".

UNDHRD

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders, A/RES/53/144). The Declaration states that "everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international level" (art. 1) and that "each State has a prime

responsibility and duty to protect, promote and implement all human rights and fundamental freedoms” (art. 2).

Article 6 (c) of the Declaration states that everyone has the right “to study, discuss, form and hold opinions on the observance, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.” Article 18 (3) explains that “individuals, groups, institutions and non-governmental organizations also have an important role in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized”.

UNGPs

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

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

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

The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

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

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.

In particular, 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”.

Furthermore, the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the adverse impact of business activities on human rights defenders (A/HRC/47/39/Add.2) acknowledges “the vital role that human rights defenders play in promoting human rights and sustainable development, and that attacks on defenders undermine a sustainable future for all.” The report recalls that States “should enable human rights defenders to play an active role in processes to develop and implement national action on business and human rights, and ensure that such plans address the issues facing defenders” (para 113).

More particularly, the report requires States to:

- “ensure policy coherence by integrating into the strategies, policies, programmes and actions of all governmental departments, agencies and other State-based institutions that shape business practices the need for: (i) the State to protect human rights defenders, and (ii) business enterprises to respect them (para. 114);
- educate the business community about the positive role of human rights defenders as valuable partners in understanding local contexts and human rights risks on the ground (para. 115);
- consider appropriate sanctions or consequences if a business is found to have caused or contributed to harm to a defender, or failed to actively take steps to prevent harm to a defender once such a risk is known to the business (para. 118);
- prevent the legal system from being used to criminalise the legitimate activities of human rights defenders (para. 119);

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.