

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group of Experts on People of African Descent; 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 and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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(Please use this reference in your reply)

24 March 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Working Group of Experts on People of African Descent; 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 and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 45/17, 45/24, 43/14 and 43/36.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of racial discrimination in Louisiana, specifically land use and zoning decisions that have classified the land as suitable for industrial facilities in the areas populated by African American communities affecting the right to a clean, healthy, and sustainable environment of communities living in certain Parishes. Such zoning practices appear to discriminate against, and disproportionately affect, the African American communities in these areas. Information that the construction of hazardous facilities by a company has been blocked by the St James Parish's Council in the Third District, with a majority Anglo/White population, is a sign of such discriminatory practices and is therefore of serious concern.

Discriminatory environmental and toxic pollution affecting African American communities in regard to the approved development of the Formosa Plastics' petrochemical complex was previously raised by special procedures mandate holders in communication AL USA 33/2020, dated 16 February 2021, and we thank your Government's reply dated 16 March 2022.

According to the additional information received:

As generally called by many, including the Environmental Protection Agency, 'Cancer Alley' is an 85-mile petrochemical corridor along the lower Mississippi River that encompasses thirteen Louisiana parishes, including St. John the Baptist Parish and St. James Parish. Most of the large stretches of rural land in the region were previously plantations. In the 1940s and 1950s, many chemical plants were built on the old plantations around Baton Rouge and New Orleans, on the doorstep of majority-Black neighbourhoods. Today 'Cancer Alley' is an industrial hub with nearly 150 oil refineries, plastics plants, and chemical facilities. The still expanding corridor of petrochemical plants has not only allegedly polluted the surrounding water and air but also subjected the areas mostly populated by African American residents in

St. James Parish to cancer, respiratory diseases, and other health problems.

We are concerned that the historic and ongoing use of land planning and zoning ordinances to reclassify the land in certain neighbourhoods for industrial use, unfairly discriminates against, and disproportionately affects Louisiana's African American communities. While official statistics indicate that the majority of Louisiana's population is white, the designation of land for industrial use, and subsequent distribution of chemical plants, is reportedly disproportionately concentrated amongst Black neighbourhoods. Allegedly, the local communities have therefore limited power to object to corporate initiatives or proposals, so long as land zoning and environmental regulations set by the James Parish and St. John the Baptist Parish Councils are adhered to.

Allegations of Environmental Racism in the United States

The relationship between, and the intersection of, environment and race has been increasingly discussed within the context of international law and policy. According to some, the concept of 'environmental racism', can be understood as "a particular form of environmental injustice and frequently includes the implementation of policies, regulations, or institutional practices that target communities of colour for undesirable waste sites, zoning, and industry."

According to a number of studies, there is evidence of environmental racism as a result of discriminatory land planning and zoning throughout the United States. Research dating back to the 1980s, highlights that disadvantaged communities are more likely to live in areas with hazardous waste facilities than wealthier, non-minority communities. In 2000, a study found that US counties with the greatest number of hazardous waste generators were home to higher proportions of non-white communities, including migrants and non-native English speakers. On 2 March 2021, subsequent to their communication to the State authorities, a number of UN human rights mandate-holders raised serious concerns about "further industrialisation of the so-called Cancer Alley in the southern US state of Louisiana, saying the development of petrochemical complexes is a form of environmental racism."

In 2022, the Committee on the Elimination of All Forms of Racial Discrimination expressed concern "at the disproportionate health, socio-economic and cultural impact of pollution, climate change and natural disasters on racial and ethnic minorities and Indigenous Peoples, caused by extractive and manufacturing industries, such as petrochemical facilities and methanol complexes, as for instance in the case of 'Cancer Alley' in Louisiana."

Additionally, the UN Working Group of Experts on People of African Descent acknowledged the existence of unfair and discriminatory legislation, policies and practices in Louisiana. It added that the concerned zones "where vast numbers of petrochemical plants were operating with the green light from the State despite the massive and intergenerational threat to Black communities".

Parish Council Zoning and Land Use Policies in 'Cancer Alley'

Information received indicates a history of unfair and discriminatory land use and zoning practices in the parishes in 'Cancer Alley', particularly in St James and St. John Parishes. In the 1990s, a controversial zoning ordinance was issued. The ordinance reclassified a large tract of rural land for heavy industrial use, consequently allowing industrial sites to be located just 300 feet away from residential areas. The parish code requires a 2000 ft buffer zone between any residential areas and heavy industrial zones, and a 300 ft buffer between residential areas and light industrial zones. Despite this, this ordinance remains in place today.

In 2011, the South Central Planning and Development Commission published the St James Parish 'Comprehensive Plan 2031' (2011 Plan) following an 18 month state government development process which included public meetings, distributed reports, and community outreach. In 2014, this comprehensive plan was revised and replaced by the 2014 Land Use Plan. It has been alleged that the 2014 Land Use Plan was introduced without consultation of affected communities, and adequate community outreach.

There are significant differences between the two plans; namely, (a) areas in the Fourth and Fifth Districts of St James Parish were redesignated from 'Residential' to 'Residential/Future Industrial', (b) restrictions were imposed on the subdivision and sale of land designated 'Residential/Future Industrial', and (c) inclusion of a buffer map which protects public institutions in some parts of the parish while failing to protect those same institutions in the Fourth and Fifth Districts. According to information received, the 2014 Plan was introduced without the prior and informed consent of the affected communities in the Fourth and Fifth Districts, and that the redesignation of land disproportionately affects communities and impedes upon their human rights.

The outlined changes have an adverse impact on the residents of the Fourth District, of which 52.1% are Black, and the Fifth District, of which 89.1% are Black. The concentration of industrial sites in these Districts the 'Residential/Future Industrial' designation restricts the subdivision and sale of land, which in turn prevents new residential development. In addition, information received suggests that the 2014 Plan failed to include African American communities in the Fourth and Fifth Districts, leading to hazardous industrial plants being allowed less than 2 miles away from community hubs. While we understand from the information received that the 2014 Land Use Plan was amended in 2018, the same discriminatory patterns and practices continue.

Regulatory Failings and National Legislation

The concerns regarding land planning is compounded by an inadequate state regulation. While the Environmental Protection Agency recommends considering the effect of various chemicals in conjunction with land planning, Louisiana state legislation monitors chemicals separately, thus obscuring a comprehensive understanding of air pollution and its impact in a particular land area.

On 12 October 2022, the Environmental Protection Agency issued a Letter of Concern in relation to its investigation in regard to whether Louisiana regulators are discriminating against Black residents by failing to control air pollution in parishes packed with refineries and petrochemical plants in the ‘Cancer Alley’. The investigation looked at the administration of the Louisiana Department of Environmental Quality’s implementation of its air pollution control permit program, and the Louisiana Department of Health’s duty to inform, and make recommendations to the public about prevention and reduction of health threats and air toxics exposures in the areas in and around ‘Cancer Alley’. Following the investigation, the Environmental Protection Agency issued a Letter of Concern expressing concerns that the regulators’ “actions or inactions have resulted and continue to result in disparate adverse impacts on Black residents of St. John the Baptist Parish, St. James Parish, and the Industrial Corridor.”

In its investigation, the Environmental Protection Agency “identified several deficiencies in the Departments’ non-discrimination programs that adversely impact the health and lives of the Black residents of ‘Cancer Alley’”. Since both the Louisiana Department of Environmental Quality and the Louisiana Department of Health receive federal financial assistance, the Departments are subject to Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race.

According to information received, the Louisiana Department of Environmental Quality had failed to acknowledge the applicability of non-discrimination rules set by Title VI.” The Louisiana Department of Health had failed to (a) undertake reviews and studies of chloroprene exposure risk; (b) issue recommendations to agencies, such as the Louisiana Department of Environmental Quality and the St. John the Baptist Parish School Board, to prioritise the reduction and prevention of chloroprene exposure; and (c) provide the predominantly Black communities with information regarding cancer risks associated with chloroprene.

Although we do not wish to prejudge the accuracy of the information made available to us, we are deeply concerned that the land zoning policies enable the construction of extractive and manufacturing industries close to or on the land and neighbourhoods largely populated by African Americans. This may further exacerbate exposure of African American communities to the environmental pollution and the disproportionate adverse impact on their right to life, right to the highest attainable standard of physical and mental health, the right to a healthy, clean and sustainable environment, and the right to adequate housing as part of the right to an adequate standard of living.

We are also concerned about the inequality engrained within land policy, framework and practices that result in environmental injustice and have severe adverse, disproportionate, and irreversible impacts on African American communities in this two Parishes. We are in this regard as well concerned that Louisiana’s health and environment regulators have failed to properly consider discrimination on the basis of race in their land zoning assessments.

Furthermore, we are concerned that the designation of land for industrial use and subsequent siting of chemical plants are disproportionately concentrated amongst

Black neighbourhoods, while in Anglo/White majority districts, the local governments have blocked similar polluting projects.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any measures taken by the Government to implement the recommendations by the Environmental Protection Agency in its Letter of Concern addressed to the Louisiana Department of Environmental Quality and the Louisiana Department of Health on 12 October 2022.
3. Please provide detailed information concerning federal and local initiatives to address African Americans' exposure to life-threatening diseases and environmental racism and to regulate corporate industrialization of residential areas.
4. Please provide information explaining why the residential areas in the Fourth and Fifth Districts of St James Parish were given "residential/future industrial" designation.
5. Please provide information if the St. James Parish Council has received requests to reconsider and rescind land use permits issued so far and if it has approved them.
6. Please provide information if the African American communities have been consulted and involved in discussions and decisions on zoning and land use permits.
7. Please provide information on any independent environment and human rights impact assessment undertaken with the participation of the communities affected in regard to industrial projects in the 'Cancer Alley', and whether such involved the affected African American communities.
8. Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to ensure that business enterprises domiciled in your territory and/or jurisdiction, respect human rights throughout their operations. This may, for example, include requiring such businesses to conduct effective human rights due diligence, in line with the UN Guiding Principles on Business and Human Rights, to identify, prevent, mitigate and account for how they address their impacts on human

rights and the environment throughout their operation.

9. Please provide information if there has been any investigation of cases of discrimination in relation to exposure to hazardous substances, and whether victims have been provided with compensation for damages of environmental pollution and medical care to address health effects.
10. Please provide information on the impact of the efforts of the new Environmental Protection Agency office focused on environmental justice and in Louisiana's Cancer Alley.

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

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 Excellency's Government's to clarify the issue/s in question.

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

Marcos A. Orellana

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Catherine Namakula

Chair-Rapporteur of the Working Group of Experts on People of African Descent

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

K.P. Ashwini

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Annex

Reference to international human rights law

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

Firstly, we would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of Racial Discrimination, ratified by the United States on 21 October 1994. Article 2, paragraph 1 c) asserts that State party has the obligation to take effective measures to review governmental, national and local policies, and to amend or rescind any laws and regulations that have the effect of creating or perpetuating racial discrimination. In addition, article 5 of ICERD stipulates that States parties have the obligation to prohibit and eliminate racial discrimination in all its forms. States also shall guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of the rights to housing, public health and medical care, as well as to participation in cultural activities. In relation to such duties, the 2022 Concluding Obligations of the Committee on the Elimination of Racial Discrimination for the United States of America (CERD/C/USA/CO/10-12, para. 5), recommended that "the State party take all measures necessary to ensure the consistent application of the provisions of the Convention at the federal, state and local levels".

We would like to refer to the Concluding Observations on the combined 7th to 9th periodic reports of the United States of America of the Committee on the Elimination of Racial Discrimination (CERD), adopted in 2014. In paragraph 10, the Committee expressed its concern at the disproportionate negative impact of pollution caused by the extractive and manufacturing industries in individuals belonging to racial and ethnic minorities. The Committee called upon the State party: (a) to ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels; (b) to undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected communities; bring those responsible to account; and ensure that victims have access to appropriate remedies; and (c) to clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date. In its 2022 Concluding Observations, on the combined 10th to 12th periodic reports of the United States of America, CERD reiterated (paragraph 46) the above mentioned recommendations. It also recommended that the State party consider adopting moratoriums on the authorization of new heavy industry facilities and the expansion of existing ones, such as petrochemical plants. It further recommended that the State party protect historical sites of cultural significance for these communities from harm by extractive and manufacturing industries.

We would also like to recall the obligations of your Government under the International Covenant on Civil and Political Rights (ICCPR), ratified on 8 June 1992. Article 6, paragraph 1 of ICCPR states that every human being has the inherent right to life. This right shall be protected by law. In its General Comment N° 36 on article 6, the Human Rights Committee has stated that States' obligation to protect the

right to life by law includes the adoption of laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities. The obligation of States to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life. In this connection, States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include degradation of the environment and the prevalence of life-threatening diseases.

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

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

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

Furthermore, States are obliged to ensure that the right to adequate housing and the right to the highest attainable standards of health and the right to safe drinking water “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” in accordance with article 2.2 of the ICESCR. This includes not only addressing formal discrimination, but as well substantive or de facto discrimination that results in unequal living conditions and unequal hazardous exposure to pollution. The Special Rapporteur on the right to adequate housing has in this context recently pointed out how zoning policies can entrench spatial segregation and may result in environmental discrimination in relation to the right to adequate housing in his recent reports (A/HRC/49/48 and A/76/408).

In its General Comment No. 14 on The right to the highest attainable standard of health (article 12 of ICESCR), the Committee on Economic, Social and Cultural Rights (CESCR) has stated that “the improvement of all aspects of environmental and industrial hygiene” (art. 12.2 (b)) comprises the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. The Committee, in its General Comment No. 15 on the right to water, defines the obligation of the States parties to prevent third parties from interfering in any way with the enjoyment of the right to water.

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

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

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

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

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies,

legislation, regulations and adjudication” (guiding principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (guiding principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (guiding principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

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

Finally, we would like to bring to the attention of your Excellency’s Government that the human right to a clean, healthy, and sustainable environment was recognized by Human Rights Council resolution 48/13 and United General Assembly resolution 76/300. The Framework Principles on Human Rights and the Environment presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 12 provides for instance that States should ensure the effective enforcement of their environmental standards against public and private actors.

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