

Mandates of the Special Rapporteur on the rights of Indigenous Peoples; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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(Please use this reference in your reply)

26 July 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of Indigenous Peoples; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 51/16, 44/5 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **use of excessive and lethal force by law enforcement against a group of Indigenous individuals** and the **alleged ill-treatment of detainees by law enforcement officials**. Additionally, we express concern about the reported continued **lack of demarcation and titling of indigenous lands, and the granting of logging and extractive concessions in the ancestral territories of Indigenous Peoples without obtaining their free, prior and informed consent**.

According to the information received:

Kalina and Lokono Indigenous Peoples in the Para District have traditionally used and occupied ancestral lands and territories that are paramount to guarantee their cultural and physical survival. As part of the peace process, in 1992, in the Lelydorp Accord (Agreement for National Reconciliation and Development), the State undertook to establish legal mechanisms to protect the lands of the Indigenous Peoples by demarcation and titling (art. 10). Also, since 2005, the collective rights of Indigenous and Tribal Peoples Bill has been under preparation. However, to today, Suriname has not adopted a legal framework to recognize Indigenous Peoples' collective rights to lands, territories, and resources, and has not conducted demarcation or titling of their territories.

On several occasions, the Inter-American Court on Human Rights (IACHR) expressed concern about Suriname's lack of legal framework to recognize and protect Indigenous Peoples' collective rights to lands, territories and resources and failure to guarantee control of their territory without any outside interference.¹ In 2015, in the case *Kalina and Lokono v. Suriname*, the IACHR required the State of Suriname to grant the Indigenous and tribal peoples in Suriname legal recognition of collective juridical personality; establish an effective mechanism for the delimitation, demarcation, and titling of their territories; adopt domestic remedies in order to ensure effective collective

¹ Inter-American Court on Human Rights, *Moiwana Community v. Suriname* (2005) https://www.corteidh.or.cr/docs/casos/articulos/serieec_124_ing.pdf; Inter-American Court on Human Rights, *Saramaka People v. Suriname* (2007) https://www.corteidh.or.cr/docs/casos/articulos/serieec_172_ing.pdf; Inter-American Court on Human Rights, *Kaliña and Lokono peoples v. Suriname* (2015) https://www.corteidh.or.cr/docs/casos/articulos/serieec_309_ing.pdf.

access to justice for the Indigenous and tribal peoples; and guarantee the effective participation, by means of a consultation process, of the Indigenous and tribal peoples (para. 305). The judgment has not been implemented yet.

The State of Suriname has granted several concessions, and extensions of existing ones, to logging and extractive companies, including the government-owned NV Grasshopper Aluminum Company (Grassalco) in the lands and territories traditionally used and occupied by Kalina and Lokono Indigenous Peoples, in the Para District. The concessions were granted without consultation with Kalina and Lokono Indigenous Peoples with a view to obtaining their free, and prior informed consent, despite their strong opposition to the concessions. In addition, several companies, including Grassalco, are allegedly operating illegally outside their respective concession areas on lands and territories traditionally used and occupied by Kalina and Lokono Indigenous Peoples. Reportedly, there are 31 active logging concessions in the Para District, and the Minister of Land Policy and Forestry signed seven extensions in July 2022, including a 5-year extension of a logging concession near the Indigenous village of Pikin Sharon.²

On several occasions, Kalina and Lokono Indigenous Peoples have communicated their oppositions and concerns to the authorities, notably via petitions to the Parliament. Reportedly, the Government promised to address issues related to land conflicts and Indigenous Peoples' rights on a number of occasions, but no effective measures were taken.

On 2 May 2023, at 6 a.m., a group of armed unidentified persons allegedly set on fire a number of logging trucks, the Pinkin Saron police station and a Forestry Management Foundation checkpoint near the Kalina Indigenous village of Pikin Saron to protest against the granting and extension of logging and extractive concessions on lands and territories traditionally used and occupied by Indigenous Peoples. At least two police officers sustained gunshot wounds during the attack.

It was reported that the police chased the protestors in the surrounding area, including the Bigi Poika village, and that law enforcement officials used live ammunition, which allegedly resulted in the killings of two protestors and the injuries of a number of other protestors. Allegedly, two victims were shot while being handcuffed, which could suggest a summary execution. The bodies of these two victims allegedly showed signs of ill-treatment.

At least five individuals were reportedly arrested and detained. While in detention, they were allegedly threatened and coerced to sign false statements about their involvement in the protest.

Since the incident, the indigenous villages of Bigi Poika and Pikin Saron have been in total lockdown, monitored with drones by military and police forces to trace down alleged protestors. Villagers are reportedly stopped, registered, and photographed by the police, while freedom of movement in the residential area is limited to employees from Grassalco and third parties.

² <https://www.starnieuws.com/index.php/welcome/index/nieuwsitem/75513>

On 2 May and on 7 May 2023, the Association of Indigenous Village Leaders in Suriname (VIDS), the institute of the traditional authorities of all indigenous villages in Suriname, representing all Indigenous Peoples of Suriname, stated that they do not condone or support violence and destruction at all and that they see this outburst as a clear signal of Indigenous Peoples frustration that finds origin in centuries-long oppression and discrimination of Indigenous Peoples and the denial of the internationally recognized collective human rights of the Indigenous Peoples in Suriname despite three binding judgments of the IACHR.

In the evening of 2 May 2023, representatives of the VIDS held an emergency meeting with Government representatives, including the Ministers of Foreign Affairs, International Business and International Cooperation; of Defense, Justice and Police; and of Land Policy and Forest Management; as well as the District Commissioner of Para and Advisor to the President's Office, to discuss the situation and prevent further escalation of tensions. According to the Minister of Land Policy and Forest Management, the Government has started a process to withdraw the extension of a timber concession. The end of the search and arrest operations and the voluntary handover of suspects in the presence of third parties, including the United Nations, was agreed upon by both parties.

On 4 May 2023, the Parliament discussed issues related to the collective rights for Indigenous and tribal people. The same day, the Minister of Land Policy and Forest Management testified on the status of land concessions in Para District. The National Assembly again convened a public meeting on the draft law on land rights of Indigenous and tribal peoples for 11 May, but it could not take place for lack of quorum.³ The next meeting on the draft was held on 16 May. At this meeting Members of Parliament of the National Democratic Party (NDP) agreed that the draft law was far from ready for discussion and that the draft law should go back to the drawing board. They further indicated that Indigenous and tribal peoples did not have to wait for the approval of the Collective Rights bill for their interests to be protected. The Housing and Habitat Protection Act stipulates that no land concession may be issued within a certain radius of Indigenous and tribal peoples areas. This Act was passed, but not promulgated.

Meanwhile, on 5 May 2023, the President, in a statement before the Parliament, informed that the investigation into the 2 May incident was ongoing and that the Government would take firm action against the perpetrators and those who provided them with weapons. He added that domestic security had been compromised, and a team of ministers had been appointed to consult with the Indigenous Peoples to address grievances.⁴

On 7 May 2023, the National Repair Commission stated that the events on 2 May were the result of the poor socio-economic circumstances of the target population and advised the Government to draw up a plan of action for the socio-economic issues and a timeline with the aim of addressing and eventually resolving the disadvantages that exist among the target population

³ <https://dwtonline.com/geen-quorum-voor-grondenrechtenvergadering-dna/>

⁴ <https://www.starnieuws.com/index.php/welcome/index/nieuwsitem/75515>

in a sustainable manner.⁵

On 13 May 2023, approximately 500 Indigenous Peoples from various villages in Suriname gathered in a peaceful protest in Paramaribo, to ask for the recognition and protection of their rights, including their rights to lands, territories and resources.

While we do not wish to prejudge the accuracy of these allegations, we are extremely concerned by the reported use of excessive and lethal force by law enforcement and by the escalation of tensions resulting from land-related issues that have remained unaddressed since the signing of the Agreement for National Reconciliation and Development in 1992. In this context, we stress that under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. We recall that the right to life is a *jus cogens* and international customary law norm and cannot be derogated from under any circumstances.

We are also concerned about the granting of concessions and extensions to logging and extractive companies, including the government-owned NV Grasshopper Aluminum Company (Grassalco), on lands and territories traditionally used and occupied by Kalina and Lokono Indigenous Peoples, without consultation with a view to obtaining the free and prior informed consent of Indigenous Peoples concerned. We are also concerned about reported illegal operations of a number of companies, including the Government owned NV Grasshopper Aluminum Company (Grassalco), outside of their respective concessions and on lands and territories traditionally used and occupied by Kalina and Lokono Indigenous Peoples.

We are further concerned that, after 8 years, Suriname appears not to have taken any step to implement the judgment of the Inter-American Court of Human Rights: *Kalina and Lokono peoples v. Suriname* (2015). We are also concerned about the reported lack of implementation of other lands-related judgments, in particular in the cases of *Moiwana Community v. Suriname* (2005) and the *Saramaka People v. Suriname* (2007). In paragraph 27 of its Concluding Observations adopted on 21 September 2022 on the combined sixteenth to eighteenth periodic reports of Suriname, the Committee on the Elimination of Racial Discrimination expressed similar concerns about “the lack of the full implementation by the State party of the judgments of the Inter-American Court of Human Rights, specifically concerning the rights of indigenous and tribal peoples, in particular in the cases of *Moiwana Community v. Suriname* (2005), *Saramaka People v. Suriname* (2007) and *Kalina and Lokono peoples v. Suriname* (2015) (...)”

Additionally, we regret that your Excellency's Government has not yet implemented the recommendations that the Special Rapporteur on the rights of Indigenous Peoples formulated in 2011 on the occasion of a visit to Suriname to assist with the development of laws and administrative measures to secure the rights of Indigenous and tribal peoples in Suriname, in particular their rights over lands and natural resources.⁶ We urge Your Excellency's Government to take all necessary measures, including the promotion of peaceful and constructive dialogue with

⁵ <https://www.starnieuws.com/index.php/welcome/index/nieuwsitem/75556>

⁶ A/HRC/18/35/Add.7, https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add7_en.pdf

Indigenous Peoples to fully implement the 2011 recommendations of the Special Rapporteur and the decisions of the Inter-American system. We stand ready to provide any advice and technical assistance to fully implement the rights of Indigenous Peoples in Suriname according to the international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples.

We further wish to highlight the importance of conducting investigations into all suspected unlawful killings in line with international standards, particularly the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the *Minnesota Protocol on the Investigation of a Potentially Unlawful Death* (2016)).⁷ We reiterate that we stand ready to support your Excellency's Government efforts in this regard and remain available for any assistance we may be able to provide to the authorities concerned. This could include discussions on the investigative steps necessary to comply with such standards and on technical assistance to improve the capacity of relevant officials to conduct such investigations.

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, in particular allegations regarding the use of excessive and lethal force by law enforcement against Indigenous protesters, and on any investigations that have taken place or are planned to look into these allegations of the use of excessive and lethal force by police and armed forces, severely impeding their rights to freedom of peaceful assembly.
2. Please provide information on measures taken by your Excellency's Government to carry out an immediate, impartial, and independent investigation into the killings, particularly if an individual or group were held accountable. Please provide further information on the extent to which the investigations complied with international standards including the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989) and the aforementioned Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).
3. Please provide information on how many detained protesters are in custody and whether those still detained have been charged with criminal offenses, have been granted access to a lawyer of their choice, and have been promptly brought before a judge to determine the legality of their detention. Please provide information on the measures taken to guarantee the physical and mental integrity of detainees.

⁷ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

4. Please provide information on any steps taken by Your Excellency's Government to ensure that the Kalina and Lokono peoples have access to effective and adequate redress mechanisms and remedies, including compensation for the destruction of ancestral lands and use of natural resources, and the long-term commercial use of their land without their free, prior and informed consent.
5. Please provide information on any capacity building activities or/and trainings for law enforcement personnel undertaken or planned to be undertaken on the international standards of the use of force, particular in contexts of assemblies and demonstrations to strengthen the prevention against the excessive and disproportional use of force.
6. Please indicate the steps that your Excellency's Government has taken or is considering taking to protect Indigenous Peoples against human rights abuses by business enterprises domiciled on its territories, including requirements of human rights due diligence, in accordance with the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), as well as the steps taken to cancel the concessions given to logging and extractive industries on lands and territories traditionally owned, used and occupied by Kalina and Lokono Indigenous Peoples in Para district.
7. In line with the judgment of the Inter-American Court of Human Rights: Kalina and Lokono peoples v. Suriname (2015), please provide information on any measures taken by your Excellency's Government to: recognize the collective juridical personality of Indigenous and tribal peoples in Suriname, establish an effective mechanism for demarcation and titling of the territories of indigenous and tribal peoples in Suriname, establish domestic remedies, or adapt those that exist, in order to ensure effective collective access to justice for Indigenous and tribal peoples, and ensure: (a) effective participation processes for Indigenous and tribal peoples in Suriname; (b) the execution of social and environmental impact assessments; and (c) the distribution of benefits, as appropriate, as established in paragraphs 305.d of this Judgment."

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

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

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.

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

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Annex

Reference to international human rights law

In relation to the above-mentioned facts and concerns, we would like to draw the attention of your Excellency's Government to its obligations under international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), to which Suriname acceded on 28 December 1976, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to on 28 December 1976.

We wish to refer to article 27 of the ICCPR, which 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).

Article 1 of the ICCPR and ICESCR recognize the right of all peoples to self-determination, including the right to manage their own resources. General Comment No. 12 of the Committee on Economic Social and Cultural Rights (CESCR) defines the obligations of States to implement the right to adequate food and water including "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 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, 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).

We would also like to refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights and articles 6 (1) and 9 of the International Covenant on Civil and Political Rights (ICCPR), the right to life and the right to liberty and security of person.

We wish to refer to Human Rights Committee, General Comment 36. It notes that the right to life is the supreme right from which no derogation is permitted (paragraph 2). It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights. The Human Rights Committee further highlights that the duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence including displaced persons (paragraph 23). It further states that "the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent

individuals from enjoying their right to life with dignity”.

In General Comment No. 31, the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials. This includes putting in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures to ensure that law enforcement actions are adequately planned to minimise risks to human life, mandatory reporting, review and investigation of lethal incidents, and supplying forces responsible for crowd control with effective, less-lethal means and adequate protective equipment in order to obviate their need to resort to lethal force. Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal.

All operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life. In addition, states hold the duty to ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms according to the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989) (para. 2).

According to these instruments, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. **Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal.**

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the aforementioned Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the United Nations Revised Manual for the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions (The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates. They must always be independent,

impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future.

We also refer to the report on Medico-legal Death Investigations (MLDIs) (A/HRC/50/34) by the Special Rapporteur on extrajudicial, summary or arbitrary executions, indicating that the families and next of kin should be informed in a timely and appropriate manner about the investigation into the death of their loved one, its progress and its findings and that should be protected from any threat resulting from their participation in the investigation (paras. 92 and 94).

We further recall that it is an indispensable obligation of States that complainants, witnesses, those conducting the investigation, and their families be protected from violence, threats of violence, or any other form of intimidation, and that legal representatives and victims' families have access to any hearing, as well as to any information relevant to the investigation, and are entitled to present further evidence. (Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, para. 15 and 16).

We would further like to recall that articles 21 and 22 of the ICCPR guarantee the rights of peaceful assembly and of association, and note that “no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

We would like to refer to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), acceded to on 15 March 1984. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Suriname 15 March 1984, guarantees the right to equality before the law and the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. It is worth recalling that any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life constitute racial discrimination (article 1). The Convention further requires States to implement affirmative measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, with a view to guaranteeing them full and equal enjoyment of all human rights and fundamental freedoms (article 2). In addition, States have a responsibility to combat and eradicate prejudices and other forms of racial discrimination and to promote, through education and other means, understanding, tolerance and friendship among nations and racial or ethnic groups (article 7).

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).

We would like to highlight that your Excellency’s Government voted in favor of adopting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), that stipulates that Indigenous Peoples 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 UNDRIP 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, in its 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.” Article 26 established that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” Article 32(2) of UNDRIP 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.”

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. These Guiding Principles are grounded in recognition of:

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

The Guiding Principles clarify that under international human rights law, “States must protect against human rights violations committed in their territory and / or their jurisdiction by third parties, including business enterprises” (guiding principle 1). This requires States to “state clearly that all companies domiciled within their territory and / or jurisdiction are expected to respect human rights in all their activities” (guiding principle 2). Guiding principle 1 clarifies the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” This obligation requires that a State takes appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In addition, this requires, inter alia, that a State should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (guiding principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur. Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed. Moreover, principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

We wish to recall that the arrest or detention of individuals is considered arbitrary when it constitutes punishment for the legitimate exercise of human rights, such as freedom of opinion and expression, as well as assembly and association and participation in public affairs (CCPR/C/GC/35, para. 17). We also recall that a deprivation of liberty is considered arbitrary when it constitutes a violation of international law on the grounds of discrimination, including discrimination based on the status of an individual as a journalist or a human rights defender. We further wish to remind your Excellency’s Government that enforced disappearances violate numerous substantive and procedural provisions of the ICCPR and constitute a particularly aggravated form of arbitrary detention (see CCPR/C/GC/35, para. 17).

Furthermore, we wish to draw the attention of your Excellency’s Government to a recent report of the Working Group on Arbitrary Detention to the Human Rights Council (A/HRC/45/16), where the Working Group reiterated that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty (paragraph 50). The right to legal assistance must be ensured from the moment of deprivation of liberty and across all settings of detention, including, inter alia, criminal justice and administrative detention (paragraph 51). Legal assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees (paragraph 53).

The Code of Conduct for Law Enforcement Officials (1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) provide an authoritative interpretation of the limits on the conduct of law enforcement forces. Principle 4 provides that in carrying out their duties, law enforcement officials may use force and firearms only if other means remain ineffective. Principle 5 adds that if the use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offense and obliges the authorities to offer assistance and medical aid to any injured persons as soon as

possible. Moreover, 11 principles 9 reiterates that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Furthermore, firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para. 60 of the recommendations). Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary (principles 5 and 10). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8).

Finally, there is a duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) provides detail on the duty to investigate potential unlawful deaths “promptly, effectively and thoroughly, with independence, impartiality and transparency.” It notes the authorities must “conduct an investigation as soon as possible and proceed without unreasonable delays. The investigation should seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist (para 25.). Family members should be granted legal standing, and the investigative mechanisms or authorities should keep them informed of the progress of the investigation, during all its phases, in a timely manner (para. 35).

States must punish those individuals responsible for violations in a manner commensurate with the gravity of their crimes” (E/CN.4/2006/53). In addition, persons whose rights have been violated have the right to a full and effective remedy including to adequate, effective and prompt reparation.