

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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(Please use this reference in your reply)

7 November 2023

Mr. Golikov,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 52/9, 53/3, 46/7, 52/4, 51/16 and 45/17.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your organization information we have received concerning **allegations of judicial harassment and criminalisation of independent journalist and human rights defender Mr. Carlos Ernesto Choc Chub, in relation to his journalistic work reporting on the activities of Solway Holding LTD's subsidiary, Solway Investment Group, and its Guatemalan subsidiaries, Compañía Guatemalteca de Níquel SA (CGN) and**

Solway Holding LTD

Compañía Procesadora de Níquel de Izabal SA (PRONICO), in the Fénix nickel mine in El Estor, Izabal, and the deeply concerning health and environmental impacts on the local Maya Q'eqchi Indigenous community.

Mr. Choc is an independent journalist and human rights defender from the Maya Q'eqchi Indigenous community. His journalistic work in the municipality of El Estor, Izabal has had a high reach and since 2017 he has faced digital attacks, judicial harassment, criminalization and threats that have materialised in aggressions against him. The journalist has had to relocate several times for his safety.

According to the information received:

Background

In February 2017 a red slick appeared in Lake Izabal near the operations of the Fénix nickel mine, operated by Compañía Guatemalteca de Níquel SA (CGN). Compañía Procesadora de Níquel de Izabal SA (PRONICO) owns the nickel processing plant for the mine, though PRONICO closed operations in 2023. Local Indigenous communities demanded that relevant state institutions carry out investigations and examinations of the waste from the mine. In official communications, the Government and CGN claimed that the colouring was caused by micro-algae and that an analysis showed that 90% of the water pollution was not generated by the company's operations, but by local communities along the Polochi River.¹ However, internal company documentation subsequently accessed by Forbidden Stories' network of journalists shows that CGN allegedly knew from the outset that the mine's wastewater was seriously polluting the lake.

In mid-May 2017, the artisanal fishermen's union (Gremial de Pescadores Artesanales), local Indigenous Maya Q'eqchi fishermen from Izabal, filed a complaint with the Public Prosecutor's Office regarding the pollution of Lake Izabal. At the same time, they highlighted CGN's lack of dialogue with local communities.

On 27 May 2017, following the failure of roundtable negotiations with CGN, Indigenous fishermen and other concerned citizens exercised their right to protest in opposition to the mine. In the course of alleged clashes during the protest, the police reportedly killed an Indigenous fisherman present at the protest and another protester was injured. The police reported six injured policemen as a result of the protest.

According to analyses of samples taken from Lake Izabal on 20 August 2017, conducted by an institute of environmental hygiene and toxicology, and the environmental health and water protection department of North Rhine-Westphalia (Germany), the amount of nickel present in the samples considerably exceeds the maximum permissible level. The analysis stated that an amount of nickel between 0.2 and 0.3 mg/l is not harmful for fish and other organisms in the water. However, the analyses found 2.05mg/l of nickel was present in the lake water closest to the mine, and 0.872mg/l of nickel was present on the water's surface.

¹ https://media.business-humanrights.org/media/documents/files/documents/SolwayStatementCGN_Espanol.pdf

In 2018, the fishermen's union filed a complaint with the Supreme Court, alleging that CGN's mining licence was invalid, because the company did not consult the community as required by international law. CGN alleged that it had already conducted two consultations in 2005 and 2018. After the Supreme Court rejected the fishermen union's complaint, the union appealed to the Constitutional Court.

In July 2019, one person was killed and a child seriously injured when they were reportedly run over by a CGN truck. The event caused a group of people to burn 12 trucks belonging to a contractor of the mine. As a result, a state of siege was implemented on 4 September 2019 by the Government.

On 18 July 2019, the Constitutional Court issued a statement indicating that the Fénix mine licence was granted in violation of the rights of local Indigenous Peoples. The Court ordered the temporary suspension of the Fénix mine's operations until an inquiry against the Ministry of Energy and Mines is resolved. CGN reportedly continued its operations without interruption.

In May 2020, CGN was accused by local residents of ignoring COVID-19 requirements and continuing operations in the Fénix mine, despite the Constitutional Court order suspending CGN's license in July 2019. Furthermore, mine workers were reportedly threatened with dismissal if they did not report to work during the COVID-19 crisis. The company replied in a statement that it was operating in line with State regulations and with authorisation from the Ministry of Energy and Mines.²

On 19 June 2020, the Constitutional Court ruled on the inquiry against the Ministry of Energy and Mines, in relation to granting the licence to CGN for the mining right called "Extracción Minera Fénix". The Court confirmed the injunction on the grounds that the rights of the Indigenous community were violated and ordered: 1) that the area of the licence granted to the mine be limited to 6.29km² of the 247.9978km² where an environmental impact study was conducted; 2) that a consultation with the affected people be carried out within 18 months, and; 3) that the mining operation be suspended until the consultation is concluded.

On 4 October 2021, the local population began a peaceful protest for 20 days, blocking the passage of trucks loaded with the coal that the mine needs to operate, demanding that the resolution of the Constitutional Court be correctly complied with.

On 22 October 2021, the National Civil Police (PNC) and the army reportedly cracked down on the peaceful protest. Despite this, the peaceful protest continued for another two days, until 24 October 2021, when the Government declared a state of siege in the municipality of El Estor for 30 days. There were multiple injured protesters, as well as seven injured members of the police. Several human rights organisations expressed concern about human rights violations in this context, and the Inter-American Commission on

² https://media.business-humanrights.org/media/documents/files/documents/Respuesta_por_parte_de_Solway_Investment_Group.pdf

Human Rights noted excessive use of force by the security forces.³

Criminalisation of Mr. Carlos Ernesto Choc Chub

On 27 May 2017, Mr. Choc reported on the protest in which local Indigenous fishermen from El Estor demanded an environmental study following the appearance of a red slick in Lake Izabal, which they attributed to the CGN-operated Fénix mine. Mr. Choc photographed the exact moment when a fisherman was shot dead by police. The police reportedly denied that anyone was killed.

Solway Investment Group, a subsidiary of Solway Holdings Ltd, issued a statement alleging that they were not responsible for the events. In addition, they reported the alleged “kidnapping of four CGN employees, violation of human rights in terms of freedom of movement, detention of the employees’ families and roadblocks”.⁴

In the following weeks, Mr. Choc received threats via anonymous phone calls in relation to the photographs taken. A warrant was issued for his arrest on 14 August 2017 by the Public Prosecutor’s Officer. In August 2017, he was charged with the crimes of threats, instigation to commit a crime, unlawful association, unlawful assembly and demonstrations, damage and illegal detentions of four CGN employees. These charges were allegedly the result of a complaint filed by CGN and PRONICO.

The prosecution’s lawyer reportedly accused Mr. Choc, another journalist and Indigenous fishermen from the Gremial de Pescadores Artesanales of illegally detaining four CGN employees on 3 and 4 May 2017 during a demonstration. According to reports received, the two journalists were not present during the events. Mr. Choc’s lawyer presented a letter from the municipality of El Estor, indicating that the journalist was working for a media outlet, Prensa Comunitaria, on the days of the events.

On 20 February 2018, Mr. Choc appeared in the Court of First Criminal Instance, Narcoactivity and Environmental Crimes of the department of Izabal, city of Puerto Barrios. He went into hiding when an arrest warrant was issued against him in August 2017.

On 22 January 2019, the judge from the Court of First Criminal Instance, Narcoactivity and Crimes against the Environment of the department of Izabal, city of Puerto Barrios decided to prosecute Mr. Choc and three Indigenous fishermen from Izabal for the crime of illegal detentions, though the Public Prosecutor’s Office requested that the case be closed for lack of merit. Mr. Choc received alternative precautionary measures under which he had to present himself to the municipality’s Public Prosecutor’s Office every 30 days, a measure that he has complied with to date.

On 18 April 2020, an unidentified individual broke into Mr. Choc’s house in El Estor, and stole his work equipment, including a camera and two mobile phones. It has been reported that the theft is in retaliation for Mr. Choc’s

³ https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/293.asp

⁴ https://media.business-humanrights.org/media/documents/files/documents/SolwayStatementCGN_Espanol.pdf

reporting on the Fénix mine. The journalist reported the theft to the Public Prosecutor's Office for Crimes against Journalists on 20 April 2020. Though an investigation was opened, the Public Prosecutor's Office said that there was insufficient evidence to conclude an investigation and closed the case on 8 November 2022.

On 23 May 2020, Mr. Choc reported being surveilled by a car parked for more than 46 hours in front of his house. The journalist called the PNC, though the PNC did not go to his residence. Mr. Choc was advised to request the transfer of the information of his complaint to the Public Prosecutor's Office for Crimes Committed against Journalists. Despite doing so, the PNC and the Prosecutor's Office for Crimes against Journalists have not conducted an investigation to date, nor did it file a report. no investigation has been conducted.

On 22 October 2021, Mr. Choc covered the community protests against CGN. He was reportedly assaulted by agents of the PNC while covering the protests and was stripped of his work equipment.

On 26 October 2021, the police allegedly raided the homes of Mr. Choc and another journalist covering the protests against CGN.

On 25 March 2022, 13 PNC agents and prosecutors from the Public Prosecutor's Office filed a complaint against Mr. Choc. The complaint was based on the charge of "incitement to commit a crime" in relation to the wave of violence and repression on 22 and 23 October 2021 in El Estor.

On 13 September 2022, the judge of the Criminal Court of First Instance, Narcoactivity and Crimes against the Environment of the department of Izabal, city of Puerto Barrios rejected the accusations of the thirteen PNC agents and representatives from the Public Prosecutor's Office against Mr. Choc. The judge dismissed the accusations, considering that there were insufficient elements to sustain the accusation by the PNC and the Public Prosecutor's Office.

Mr. Choc was due to appear at a hearing on 21 August 2023 with regard to the previous allegations of illegal detentions linked to the events of May 2017. The Public Prosecutor's Office is said to be requesting the closure of the case. On 21 August 2023, Mr. Choc was informed by his lawyers that the court would not be working due to the presidential elections and therefore his hearing was suspended. His hearing was rescheduled for 7 December 2023 in the Criminal Court of First Instance, Narcoactivity and Crimes against the Environment of the department of Izabal, city of Puerto Barrios.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed about the apparent judicial harassment and criminalisation of independent journalist and human rights defender Mr. Choc, in relation to his work reporting on the activities of Solway Investment Group's (of which Solway Holding LTD is the parent company) Guatemalan subsidiaries, CGN and PRONICO, in the Fénix nickel mine in El Estor, Izabal. We express particular concern regarding the use of legal action against journalist and human rights defender Mr. Choc. Such legal action presents the hallmarks of Strategic Lawsuits against Public Participation

(SLAPPs), which undermines journalistic work and discourages legitimate advocacy work, particularly for those documenting human rights violations in relation to corporate activities, thus creating a chilling effect on journalists', activists' and human rights defenders' right to public participation.

We further wish to express our concerns regarding the health and environmental impacts of the Fénix mine on the local Maya Q'eqchi Indigenous community, including the contamination of Lake Izabal. Given the analyses of water samples taken from Lake Izabal, there is serious concerns about the quantity of nickel found in the lake, which could seriously harm fish and other organisms present in the water. This directly impacts the Maya Q'eqchi Indigenous community and their livelihoods, who rely on fishing in the lake as a source of food. Also of concern is the continuation of the mine's operations despite the resolution of the Constitutional Court, which reportedly has not been properly complied with. We are further concerned about Solway Holding LTD's alleged failure to prevent, mitigate or address adverse human rights impacts that are directly linked to its subsidiaries' operations, products or services, in line with the UN Guiding Principles on Business and Human Rights, and Solway Holding LTD's own corporate governance commitments.

Freedom of expression is an essential enabler of sustainable development. In addition to empowering individuals, communities and civil society, "it facilitates a range of other rights, including those underpinning sustainable development, such as the rights to health, education, water and a clean environment."⁵ The right to freedom of opinion and expression, enshrined in article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, and in various international and regional instruments, encompasses the right to seek, receive and impart information and ideas, regardless of frontiers and in any media.⁶ Further, the UN Guiding Principles on Business and Human Rights recognize the responsibility of companies to respect the right to information in relation to their operations and activities.⁷ Such information must be sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact(s) involved.⁸ We therefore urge your company to ensure the right to information regarding its operations and activities is respected, particularly information regarding possible environmental, health and human rights impacts that such operations or activities may have on local communities, including Indigenous Peoples.

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

⁵ A/HRC/53/25, para 3.

⁶ International Covenant on Civil and Political Rights, art. 19 (2).

⁷ A/HRC/53/25, para 35.

⁸ A/HRC/17/31, Principle 21 (b).

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the human rights and environmental due diligence policies and processes established by your company to prevent, mitigate and remediate adverse human rights impacts that are directly linked to your operations, products or services, including those related to the Fénix mine, in line with the UN Guiding Principles on Business and Human Rights.
3. As “[s]trong corporate governance is a guiding principle of Solway Holding [Ltd.], which drives the leadership structure and ensures ethical behavior of the subsidiaries/companies,”⁹ please provide information on how Solway Holding Ltd puts this into practice, particularly in the context of mining operations that may have adverse human rights impacts on the environment and Indigenous Peoples. As part of this response, please provide information on the role that your company, as the parent company, plays in relation to the policy and decision-making of its subsidiaries relevant to the above-mentioned incidents and more generally to human rights-related issues.
4. Please indicate measures taken to ensure that your company complies with Guatemalan and international environmental laws and human rights standards.
5. Please provide updated and comprehensive information on the health and environmental impacts and damages of the mining operations. Please indicate what measures have been taken to ensure health care services for the affected communities, including Indigenous Peoples.
6. Please indicate the steps your company has taken, or is intending to take, to ensure the environmentally sound management and disposal of hazardous substances and waste.
7. Please provide information on how your company addresses potential land disputes with Indigenous Peoples living in concession areas, and other concerns by affected stakeholders. As part of your response, please indicate whether your company carries out public consultations, including free, prior and informed consent for Indigenous Peoples.
8. Please explain what measures have been taken to ensure that human rights defenders and journalists can carry out their peaceful and legitimate activities without fear of judicial harassment, strategic lawsuits against public participation (SLAPPs), violence, or other restrictions. In particular, please indicate how your company has incorporated the recommendations made by the Working Group on

⁹ <https://solwaygroup.com/corporate-structure/>

business and human rights to businesses in its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2).

9. Please provide information about any interim measures your company has taken or plans to take to suspend the operations of CGN and PRONICO until the rights of the Maya Q'eqchi Indigenous community living on the company's concessions are safeguarded, and measures are established to prevent any form of further litigation against Mr. Carlos Ernesto Choc Chub, who has been targeted for his peaceful and legitimate work as a journalist and Indigenous human rights defender.
10. Please indicate whether stakeholders affected by the above-mentioned allegations have had access to remedies, and indicate measures provided by your company to identify and hold accountable the perpetrators of human rights abuses.
11. Please provide information on steps taken by your company to establish, or participate, in operational-level grievance mechanisms, in line with the UN Guiding Principles, to effectively address adverse human rights impacts caused by (or contributed to) your company throughout your operations.

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

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

Please note that the allegations contained in this letter will also be sent to the Government of Guatemala, Solway Investment Group, Compañía Guatemalteca de Níquel SA (CGN), Compañía Procesadora de Níquel de Izabal SA (PRONICO), the Government of Malta and the Government of Switzerland.

Please accept, Mr. Aleksandr Golikov, the assurances of our highest consideration.

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

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

Annex

Reference to international human rights law

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

Principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of the principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. [...] Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

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

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

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to guiding principle 25).

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. 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. In its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It explains, for States and business, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.

Furthermore, we would like to bring to your attention 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to article 1 of the Declaration which 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 levels.

We would also like to bring to your attention the following provisions of the UN Declaration on Human Rights Defenders:

- article 6(a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6(b) and (c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.