

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the rights of Indigenous Peoples

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(Please use this reference in your reply)

20 December 2023

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to development; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the rights of Indigenous Peoples, pursuant to Human Rights Council resolutions 53/3, 51/7, 46/7 and 51/16.

In this connection, we would like to bring to your attention the information we have received regarding **the signing of a Nature Conservation Agreement (NCA) granting monopoly rights of two million hectares (4.9 million acres) of a forest located in the ancestral territories of Sabah Indigenous Peoples to Hoch Standard Pte Ltd, a private company based in Singapore with ultimate control vested in a British Virgin Islands company, Lionsgate Ltd. Allegedly, the agreement was made without respecting Sabah Indigenous Peoples' rights, including their rights to consultation and free, prior and informed consent (FPIC).**

According to the information received:

In the state of Sabah, in Malaysia, 39 ethnic groups of Indigenous Peoples, constitute 58.6% of the population. Sabah's expansive forest covers a total of 4,679,594 hectares, of which 82% is located in Protected Areas, and 42% in Totally Protected Areas. Approximately 25,000 Indigenous Peoples live in Sabah's Forest reserves, and about 325,000 in adjacent areas, having responsibly managed and cared for these forests since immemorial times.

According to the High Conservation Value V and VI Assessments for Sabah, in 2020, there were about 117 villages in designated Totally Protected Areas, 159 located within the boundaries of Sabah's Commercial Forest Reserves, 128 villages within 100 meters of the boundary of a Totally Protected Area or commercial forest, 729 villages within 500 meters and 815 villages within 1 km of those boundaries. These villages depend on the forest for livelihood and traditional and spiritual activities.

The rights of the Sabah Indigenous Peoples are enshrined in the 1930 Ordinance (revised in 1996), forming the foundation for the State's land tenure system and recognizing Native Customary Rights to land and forest products. The Sabah Biodiversity Enactment (2000) guarantees native and community rights, while Sabah's Forest Enactment (1968) Section 15(1) prohibits licensing for commercial exploitation of natural resources in Totally

Protected Areas (Forest Reserve Classes I, VI, and VII).

On October 28, 2021, the Sabah State Government reportedly signed an NCA with Hoch Standard Pte Ltd, a company headquartered in Singapore. The agreement gives exclusive rights to the company to develop nature conservation management plans and creates a commercial monopoly over all carbon and other natural capital benefits, including the natural capital contained in the designated area, and to sell, exchange, transfer, or otherwise dispose of in any manner it deems necessary. This exclusive right is allegedly granted for 100 years, with the opportunity for renewal for another 100 years. Under the NCA, Hoch Standard Pte Ltd would secure 30% of gross revenue from the monetization of carbon and other natural capital, while the Sabah State Government would receive 70% of the revenue and be responsible for most management costs and generating carbon credits.

Indigenous, conservation, and civil society organizations have expressed concerns regarding the NCA's compliance with Indigenous Peoples' rights, transparency, due diligence, and technical feasibility.¹

The NCA fails to acknowledge the presence of Indigenous Peoples in the area of the project and do not refer to Indigenous Peoples' rights established in domestic and international law. This is creating uncertainty on the possible impact of its implementation on the management, use, and access to lands and resources by Sabah Indigenous Peoples, who live on or depend on the land covered by the agreement. By granting 100 years of monopoly rights of two million hectares of the forest mainly occupied by Indigenous Peoples to a foreign private company, for all carbon and other natural capital benefits, the NCA could restrict Indigenous Peoples' tenure rights and access to forest products, such as herbs, plants, and trees used in traditional ceremonies and subsistence diet. The NCA would severely limit Indigenous Peoples' rights to practice their culture and economic activities, such as hunting, fishing, making tuhau and harvesting bamboo. Finally, the NCA would restrict Indigenous Peoples' rights to practice, develop, and teach their spiritual traditions and ceremonies and access to their sacred areas. It is uncertain whether Indigenous knowledge of medicinal or food plants will be financially compensated if monetized.

In addition, it is reported that the NCA was adopted without meaningful consultation with Indigenous Peoples and without obtaining their free prior and informed consent. They learned of the signing of the NCA on 9 November 2021, after the international press published a story featuring it.² The official

¹ Malay Mail, "Conservation groups call for transparency, engagement in controversial Sabah carbon deal project", Julia Chan, 11th November, 2021. The parties were: Bornean Sun Bear Conservation Centre, Borneo Rhino Alliance, Danau Girang Field Centre, LEAP – Land Empowerment Animals People, PACOS Trust, Sabah Environmental Trust, Seratu Aatai, South East Asia Rainforest Research Partnership and WWF Malaysia; Statement by 32 civil society organisations and 56 individuals to the State Assembly ("Demand for Engagement, Disclosure and Transparency on Sabah Forest Carbon Deal in the Nature Conservation Agreement (NCA)") on 6th December 2021; Statement by 11 civil society organisations (New Straits Times, "Address NCA technical issues to fully benefit from carbon trade deal, says 11 Sabah NGOs", 9th February, 2021); and the statement by the Sabah Environmental Protection Association (Free Malaysia Today, "More questions than answers on Sabah carbon trade deal", 18th November, 2021)

² Mongabay, "Bornean communities locked into 2-million-hectare carbon deal they don't know about", John Cannon, 9th November, 2021

text of the NCA was made public on 19 January 2022, when the High Court ordered the Chief Conservator of Forests (CCF) to publish it. However, relevant contents of the agreement, such as the map of the designated area, are still unpublished.

The NCA presents restrictive provisions. For instance, some irrevocable clauses in the NCA seek to make it impossible for the Sabah State Government to cancel the NCA, or for the Legislative Assembly to pass laws that impact its financial profitability without payment of significant compensation. In addition, the NCA grants Hoch Standard Pte Ltd extensive rights, allowing it to seek the commercial use of natural capital or ecosystem services. These rights can be sold to any entity without the Sabah State Government's consent.

Civil society organizations have expressed concern about the lack of clarity on how the project will be carried out, in particular about the measurement and methodology that will be used and its compliance with existing Verified Carbon Standards. In a public statement, 11 Sabah civil society organizations claimed that technical and financial arrangements under the NCA are flawed, with incorrect pricing, lack of understanding of additionality, and lack of transparency and due diligence.

According to the information received, on 29 November 2021, a representative of the Native Communities of Sabah holding Native Customary title filed a lawsuit in the Sabah High Court to request documents to determine if and how the NCA would impact Sabah's Indigenous Peoples. On 10 January 2022, the High Court ordered the Chief Conservator of Forests (CCF) to provide, within eight days, the NCA, the map of its Designated Area, and relevant correspondence and due diligence with Hoch Standard. The CCF complied on 19 January 2022, undertaking to provide the still unprepared Designated Area map and due diligence materials as they become available.

On 6 December 2021, 32 Civil Society organizations issued a Joint Memorandum to the Sabah State Legislative Assembly (DUN), citing seven concerns and calling for transparency on the NCA.

On 9 December 2021, the Chief Minister of Sabah declared before the State Legislative Assembly that the NCA was not sealed and that the Government would update members of the State Legislative Assembly on the matter, including proceeding with the carbon trading. He also offered to set up a select committee to investigate the NCA deals and terms. On 13 December 2021, the Sabah State Government appointed an Interim Sabah Climate Change Committee to investigate carbon trading, including carrying out due diligence on proposals like the NCA.

On 7 February 2022, the Warisan Party lodged a formal complaint with the Malaysian Anti-Corruption Commission (MACC) regarding irregularities surrounding the negotiation and signing of the NCA.

On 9 February 2022, the Sabah Attorney-General issued a press statement on behalf of the state's Government in which he described a five-point policy on carbon trading, which includes no handing-over of land in any fashion to third

parties; carbon sovereignty as the core; no carbon trading without FPIC; and the role the Sabah Climate Action Council (SCAC) “to manage a carbon future in alignment with recognized global standards, safeguards and processes that prioritize equity, inclusion, transparency and multilateralism”. The Sabah Attorney-General described the status of the NCA as a non-binding framework subject to due diligence to the satisfaction of the State Attorney-General and the cabinet, the inclusion of an Addendum “by which all unfair and absurd contract terms are removed”, the identification and obtaining of FPIC from all affected Native Communities, and the identification of “suitable and available Totally Protected Areas” as the Designated Area.

On 17 February 2022, Carbon Sovereign Sabah released a technical report entitled “Technical & Financial Impediments to the Viability of the Nature Conservation Agreement (NCA)” focused on the economics and practicality of the restoration activities required by the carbon market’s additionality requirements. The report indicated some flaws in the premise of the NCA marketing carbon from Sabah’s Totally Protected Areas, indicating that the only possibility for claiming additionality – and this also lacks international precedent – would be to argue that restoration is not a current practice or obligation of Sabah’s conservation agencies and, therefore, additional carbon sequestered through restoration can be marketed. The report concludes that “it is unlikely that the NCA, in its current form, could be certified to any internationally recognized carbon standard” and “it is highly unlikely (...) that the NCA could generate sufficient saleable carbon to meet the costs of restoration – with no reasonable prospect of the project generating any additional revenue for the State for several decades”.³

On 27 July 2023, the Deputy Chief Minister held a press conference with Indigenous organizations, all of whom called on the state Government to move forward with the deal. No further information was provided on how the consultation was conducted and whether the organizations are representative of the Indigenous Peoples affected by the project. Also, the Deputy Chief Minister informed that the NCA implementation would be started in a pilot area, Nuluhon Trus Madi, which constitutes 75,000 hectares of Totally Protected Forest Reserve in central Sabah. In these areas, there are six villages, with approximately 3,400 indigenous residents, who allegedly were not informed of the project. On August 2023, Sabah’s Chief Minister, also confirmed to several media outlets that the Sabah State Government is finalizing the NCA.

While we do not wish to prejudge the accuracy of these allegations, we express our concerns over the adoption of the NCA without the conduct of genuine consultations or obtaining the free, prior, and informed consent of affected Indigenous Peoples, as required under international human rights law, including the United Nations Declaration on the Rights of Indigenous Peoples, in article 32. In addition, we express grave concern about the potential adverse impacts of the NCA and the associated project on the right to land, territory, and use of forest resources of Sabah Indigenous Peoples who live or depend on the land covered by the NCA. In addition, the NCA appears to undermine Sabah Indigenous Peoples’ right to development, which includes the right of peoples to self-determination over all their natural wealth

³ Prof. David Burslem & Dr. Glen Reynolds, “Technical & financial impediments to the viability of the Nature Conservation Agreement (NCA)”, 15th February 2022

and resources, under the Declaration on the Right to Development (article 1).

We are concerned about the lack of transparency on the terms of the contract, the land covered by the NCA, and the communities of Indigenous Peoples that will be affected, as well as the absence of reference to Indigenous Peoples' rights and mechanisms for equitable benefits sharing. Also, we are concerned about the lack of cultural, environmental, and social impact assessments to analyze the implication that such a large-scale project, encompassing about half of the Sabah Forest, can have on the Sabah population and Indigenous Peoples in particular. We are also concerned about the absence of provisions related to the setting up of measures to safeguard against or to mitigate impacts that the NCA could have on the rights of Indigenous Peoples, including the establishment of independent, accessible and effective accountability mechanisms for monitoring compliance and mechanisms for the fair sharing of benefits with Indigenous Peoples.

We are further concerned about the absence of human rights due diligence to ascertain the potential adverse impacts of the NCA and the associated project, and to verify the truth and reliability of the company's representation and capability to implement the agreement. Reportedly, Hoch Standard Pte Ltd appears as a shell company with \$1,000 paid-up capital, no business record, no record in carbon trading, and with ultimate control vested in a British Virgin Islands company, Lionsgate Ltd, whose ownership is unknown.

Finally, we are concerned that, based on a prima-face analysis, the NCA does not align with existing international standards and safeguards established for conservation and green economy projects. The UN Special Rapporteur on the Rights of Indigenous Peoples has reminded States on several occasions (A/71/229; A/77/238; A/HRC/54/31), that conservation projects and green economy projects must embrace a human rights-based approach that respects the rights of Indigenous Peoples established in the UN Declaration on the Rights of Indigenous Peoples. These rights include the right to land, territory, and resources (article 26), the right to consultation and free prior and informed consent (article 32), the right to conservation and protection of the environment (article 29), the right to determine and develop priorities and strategies for the development (article 32) and right to maintain, control, protect, and develop their intellectual property over cultural heritage, traditional knowledge, and traditional cultural expressions (articles 24 and 31).

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 explain the measures that your Excellency's Government has taken or plans to take, including policies, legislation, and regulations, to uphold its obligations to protect against human rights abuses by

Hoch Standard Pte Ltd, ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct human rights due diligence to identify, prevent, mitigate, and account for how they address their impacts on human rights and the natural environment throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.

3. Please describe the guidance, if any, that your Excellency's Government has provided to Hoch Standard Pte Ltd on how to respect human rights throughout its operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human rights due diligence, consulting meaningfully potentially affected stakeholders, and remediating any negative impacts. In particular, please also indicate whether any guidance was provided with regard to the duty to obtain free and informed consent of Indigenous peoples prior to the approval of the project on their traditional lands, as per the UN Declaration on the rights of Indigenous Peoples' rights.
4. Kindly provide information on the steps your Excellency's Government has taken, or is planning to take, to ensure that the overseas activities of Singaporean companies are not affecting Indigenous Peoples' right to development (including self-determination over their natural wealth and resources) in line with the Declaration on the Right to Development.
5. Please provide information regarding the measures that your Excellency's Government is taking or considering to ensure that those affected by the overseas activities of Singaporean companies involved in the NCA of the forest located in ancestral territories of Sabah Indigenous Peoples have access to effective remedies, as per the UN Guiding Principles

We stand ready to support Your Excellency's Government in its efforts and remain available for any technical assistance we may be able to provide to the authorities concerned.

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

Please be informed that a letter on this subject matter has also been sent to those business enterprises that are involved, Hoch Standard Pte Ltd and Lionsgate Ltd, the home-States of all involved companies, the Governments of Malaysia and the United Kingdom.

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

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

Surya Deva
Special Rapporteur on the right to development

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

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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your Excellency's government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. Singapore has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).

We also wish to highlight the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which sets out international human rights standards relating to Indigenous Peoples' rights. Article 26 of UNDRIP asserts Indigenous Peoples' right to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired'. Article 10 affirms that Indigenous Peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous Peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 32 affirms that Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and resources and 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 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'.

Furthermore, article 28 of the UNDRIP states that Indigenous Peoples have the right to just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned, occupied or used and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Concerning the environment, under article 29 of the UNDRIP, Indigenous Peoples have the right to the conservation and protection of the environment, and article 32 affirms that Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories. As detailed in the Framework Principles on Human Rights and the Environment⁴, States must ensure a safe, clean, healthy and sustainable environment to be able to respect, protect and fulfil human rights (Principle 1). In addition, States should also ensure effective enforcement of their environmental standards against public and private actors (Principle 12) and should take additional measures to protect the rights of those most vulnerable to or at particular risk of environmental harm, taking into account their needs, risks and capacities (Principle 14).

The mandate of the Special Rapporteur on the rights of Indigenous Peoples has clarified on several occasions⁵ that States shall apply a strict human rights-based

⁴ A/HRC/37/59

⁵ See A/71/229 and A/77/238.

approach to the creation or expansion of existing protected areas and recommended providing Indigenous Peoples with legal recognition of their lands, territories and resources. Recognition of Indigenous Peoples' rights should be approached with utmost respect for their legal systems, traditions, and land tenure systems. It is imperative to extend protected areas into Indigenous territories only with the explicit, free, prior, and informed consent of the Indigenous Peoples involved. Guaranteeing Indigenous Peoples unfettered access to their lands and resources is essential, allowing them to conduct their activities in alignment with their worldview. This worldview, shaped over generations, has been instrumental in ensuring the sustainable conservation of the environment. Importantly, States must refrain from criminalizing the sustainable activities of indigenous peoples that are integral to their way of life, recognizing that such practices may be culturally significant and essential while respecting the diverse cultural contexts that differentiate them from non-indigenous communities.

Furthermore, the Special Rapporteur on the rights of Indigenous Peoples has established⁶ that the shift to green finance is necessary and urgent; however, it must embrace a human rights-based approach. The increased interest from international carbon markets poses a threat to the land security of Indigenous Peoples, and the rising economic value of carbon sequestered on Indigenous lands promotes land-grabbing by both the public and private sectors. Therefore, the Special Rapporteur has recommended States to protect Indigenous Peoples from human rights abuses by business enterprises and financial actors. Indigenous Peoples can provide or withhold their free, prior and informed consent regarding green finance initiatives affecting their lands, territories and resources after a meaningful and gender-inclusive consultation process. States should recognize that free, prior and informed consent is an ongoing process, requiring continuing consultation throughout the life cycle of a project. States must ensure that Indigenous Peoples directly and equitably benefit from green financing projects and must establish effective, accessible, culturally appropriate and independent mechanisms for Indigenous Peoples to seek justice and remedy in cases of human rights violations or environmental harm resulting from green financing projects. It is also important to count on monitoring and reporting mechanisms to track the impacts of green financing projects on the rights of Indigenous Peoples, including regular consultations with the Indigenous communities affected. Transparency at all levels of green finance projects is paramount to ensure access to information by Indigenous Peoples.

Article 11 of the Declaration recognizes the right of Indigenous Peoples to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies, visual and performing arts and literature. Article 31 recognizes the rights of Indigenous Peoples to maintain, control, develop and protect traditional knowledge as well as manifestations of science, technologies and cultures, including seeds, medicines and knowledge of the properties of fauna and flora. The right to traditional medicines, health practices, and the conservation of vital medicinal plants, animals, and minerals is specifically identified in article 24.

Moreover, we wish to draw the relevance of the Declaration on the Right to Development (GA Resolution 41/128). Article 1 of the Declaration provides that the “right to development is an inalienable human right by virtue of which every human

⁶ A/HRC/54/31.

person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” This right “implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.” (Article 1(2)). Article 2(3) of the Declaration further provides that “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.”

The Declaration further requires that States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights (article 8.2). In this line, the ILO Convention 169 prescribes that Indigenous Peoples have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well being and the lands they occupy.

We also refer to the Guidelines and recommendations on the practical implementation of the right to development developed by the Special Rapporteur on the right to development (A/HRC/42/38). The Guidelines urge States to design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. They further recommend (para 37) that States should respect the right of indigenous peoples to self-determination to fulfil the right to development. The Guidelines also recommend (para 45) that all actors, including institutions, businesses and investors, who produce information about development projects should provide that information transparently. Specifically:

(a) Information about development projects should be shared with the affected communities as a matter of priority, in the language of those communities and in accessible formats. The information might need to be translated into local and indigenous languages;

(b) Information should be shared in a format that is accessible to target populations.

We would also 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, as these are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in the 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. States may be considered to have breached their international obligations where they fail to take appropriate steps to prevent, investigate and redress activities by private actors that could infringe human rights.

While States generally have discretion in deciding upon these steps, they should consider the full range of permissible, preventative and remedial measures. Furthermore, we would like to note that as outlined in the United Nations Guiding Principles on Business and Human Rights, 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 of their activities. 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 to 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 to 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 “business relationships” are understood to include relationships with partners, entities in its value chain, and any other non-State or State entity directly linked to its 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” (Principle 13).

Principles 17-21 lays down the four-step 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 Principle 25).

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

We also wish to refer to Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 29 July 2022, which recognize the right to a clean, healthy and sustainable environment as a human right.

We would also like to bring to the attention of your Excellency’s Government the Framework Principles on Human Rights and the Environment as detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The Principles state that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by: A) Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used; B) Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources; C) Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources; D) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources (Principle 15).