Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the human right to a clean, healthy and sustainable environment and the Special Rapporteur on extreme poverty and human rights

Ref.: AL NOR 4/2024
(Please use this reference in your reply)

8 November 2024

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 promotion and protection of human rights in the context of climate change; Special Rapporteur in the field of cultural rights; Special Rapporteur on the human right to a clean, healthy and sustainable environment and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 53/3, 48/14, 55/5, 55/2 and 53/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the issuance of carbon credits in Guyana, validated by Aster Global Environmental Solutions and certified by Architecture for REDD+ Transactions, which were subsequently sold to Hess Corporation, all without the free, prior and informed consent of Indigenous Peoples in Guyana. Architecture for REDD+ Transactions is registered in the United States of America and currently funded via Winrock International by the Government of Norway and the Climate and Land Use Alliance, which is an association of five philanthropies (Ford Foundation, Gordon and Betty Moore Foundation, the David and Lucile Packard Foundation, Climateworks Foundation and Good Energies by Porticus)**.

According to the information received:

Context

Carbon offsets or carbon credits are instruments that enable the purchaser to cancel out their greenhouse gas emissions by financing activities that reduce emissions. However, this so-called voluntary carbon market has come under intense scrutiny over concerns around the environmental and social integrity of carbon credits being sold as well as human rights impacts. This scrutiny has in turn led to the creation of an array of standards and certification schemes that purport to guarantee high-integrity carbon credits. Carbon credits certified by such schemes theoretically allow sellers to make more reliable claims about their product's environmental and social impacts. Based on these assurances, they are able to charge a premium. However, to date many of these frameworks do not ensure respect of human rights in line with international human rights standards, including the UN Guiding Principles on business and human rights (UNGPs), particularly in relation to ensuring that they respect the rights of Indigenous Peoples.

One such certifier is Architecture for REDD+ Transactions (ART),[1] which assesses carbon credits against a standard called the REDD+ Environmental Excellence Standard (TREES). In December 2022, ART issued the world's first TREES carbon credits to the Government of Guyana. These credits were issued retroactively for the period 2016-2020. This marked the first time a country had been issued carbon credits for preventing forest loss and degradation, as well as the first time a country had received high forest, low deforestation credits. However, the information received alleges that these credits were certified and sold without meaningfully engaging with and obtaining the free, prior and informed consent of Indigenous Peoples.

Architecture for REDD+ Transactions' (ART) role

ART is a standalone, independent program that develops and administers standardized procedures for crediting emission reductions and removals from national and large sub-national REDD+ programs. As such it claims to facilitate and scale private sector funding of greenhouse gas forest sinks. ART indicates that it is a private standard that entities may voluntarily choose to participate in.

ART is financially overseen by the Board of Managers of Environmental Resources Trust (ERT) LLC, a wholly-owned nonprofit subsidiary of Winrock International, which is a tax-exempt charity registered in the United States of America. ART is currently funded via Winrock International by the Government of Norway and the Climate and Land Use Alliance, which is an association of five USA-based philanthropies (Ford Foundation, Gordon and Betty Moore Foundation, the David and Lucile Packard Foundation, Climateworks Foundation and Good Energies by Porticus).

According to the information received, ART seeks to ensure the environmental and social integrity of emission reductions and removals credits through requiring compliance with its standard, TREES. TREES incorporates the REDD+ safeguards, also known as the Cancún Safeguards, which require that program participants recognize, respect, protect and fulfill the rights of Indigenous Peoples and local communities.

Timeline

In 2020, the Government of Guyana developed a proposal for the retroactive sale of carbon credits for the period 2016-2020. The proposal to ART was for the sale of carbon credits from all forests in Guyana. However, Guyanese national legislation is clear that not all forests in Guyana are nationally owned. The Forests Act (No. 6 of 2009) itself acknowledges that the Government does not own all forests in Guyana and cannot, for example, issue forest concessions over titled Indigenous lands. Similarly, the Government acknowledges in its TREES proposal documents that the National Forest Policy on which its justification for Emission Reductions and Removals (ERR) ownership relies "does not directly apply to private property and Amerindian

1 REDD+ stands for reducing emissions from deforestation and forest degradation in developing countries, and is designed as a national system under the UNFCCC. The '+' stands for additional forest-related activities that protect the climate, namely sustainable management of forests and the conservation and enhancement of forest carbon stocks.

Titled Lands". The Government of Guyana submitted its concept note to ART in December 2020, and publicly announced its plan to sell carbon credits in April 2021.

In October 2021, the Government of Guyana published a draft Low Carbon Development Strategy (LCDS) for 2030, which expands on previous LCDS. Within this broader strategy, the Government of Guyana included a component on REDD+ and voluntary carbon markets, indicating that after assessing various market standards, the ART-TREES mechanism was the best match for the Government's objectives. The Government publicly communicated that it intended to fund the initiatives under the LCDS through the sale of carbon credits.

From November 2021 to June 2022, the Government conducted information-sharing sessions about the LCDS with potentially affected stakeholders. At some of these sessions, participants requested materials in simpler language and translated to the relevant Indigenous languages, but these requests, among others, were not fulfilled. During this period, civil society organizations expressed their concern to the Government and ART about the inadequate consultation process for Indigenous Peoples.

In April 2022, Aster Global Environmental Services, Inc. (Aster Global), a company headquartered in the United States of America, conducted a validation and verification visit to Guyana for the 2016-2020 TREES carbon credits proposal. Although Aster Global interviewed civil society representatives and visited some Indigenous communities, ART's validation and verification standard only required Aster Global to evaluate the Government of Guyana's own reported compliance with TREES.

In July 2022, the National Toshaos Council (NTC) endorsed the LCDS. The NTC was established by the Amerindian Act of 2006 as an advisory body comprising all toshaos (heads of Indigenous villages) in Guyana. The toshaos are also members and chairs of their respective village councils, and it is these village councils that hold the titles to land under the Amerindian Act. All decisions to be made by an Indigenous village, such as a decision whether to include Indigenous forests in a national REDD+ program, are required to be made in a village general meeting. Each village council holds the legal authority to make decisions to sell carbon credits generated on village lands. The NTC's endorsement of the LCDS did not, therefore, demonstrate the Government of Guyana's legal rights to the ERR credits generated on Indigenous lands, as this is not a decision made solely by toshaos. However, after the NTC's endorsement, the LCDS was passed as a resolution by Guyana's Parliament in August 2022. Although TREES requires a program participant to "demonstrate clear ownership or rights", ART never requested an explanation from the Government of Guyana on the sale of carbon credits from Indigenous lands, and seemed to accept the NTC endorsement of the LCDS as evidence of a transfer of ownership of ERR credits.

In December 2022, Aster Global's report was published, finding that the Government of Guyana's self-reporting showed that it met ART's program requirements. ART then approved the Government of Guyana's proposal for carbon credits for the period 2016-2020. Immediately after this certification,

the Government announced the sale of carbon credits to Hess Corporation, an oil company headquartered in the United States of America and drilling for oil offshore in Guyana, again without Indigenous Peoples' participation or consent to that decision.

In March 2023, ART received a complaint objecting to its decision to certify the 2016-2020 carbon credits. ART reviewed the complaint, and decided to dismiss it in May 2023 without engaging on the substantive concerns raised, which led to an appeal in June 2023. Over the following months, ART set up an appeal committee and imposed new rules for the resolution process, leading to a protracted negotiation over fair procedures. Despite the complainant's attempts to revise the terms of reference for the appeal process, ART dismissed the appeal in October 2023, still without having engaged on the substantive concerns.

On 28 February 2024, ART approved and issued an additional 7 million carbon credits for 2021 to the Government of Guyana. Around the same time, ART also published the verification report for the 2021 credits by Aster Global, and a monitoring report for 2022 credits for public comment. These new documents reiterated and added to the arguments previously used by the Government of Guyana and ART to claim that free, prior and informed consent (FPIC) was respected in the development and implementation of the carbon crediting program.

In May 2024, ART received approval from the Integrity Council for the Voluntary Carbon Market as "Core Carbon Principles Eligible." At the same time, Aster Global visited Guyana to conduct verification exercises for the 2022 credits. In meetings, members from Indigenous communities informed Aster Global that the Village Sustainability Plans (VSP) process was not transparent. While these Indigenous communities, who find themselves in vulnerable economic situations, have welcomed receiving the financial benefits from the carbon credits, they were not appropriately consulted and did not participate in the design of the benefit-sharing plan. They were therefore unable to tell the Government what they consider appropriate compensation for having Indigenous forests included in the national carbon scheme. Indigenous villages were required to develop and submit VSPs to the Government for approval in order to receive funds from the carbon credit sale to Hess Corporation. As part of this process, the Government of Guyana presented pre-drafted cover letters for village councils to sign and submit with their VSPs. The letters included a statement that the village agrees to participate in the REDD+ program. At least one village initially modified their VSP cover letter to clarify that they accepted participation in the program only with respect to the credits already issued (at that point, covering 2016-2020). That village was later asked by the Government to sign another letter agreeing to participate in additional years of crediting before receiving funds. Members of Indigenous communities also informed Aster Global that each village council holds the legal authority to make decisions to sell carbon credits generated on village lands (that is, that the NTC does not have any legal authority to make these decisions).

In August 2024, the NTC reaffirmed its commitment to the LCDS 2030 via a new resolution.

While we do not wish to prejudge the accuracy of these allegations, we express our concern that, given the emerging carbon credit markets and the impacts they have on Indigenous Peoples worldwide and other rights-holders, there is a need to structure these markets to ensure adequate human rights safeguards, including via developing carbon credit proposals that respect human rights, including with regards to the rights to information, free, prior and informed consent (FPIC) of Indigenous Peoples, public participation in decision-making, and access to remedy. We also express concerns about the reported lack of meaningful participation of those concerned in the decision-making processes that have an impact on their cultural life and development.

We further indicate our concern with the use of carbon credits. As highlighted by the then Special Rapporteur on the right to a clean, healthy and sustainable environment in his 2023 Policy Brief on The Imperative of Human Rights-based Climate Finance, a large proportion of the carbon offsets or credits purchased by States and businesses as an alternative to reducing their own emissions has been exposed as a massive scam that shifts billions of dollars around but has little or no impact in reducing or sequestering GHG emissions. Carbon offsets have also had negative impacts on the human rights of Indigenous Peoples and other nature-dependent local communities who have been displaced and prevented from practicing traditional activities. The vast majority of carbon offsets appear to be of very low quality and should not be relied upon to make claims of having reduced emissions or achieved climate neutrality. The High Commissioner has also underscored that many voluntary carbon credits have been found to inaccurately reflect emission reductions actually achieved or likely to be achieved and that nature-based carbon credits have been associated with widespread displacement and increased human rights harms and risks for people whose livelihoods depend on nature, including Indigenous Peoples (A/HRC/55/37).

The UN Special Rapporteur on Climate Change and Human Rights has recently clarified that access to information on carbon credits must include: calculations of carbon capture; expected local impacts on land and waters, tenure rights and other human rights; confirmation of consent of all affected communities, including free, prior and informed consent of Indigenous Peoples; revenue throughout the project life cycle, including the sale price of carbon credits; distribution of revenue and other benefits to the project developer, national and local governments and affected communities; and the identity and purpose of those buying credits associated with the project, including whether credits are being used to offset preventable emissions. States should collect and share this information systematically to allow credit buyers to easily understand the potential risks of the credit they are purchasing. Equally States should monitor the use of technologies (remote sensing, artificial intelligence and digital platforms) to measure carbon storage, and to issue and trade carbon credits, because they collect and use data from communities beyond their control (A/79/176).

In addition, the Special Rapporteur on the rights of Indigenous Peoples' report on green finance (A/HRC/54/31) documented several shortcomings of carbon markets that affect Indigenous Peoples' rights. For instance, he noted that the lack of regulation for the voluntary carbon market has led to land-grabbing of Indigenous lands for carbon-offsetting schemes as well as a lack of or insufficient benefit-sharing with Indigenous Peoples. In that report, the Special Rapporteur specifically references

Guyana's case and indicates that the ART grievance mechanism failed to apply an Indigenous Peoples human rights framework to decide the complaint. This is particularly important when State-based grievance mechanisms are lacking, weak and do not garner public trust. It is therefore crucial for carbon credit certification bodies and frameworks to ensure that they have effective and appropriate grievance mechanisms.

The Special Rapporteur further recommended in his report that States secure and guarantee the rights of Indigenous Peoples to their lands and territories and their right to give or withhold FPIC to or from green finance initiatives affecting them. He also recommended that non-State organizations involved in green finance adapt carbon crediting and certification schemes to explicitly require compliance with international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples, and to ensure that green finance projects proceed in a manner that respects the rights of Indigenous Peoples and are agreed to by them. We note that the sale of carbon credits can reinforce and perpetuate violations of Indigenous Peoples' rights to develop and use their lands.

Further, we highlight that, to address human rights violations, duty-bearers are required to have in place appropriate procedures to guarantee rights-holders access to justice, adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and redress mechanisms.

We note that ART, which is headquartered in the United States of America, creates commercial value for carbon credits by certifying them, which would fit the UNGPs definition of value chain as encompassing activities that convert input into output by adding value. Moreover, various Organisation for Economic Co-operation and Development (OECD) National Contact Points have concluded that non-profit organizations, like the World Wide Fund for Nature, and sustainable agro-commodity certification bodies, like the Roundtable on Sustainable Palm Oil and Bonsucro, are multinational enterprises to which the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct apply. Therefore, we highlight that the UNGPs apply to ART's activities. We encourage ART to ensure that the UNGPs are explicitly integrated within their policies and safeguards in order to strengthen the framework for: (a) risk assessment; (b) ongoing, risk-based human rights due diligence; (c) addressing risks throughout the value chain; and (d) remedy.

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

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information on measures that your Excellency's Government has taken or plans to take to identify and respond to the above-mentioned concerns, including whether it requires entities to

which it provides funding to comply with Norway's National Action Plan for the implementation of the UN Guiding Principles, which states that Indigenous Peoples have a right to be consulted on projects that will have an impact on land where they live and earn their livelihoods.

3. Please indicate whether Your Excellency's Government requires entities to which it provides funding to conduct human rights due diligence processes in line with the UN Guiding Principles on business and human rights.

4. Please provide information about the measures that your Excellency's Government has taken, or is considering taking, to ensure that the entities to which it provides funding provide access to effective remedies, including adequate reparation, to affected local communities and Indigenous Peoples, in line with the UNGPs.

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.

Pending your response, we would like to urge your Excellency's Government to take all necessary measures to protect the rights and freedoms of the above-mentioned Indigenous Peoples and person(s). We would also like to urge you to take effective measures to prevent such occurrences, if any, from recurring.

Please note that letters expressing similar concerns have been sent to the Governments of the United States of America and Guyana, and to Architecture for REDD+ Transactions, Hess Corporation, Winrock International, Aster Global Environmental Solutions Inc, Climate and Land Use Alliance, Ford Foundation, Gordon and Betty Moore Foundation, the David and Lucile Packard Foundation, Climateworks Foundation and Good Energies by Porticus.

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

Fernanda Hopenhaym
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Elisa Morgera
Special Rapporteur on the promotion and protection of human rights in the context of climate change

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

Astrid Puentes Riaño
Special Rapporteur on the human right to a clean, healthy and sustainable environment

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. Norway has ratified international treaties relevant to the rights of Indigenous Peoples, including the International Covenant on Civil and Political Rights (hereinafter, "ICCPR") on 23 March 1976, and the International Covenant on Economic, Social and Cultural rights (hereinafter ICESCR) on 3 January 1976.

Article 15 paragraph 1(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to take part in cultural life. In its general comment 21, the Committee on Economic, Social and Cultural Rights stressed that this provision includes the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights (para. 15.c). The Committee also makes clear that States must adopt appropriate measures or programmes to support minorities or other groups in their efforts to preserve their culture (para. 52.f), and must obtain their free, prior and informed consent when the preservation of their cultural resources is at risk (para. 55). In the case of indigenous peoples, cultural life has a strong communal dimension that is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. The Committee has stressed that "indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature must be respected and protected, in order to avoid the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity".

In her reports on cultural rights and development, the Special Rapporteur in the field of cultural rights underlined that no violation of human rights, including cultural rights, may be justified in the name of development or sustainable development (A/77/290, para. 95). The Special Rapporteur stressed that people and peoples must be the primary beneficiaries of development processes and recommended that States, international organizations and other stakeholders ensure that sustainable development processes (a) are culturally sensitive and appropriate, contextualised to specific cultural environments and seek to fully align themselves with the aspirations, customs, traditions, systems and world views of the individuals and groups most likely to be affected; (b) fully respect and integrate the participation rights and the right of affected people and communities to free, prior and informed consent; (c) are self-determined and community led; (d) are preceded by human rights impact assessments to avoid any negative impacts on human rights, including impact assessments on cultural rights; any impact assessment failing to address living heritage or the cultural significance of affected natural resources, or conducted without the free, prior and informed consent, consultation and active participation of the persons and communities affected directly or indirectly, should be rejected as insufficient and incomplete; (e) recognize that indigenous peoples must give their free, prior and informed consent before any project that affects them is implemented (A/77/290, paras. 97-98).

The Paris Agreement under the United Nations Framework Convention on Climate Change underscores that State actions to address climate change should respect, promote and consider their respective obligations on human rights. Specifically, article 6.4 of the Paris Agreement sets up a framework for a centralized international carbon market and attempts to address concerns raised globally that the carbon market system lacks adequate human rights and environmental safeguards, including grievance mechanisms, by introducing an appeals and grievance processes mechanism in May 2024.

As the IACHR has previously indicated, the right of Indigenous Peoples to their lands and resources needs to be specially protected because the full exercise of that right not only implies the protection of an economic unit but the protection of the human rights of a community whose economic, social, and cultural development is based on its relationship to the land. Moreover, both the IACHR and the InterAmerican Court of Human Rights (IACtHR) have indicated that Indigenous territorial property is a form of property not based on official State recognition but on the traditional use and possession of the land and its resources. Human rights violations and abuses affecting these groups also have implications for their collective rights as communities, societies, and cultures with their own values and ways of living.

Both the IACHR and IACtHR have recognized that Indigenous Peoples hold the right to consultation as well as free, informed, prior, culturally appropriate, and in-good-faith consent. Indigenous Peoples must have prior and sufficient awareness of the possible risks involved in development projects, including health and environmental risks, in order to voluntarily accept the proposed development or investment plan in an informed way. Specifically regarding the right to consent, the IACHR has expressly stated that the objective of any consultation process must be to reach an agreement or obtain consent. Accordingly, Indigenous Peoples must be able to significantly influence the process and the decisions made in it, which includes the accommodation of their perspectives and concerns, for example, through provable and verifiable changes regarding the project objectives, parameters and design, as well as any concerns they may have about the acceptance of the project itself. Likewise, it has been specified that these processes must be carried out beforehand, that is, before the execution of actions that could significantly affect the interests of Indigenous Peoples.

We wish to also recognize that Your Excellency's Government has voted in favour of the adoption of, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on 13 September 2007. By its very nature, the Declaration on the Rights of Indigenous Peoples is not legally binding, but it is nonetheless an extension of the commitment assumed by United Nations Member States – including Norway – to promote and respect human rights under the United Nations Charter, customary international law, and multilateral human rights treaties to which Norway is a Party. As a universal framework setting out the minimum standards of protection of Indigenous Peoples' rights, the Declaration establishes, at article 18, the rights of Indigenous Peoples to participate in decision-making in matters which would affect their rights and at article 19, mandates States to 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 26 of UNDRIP assets the rights of Indigenous Peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and that 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 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 other 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". With regards to the situation related to the environment, its article 32(3) requires that States "provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact".

We also wish to recall article 7(1) of the ILO Indigenous and Tribal peoples Convention, which your Excellency's Government has ratified, that affirms the right of Indigenous Peoples "to decide their own priorities for the process of development' and to 'participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly". The Convention further stipulates that States shall ensure that studies are carried out, in co-operation with the people concerned, to assess the social, spiritual, cultural and environmental impact that planned development activities may have on these peoples. The results of these studies shall be considered as fundamental criteria for the implementation of the above-mentioned activities (article 7). ILO Convention 169, article 14(1) implores states to recognize Indigenous Peoples 'rights of ownership and possession' over the lands they "traditionally occupy". This includes "lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities". The Convention also establishes, at article 6, that Governments shall: "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them"; and that "the consultation carried out in application to the circumstances, with the objective of achieving agreement or consent to the proposed measures". Article 15 of ILO Convention No. 169 refers to the right to participate in the use, management and conservation of natural resources pertaining to Indigenous and tribal peoples' lands, encompassing a right to participate in the benefits arising from these activities and to receive fair compensation for any damages which they may sustain as a result of such activities.

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 that they comply with their obligations to Indigenous Peoples, by recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used; consulting with them and obtaining their free, prior and informed consent before

taking or approving any other measures that may affect their lands, territories or resources; respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources; and ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources (principle 15). This Principle reflects the jurisprudence of the IACtHR, global human rights monitoring bodies, and the relevant obligations of your Excellency's Government under the Convention on Biological Diversity (art. 8(j), 10(c) and 14) (A/HRC/34/49; A/HRC/37/59).

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 freedoms.

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.

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).

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. 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 duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. 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."

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.