

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 OTH 140/2024
(Please use this reference in your reply)

8 November 2024

Dear Ms. McMahon,

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.

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 60 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 your attention 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).**

Aster Global Environmental Solutions, Inc.

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 philanthropies (Ford Foundation, Gordon and Betty Moore Foundation, the David and Lucile Packard Foundation, Climateworks Foundation and Good Energies by Porticus).

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.

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 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 Solutions, 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 Toshias 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).

Further, the UN Special Rapporteur on Climate Change and Human Rights indicated that businesses should also regularly disclose accessible information

relevant to climate change and human rights contained in contracts, concessions, agreements or other documents involving public resources. Businesses should ensure effective communication, including translation into local languages and culturally appropriate engagement methods, drawing on external expertise and offering potentially affected communities legal and technical support to understand the project components. Carbon credits bought on voluntary carbon markets can contribute to climate-washing at the point of credit issuance and when advertising a company or product/service due to high uncertainty and lack of transparency over the quality of credit issuance (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, and according to the information received, has highlighted the lack of effective regulatory frameworks to safeguard the rights of Indigenous Peoples in Guyana. We highlight that deficiencies in the Guyanese legal framework had already been underlined on multiple occasions, most recently by the IACHR in a merits report on a petition filed by an Indigenous village in Guyana where it confirmed that the Government of Guyana is responsible for an array of violation of the rights of Indigenous Peoples, including deficiencies in the Guyanese legal framework and land titling system as they relate to Indigenous Peoples' rights (report No. 8/24 case 13.083).

There may be differences of opinion between Indigenous communities on the issue of carbon credits, and as Guyana has hundreds of Indigenous villages, we would like to highlight that each Indigenous community should have the right to opt in or out of such programs, thus balancing individual and collective decision-making.

We also 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 as to what human rights due diligence policies and processes have been put in place by your company to identify, prevent, mitigate, and account for how you address adverse human rights impacts that your activities and business operations could cause or contribute to, or be directly linked to, as set forth in the UN Guiding Principles on Business and Human Rights (UNGPs).
3. Please provide information on measures that you have taken or plan to take to identify and respond to the above-mentioned concerns, including addressing the alleged lack of consultations and ensuring that the right of Indigenous Peoples to free, prior and informed consent was respected by the Government of Guyana.
4. Please indicate how you incorporate human rights into your programs and policies. As part of this response, please indicate whether you make reference to and how you comply with the UN Guiding Principles on business and human rights (UNGPs), and if not, please indicate why not.
5. In relation to the above-mentioned allegations, please indicate how you have implemented the Cancún Safeguards to recognize, respect, protect and fulfil the rights of Indigenous Peoples, and how you effectively communicate on these efforts, including by providing translation into local languages, culturally appropriate engagement methods, and independent legal and technical support.
6. Please indicate whether your company has established or participates in any operational-level grievance mechanisms, to provide access to remedy for affected individuals and communities, 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 company 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 company to take all necessary measures to protect the rights and freedoms of the above-mentioned 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 Guyana, the United States of America and Norway, and to Architecture for REDD+ Transactions, Hess Corporation, Winrock International, 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, Ms. McMahon, 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

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; and
- 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 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.

Furthermore, we would like to note that as set forth 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 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 cause or contributed to adverse impacts. Moreover, the commentary of 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 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 guiding principle 25).

According to the UN Special Rapporteur on Climate Change and Human Rights, businesses have specific responsibilities in relation to ensuring access to information that are applicable to the context of carbon credits, including to: a) accurately report and disclose their climate impacts in an accessible manner that is sufficient to evaluate the adequacy of their efforts to prevent climate change-related human rights harm; b) ensure effective communication on these efforts, including by providing translation into local languages and culturally appropriate engagement methods, drawing on external expertise, and offering communities independent legal and technical support to understand these efforts; c) share information about lobbying related to climate policies; and d) refrain from supporting public misinformation campaigns (A/79/176).