Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; 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; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL PNG 1/2020

20 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; 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; Special Rapporteur on the right to food; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 36/15, 35/7, 42/23, 37/8, 32/8, 34/18, 41/12, 42/16, 34/5, 42/20 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government concerns relating to **serious risks posed to the enjoyment of human rights of affected populations, in the context of risk of failure of a proposed tailings dam, and other issues arising from the hydroelectric/tailings dam, mine, waste discharge and associated infrastructure on the proposed Frieda River gold and copper mine ("Sepik Development Project") in Papua New Guinea**.

According to information received:

The Sepik Development Project is a set of four projects in Sepik, in northwest Papua New Guinea (PNG). With a footprint of at least 16,000 hectares, it comprises the Frieda River Copper-Gold Project (a 1,145 hectare, open-pit mine), the Frieda Hydroelectric Project (a 12,700 hectare dam), the Sepik Infrastructure Project (roads and airport and related infrastructure); and the Sepik Power Grid Project (power lines and related infrastructure).

The Project is proposed by an unincorporated joint venture, with 80% in favour of Frieda River Limited and 20% in favour of Highlands Frieda Limited. Frieda River Limited is a PanAust Limited subsidiary company. PanAust is a company headquartered in Australia, and a wholly owned subsidiary of Guangdong Rising H.K (Holding) Limited, which is a wholly owned subsidiary of Guangdong Rising Assets Management Co Ltd. The latter company is a People's Republic of China state owned company regulated under the State Owned and Assets Supervision Commission, Guangdong. Highlands Frieda Limited is a subsidiary of Highlands Pacific Limited, which is wholly owned by Cobalt 27 Capital Corp, which is headquartered in Toronto, Canada.

The Project documents, including the Environmental Impact Statement (EIS) dated 7 November 2018,[1] are under consideration by the PNG Conservation and Environment Protection Authority (CEPA) for assessment under the Environment Act 2000. The public review and submission process closed on 31 March 2020.

According to the EIS, the mine is planned to have a life of approximately 33 years, after a 7-year implementation period. The hydroelectric project, with a planned lifespan of 100 years, after a 5-year construction period, is to be located downstream from the mine, and is intended to provide electricity for the mine. It is also to provide an Integrated Storage Facility (ISF) to store water and sediment on the surface, and underneath to store process tailings and mine waste rock from the mine. The ISF is to discharge water into Frieda River as part of the operation of the hydroelectric project.

The power grid is to provide power to the sites. Excess power is to be exported, and after the life of the mine the full generation capacity to be available for export to potential customers in Papua New Guinea and Indonesia. The infrastructure project, including roads, an airport, and an ocean port, is to provide access to the sites, and be open to public use. Ancillary projects and works, which are part of the infrastructure, include a 325km pipeline, soil dumps, and the Ok Binai catchment waste dump.

The Sepik River is 1126 km long and covers an area of 7.7 million hectares. The Frieda River, near where the mine is to be located, contributes around 5% of water inflow to the Sepik River. In 2006, Papua New Guinea's submission to UNESCO seeking recognition of the Upper Sepik River Basin as a World Heritage Site acknowledged, "the Sepik River is one of the least developed areas in PNG and home to approximately 430,000 people who depend almost entirely on products from the rivers and forests for their livelihoods". It further noted, "The area is famed for the gabled spirit houses or "haus tambarans", one of the

[1] Frieda River Limited, Environmental Impact Assessment (2018) https://friedariver.com/eis/?v=1

most dramatic examples of indigenous Melanesian architecture, and a very rich ceremonial carving and music tradition."[2]

Civil society and indigenous peoples and human rights defenders have raised various concerns relating to the project, urging the Conservation and Environment Protection Authority to reject the EIS and the project. Concerns relate to the inadequacy of the EIS in considering the (i) impacts of the toxic waste (ii) risk of failure of the tailings dam, (iii) destruction of livelihoods, (iv) consultation process with affected communities including availability of information. Since they began raising concerns about the project, human rights defenders have faced death threats, intimidation and have reported gunshots fired at them from unidentified individuals.

Community members raise concern that the EIS appears to have failed to consider potential substantive toxic waste problems, including the discharge of toxic waste into the Frieda River and into the sea near the coastal town of Vanimo. Other impacts include contamination of river and water sources, and effects of contamination on biodiversity. Acknowledging that the EIS states that "Even with [the] worst-case scenario, the [Health Impact Assessment] determined there would be no adverse impacts to human health", perceptions among the community, and anxiety about water quality, may be derived from negative health impacts generally associated with gold and copper mines around the world. Acid rock drainage is associated with skin irritation, kidney damage, and neurological diseases. Air pollution from copper mining is associated with various respiratory illnesses, including asthma and lung cancer.

With respect to stability of the tailings dam, the receiving environment is seismically active. The dam will store 1,450 Mt of waste work (with 1,340 Mt potentially acid forming sulphide) and approximately 1,500 Mt of tailings. The EIS states that to limit the potential for generation of acid and metalliferous drainage, the dam is to provide a permanent water cover for the waste rock and process tailings material from the mine. While termed by the proponents to be "very unlikely", a failure of the tailings dam and the release of the toxic waste would be catastrophic resulting in loss of life and environmental destruction, as occurred with the Ok Tedi environmental disaster (1984 to 2013).

Consultations concerning the EIS and the Project have not been satisfactory in the view of community members. The EIS relies on reports that are critical to understanding the Project and risk analyses. However, critical background reports were not made available during the public review and submission process. Community representatives formally requested these reports, which were still not provided. For example, the 'dam break analysis' mentioned in the EIS was not included in the EIS for public review. A villager requested the dam

[2] UNESCO, World Heritage Convention, Tentative List: Upper Sepik River Basin, https://whc.unesco.org/en/tentativelists/5065/

break analysis from the proponent during a consultation session, but the information was not provided.

There is a lack of information in the EIS about how toxic waste risks are to be managed, signalling deficiencies in the assessment process. For example, the risk of leakage from the 325km pipeline, which would traverse difficult terrain and biodiverse wetlands and habitats, has been inadequately assessed from the perspective of the community members.

As mentioned, the proposed location is a seismically active area. The risk of major earthquake causing damage to the dam will persist for millions of years. The EIS only considers a 200-year timeframe. However, beyond this date, and especially when the tailings dam will not be subject to maintenance and management, the risk will persist. Inadequate detail is included in the EIS on monitoring, maintenance and oversight, which would be necessary to collect data and facilitate public participation, including of the indigenous communities, during and after the project term.

In 2018, Papua New Guinea acknowledged various ongoing challenges in protection of wetlands such as the Sepik River Basin. These include inadequate funding, lack of capacity of the CEPA including in monitoring, competing land uses including extractive projects, and land tenure issues.[3] The capacity of Papua New Guinea to monitor the dam's maintenance by the proponent during the life of the mine or to take on the maintenance itself in perpetuity at the end of the life of the mine comes into question.

There are more than 30 villages located downstream from the proposed dam along the Frieda and Sepik Rivers. The project will displace the four villages of Ok Isai, Wabia, Paupe, and Wameimin 2, affecting approximately 194 households comprising circa 1,316 people. Consultation with the residents of the affected villages has commenced as part of a resettlement planning process. The social impact assessment prepared as an appendix to the EIS has highlighted that "Project activities will result in the discharge of water, the generation of dust, and the emission of air pollutants, noise and light to the surrounding environment. People who live near or downstream of Project construction and operations may be affected by changes to quality and quantity of land and water resources on which they depend. With Paupe being resettled away from the Frieda River, likely to a location on Kaugumi Creek, residents will have access to a piped water supply and will not be dependent on water from the Frieda River, though may still access and use the river for recreation or fishing. Perceptions held by downstream villagers about water quality will also require active management". However, neither the proponent nor the State has obtained free, prior, and informed consent of all the villages that rely on the

[3] Ramsar National Report to COP13 (2018)
https://www.ramsar.org/sites/default/files/documents/importftp/COP13NR_PNG_e.pdf

Frieda and Sepik Rivers for their livelihoods. No resettlement plan has been released publicly.

Further, the consultation process in the Sepik Basin has been marked by violence and police suppression. Indigenous peoples in the Sepik Basin protested against the Frieda Mine during the consultation period. In response, local police and officers hired by the proponent adopted measures to intimidate and suppress opposition to the project.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern regarding the potential and actual threats to the human rights to life, health, bodily integrity, water, food, and others, of the project and the environmental impact assessment process. Further, allegations of violation of the right to free, prior and informed consent of the affected indigenous peoples are concerning. The project not only impinges on the rights to land of the four villages for which the relocation is envisioned, but also all downstream and neighbouring communities, including indigenous communities, whose livelihoods are at risk of destruction on the premise of economic development. The rights of indigenous peoples include the requirement for free, prior and informed consent for actions that stand to violate their human rights, including the storage or disposal of hazardous materials in their lands and territories.

We wish to express our concern that the project and its implementation so far appears to disregard the human rights of those affected. It emerges that the people and peoples of the Sepik River Basin will be forced to bear the costs of the Project in perpetuity. We remain concerned that critical information about the tailings dam, including the dam break analysis, have been made neither publicly available, nor available to affected community members and human rights defenders who request it. This seems highly problematic with regard to the right of access to information and the positive duty of the State to proactively place information of general interest in the public sphere. Such information, which may be considered safety information as it has the potential to negatively impact the safety of the community including in the event of a dam break, should never be confidential.

Lastly, we express our concern that the project threatens the cultural rights of the Sepik Peoples, including their right to practice and develop their spiritual and cultural beliefs, which are dependent on the right to a healthy environment. We note that given the nature of the project it could undermine the rights of Sepik children to life, health, culture, and a healthy environment, including the rights of unborn generations. This fear is compounded by the fact that human rights defenders, who try to protect the rights of the indigenous communities, face serious risks to their own life as a result.

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 mandate 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 comments you may have on the above-mentioned allegations.

2. Please provide information with respect to processes undertaken to obtain free, prior and informed consent from all affected Sepik Peoples, including, the four villages planned for resettlement, the downstream villages that fall within the project catchment, and all the villages within the sphere of its environmental effects.

3. Please provide information on any attempts to conduct a supplementary EIS including provision to the public for review and submissions, taking into account the concerns raised.

4. Please provide information on the measures taken to ensure the right of access to information, in particular through publication of all documents related to the EIS. Please provide information also on any steps taken to acquire or publicize any missing critical information demanded by affected communities. Please specify whether your Excellency's Government has considered less intrusive and safer alternatives to the construction of the hydroelectric project and especially its tailings dam.

5. Please provide further information on measures to ensure monitoring of this project so that appropriate scrutiny and accountability are maintained during the project's application and development process.

6. Please indicate what measures your Excellency's Government has implemented to ensure that the proponent conducted human rights diligence as set forth in the UN Guiding Principles on Business and Human Rights.

7. Please indicate what measures have been taken, to ensure that human rights defenders in Papua New Guinea, including environmental rights advocates, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation directed against them or their family members and stigmatisation and harassment of any sort.

8. Please indicate what measures have been taken in each step of the project (macro-planning, licensing and approval, planning and designing, construction, short-term operation, long-term operation and recommissioning and deactivation) to prevent and mitigate its risks in relation to the rights to water and sanitation, and the right to health of the affected population.

9. Regarding all the above, please provide information on any specific measures taken to ensure dam safety, pollution control and environmental, worker and indigenous rights are respected and protected in the present case.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that a letter on the same subject has also been sent to the Governments of Australia, the People's Republic of China, Canada, as well as to other companies involved in the abovementioned allegations.

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

Baskut Tuncak
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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

Saad Alfarargi
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

Michael Fakhri
Special Rapporteur on the right to food

David Kaye

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

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Léo Heller
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex
Reference to international human rights law

In connection with 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. These include the:

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child;
- UN Declaration on the Rights of Indigenous Peoples:
- UN Guiding Principles on Business and Human Rights

We wish to draw the attention of your Excellency's Government to obligations under international human rights instruments, to which Papua New Guinea is party, recalling Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Papua New Guinea on 21 July 2008, which guarantee the right of every individual to life, liberty and security. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. As highlighted by the Human Rights Committee in General Comment no. 36, duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para 26). Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para 62). In addition, Article 6 of the Convention on the Rights of the Child (CRC) recognizes that every child has the inherent right to life and requires States parties ensure to the maximum extent possible, the survival and development of the child. It further requires State parties to take all effective and appropriate measures to diminish infant and child mortality. Further, Article 7 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007 states that indigenous individuals have the rights to life as well as physical and mental integrity.

We would also like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Papua New Guinea acceded to on 21 July 2008. The Article enshrines the right to the highest attainable standard of physical and mental health, which is also guaranteed as a part of the UDHR, Article 25 read in terms of the individual's potential, the social and environmental conditions affecting the health of the individual, and in terms of health care services. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) interprets the right to health as "an inclusive right extending not only to timely

and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information." Accordingly, States have a duty to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. The Committee also affirms that "vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected"; and that "development related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health." (para 27).

The United Nations Declaration on the Rights of Indigenous Peoples also provides that indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health (article 24.2) and also provide for their collective right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. (Article 24.1). Furthermore, Article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health, and the concomitant duty of the State to provide adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

We would like to refer your Excellency's Government to Article 11 (1) of the ICESCR, which recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In interpreting this provision, the CESCR stressed in its General Comment No. 12 that the core content of the right to adequate food implies, inter alia, both economic and physical accessibility of food (para. 7). The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. In addition, Article 27 of the CRC acknowledges the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 24 of the CRC provides measures that States Parties should take in order to protect the right to food of every child, including "through the provision of adequate nutritious foods

and clean drinking-water, taking into consideration the dangers and risks of environmental pollution".

We wish to call the attention of your Excellency's Government to Article 25 of the ICCPR, which guarantees the right and the opportunity of every citizen to take part in the conduct of public affairs. The Human Rights Committee in General Comment No. 25 stipulates that citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government (para 6), and that they may also exert influence through public debate and dialogue with their representatives or through their capacity to organize themselves (para 8). The right to participate in public affairs is further expounded in A/HRC/39/28: "Meaningful participation" requires a long-term commitment by public authorities, together with their genuine political will, an emphasis on agency and a shift in mind-set regarding the way of doing things… Laws, policies and institutional arrangements should ensure the equal participation of individuals and groups in the design, implementation and evaluation of any law, regulation, policy, programme or strategy affecting them (para 19(c). The right to participate in public affairs should be recognized as a continuum that requires open and honest interaction between public authorities and all members of society, including those most at risk of being marginalized or discriminated against, and should be facilitated continuously (para 19(h)). When decision-making processes may have an impact on children, States should ensure that the right of children to express their views freely and to be heard is guaranteed, including by establishing child-friendly, age-appropriate, gender sensitive, inclusive and safe mechanisms for their meaningful engagement (para 59). Article 12 of the CRC provides that States shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The United Nations Declaration on the Rights of Indigenous Peoples reflects existing legal obligations sourced in international human rights treaties. We wish to call the attention of your Excellency's Government to Article 3 and 4 of the Declaration, providing for the right of Indigenous peoples to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development, and have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

The Declaration underlines the importance that indigenous peoples give their free, prior and informed consent before the development of extractive industries or other development project on their ancestral homelands. Specifically, Article 32 of the Declaration recognizes the right of indigenous peoples "to determine and develop priorities and strategies for the development or use of their lands or territories and other resources" and to be consulted in good faith "through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other

resources." As noted by the previous Special Rapporteur on the rights of indigenous peoples "given the invasive nature of industrial-scale extraction of natural resources, the enjoyment of these rights is invariably affected in one way or another when extractive activities occur within indigenous territories –thus the general rule that indigenous consent is required for extractive activities within indigenous territories" (A/HRC/24/41, para. 28). Article 29 provides that States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. Further, Article 27 of the ICCPR and under the International Convention on the Elimination of All Forms of Racial Discrimination (see General Recommendation No.23) provide a basis for protection of the right to culture.

We wish to appeal to your Excellency's government to take all necessary steps to secure the right of access to information under Article 19 (2) of the ICCPR, which in turn enables the implementation of the rights to meaningful participation, prior informed consent, among many others. The freedom of information is one of the rights upon which free and democratic societies depend (E/CN.4/2000/63, para. 42). The right of access to information includes "access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production" (Human Rights Committee, General Comment no 34, paras. 18 and 19). The importance of the right to information about hazardous substances to the general public, was emphasized in the Report of the Special Rapporteur of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the Human Rights Council (A/HRC/30/40) in paragraphs 7, 8 and 48, as well as in the Human Rights Committee's General Comment No. 34 concerning Freedoms of Opinion and Expression (para.19). In order to fully realize the right of access to information, and to ensure accountability of decision-making, the State must implement frameworks for measuring, monitoring, reporting and verifying information. In this regard, States should ensure collection and proper management of information on exposure levels, contamination, and long-term health implications of exposure to chemicals, especially with regard to affected communities.

Moreover, the CESCR stated that "corporate activities can adversely affect the enjoyment of Covenant rights", including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the "obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities" (E/C.12/2011/1, para. 1).

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international

levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would also like to draw the attention of your Excellency's Government to articles 6(c) and 18(3) of the Declaration which state that everyone has the right to study, discuss, form and hold opinions on the observance, of all human rights and, through these and other appropriate means, to draw public attention to those matters; in addition, individuals, groups, institutions and non-governmental organizations have an important role in contributing, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

We would also like to draw the attention of your Excellency's Government to the 2019 report of the Special Rapporteur on the human rights to safe drinking water and sanitation (A/74/197), where he introduces a megaproject cycle framework. The framework consists of seven stages (from macro-planning to decommissioning) and contains a list of questions that constitute guidelines for all accountable actors to implement their human rights obligations and responsibilities.

We would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly (A/74/480). This obligation derives implicitly, but clearly, from any number of rights and duties enshrined within the global human rights framework, under which States are obligated to respect and fulfil recognized human rights, and to protect those rights, including from the implications of exposure to toxics. Those rights include the human rights to life, health, safe food and water, adequate housing, and safe and healthy working conditions. The duty to prevent exposure is further reinforced by the national and regional recognition of the right to a safe, clean, healthy and sustainable environment, including clean air. The existence of the State's duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the person, which helps to provide context to the extent to which every person should have the right to control what happens to their body (see A/HRC/39/48). Read together, international human rights clearly establish a duty of the part of your Excellency's government to prevent exposure to hazardous substances and wastes.

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

a. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8). In accordance with these legal obligations, Guiding Principle 1 reiterates that the State has a duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." Moreover, Guiding Principle 3 reiterates that States must 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 "provide effective guidance to business enterprises on how to respect human rights throughout their operations". Lastly, in accordance with the right recognized in treaty and customary international law (see for example ICCPR Article 2 (3), the Guiding Principles reiterate that States must ensure that victims have access to effective remedies, also in instances where adverse human rights impacts linked to business activities occur.

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.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect 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. 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".

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.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Moreover, where business enterprises "identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes" (Guiding Principle 22).

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).

In addition, the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017) 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".

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.