

**Mandates of the Special Rapporteur in the field of cultural rights; the Working Group on Arbitrary Detention; 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 on the right to development; the Special Rapporteur on the human right to a clean, healthy and sustainable environment; 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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of Indigenous Peoples; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief**

Ref.: AL CHN 8/2024

(Please use this reference in your reply)

8 July 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Working Group on Arbitrary Detention; 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 on the right to development; Special Rapporteur on the human right to a clean, healthy and sustainable environment; 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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the rights of Indigenous Peoples; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 55/5, 51/8, 53/3, 48/14, 51/7, 55/2, 52/9, 50/17, 52/10, 51/16, 50/6, 52/5 and 49/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the widespread crackdown on Tibetan individuals peacefully expressing their opposition to the construction of the Kamtok (Gangtuo) hydroelectric power plant, that would result in the forced displacement and relocation of Tibetans living along the Drichu river (Jinsha) from their ancestral villages and irreversible destruction of important cultural and religious sites, as well as irreversible or significant environmental (biodiversity and climate) impacts. The project is developed by Huadian Jinsha River Upstream Hydropower Development Co., Ltd., a subsidiary of the state-owned enterprise China Huadian Corporation Ltd.**

The allegations described below reportedly form part of a general crackdown against the Tibetan people, in breach of the human rights to take part in cultural life, freedom of opinion and expression and freedom of peaceful assembly and of association. Similar concerns have been raised in previous communications, including [JAL CHN 14/2023](#), [JAL CHN 8/2023](#), [JAL CHN 14/2022](#), [JAL CHN 6/2022](#), [JAL CHN 14/2021](#), [JAL CHN 5/2019](#) and [JAL CHN 16/2018](#).

According to the information received:

The construction of Kamtok (Gangtuo) hydroelectric dam was approved in 2012, and its construction began in 2018. The project is developed by Huadian Jinsha River Upstream Hydropower Development Co., Ltd., a subsidiary of the state-owned enterprise China Huadian Corporation Ltd. It is one of at least 8 cascading dams proposed in Tibet along the upper reaches of the Yangtze River (also known as the Driчу (Jinsha) river), and one of hundreds of large hydroelectric dams currently planned, under development, or under construction across the Tibetan plateau. This is part of China's goal to build a hydropower network across Tibet to export power to eastern China, and later to neighbouring countries. The power of this hydroelectric station, estimated at 1 gigawatt, is to be transferred through the "West to East transmission project", an ultra-high voltage direct current power transmission line, to Chinese cities, whereas Tibet will allegedly not benefit significantly from the hydropower of the dam.

Once completed, the basin of the Kamtok (Gangtuo) dam will submerge a historical area now split across the Kardze (Ganzi) Tibetan Autonomous Prefecture, incorporated into the Chinese Sichuan Province, and Chamdo (Changdu) Prefecture in the Tibet Autonomous Region. Two villages will be submerged, Wonpotoe (Wangbuding) township in Derge (Dege (Kardze)) County and Shepa village in Jomda (Jiangda) County (Chamdo (Changdu)), as well as six monasteries situated along the riverbanks, namely Yena, Wontoe, Khadho, Rabten, Gonsar and Tashi Monasteries. In addition, the dams would cause significant, and possibly irreversible, environmental (biological and climate) negative impacts to the Tibetan plateau, impacting one of the largest rivers on Earth, and an important and strategic area to guarantee water and food security, as well as ecosystem health and climate stability.

Hydropower dams also have significant negative impacts on the environment, as they can increase negative climate impacts including methane and other emissions, the risk of earthquakes, landslides and flash floods, and further fragilize biodiversity, including by affecting aquatic life, soil and nutrient flows downstream. It is reported that in 2011, an impact assessment was conducted for the whole area of the upper reaches of the Driчу (Jinsha) river, which was followed in 2018 by a pre-feasibility study. However, there are no indications that any environmental impact assessment that specifically considered the Kamtok (Gangtuo) project was ever conducted.

Protests against the Kamtok (Gangtuo) hydropower dam first surfaced in 2012. Since then, concerned Tibetans have been appealing to halt the planned construction of the hydroelectric power plant and to withdraw the official order for residents in the affected area to relocate.

#### *Irreversible destruction of religious and cultural heritage sites and ways of life*

Derge (Dege) was once a kingdom and has particular historical and cultural significance. The Derge Printing Press built in the 18<sup>th</sup> century is a famous cultural landmark and a recognized protected heritage site in China.

The 6 centuries-old monasteries along the riverbanks date back to the 13<sup>th</sup> century and house numerous ancient relics and murals of Buddha of historical and religious significance, that survived the cultural revolution. These monasteries would be entirely and irreversibly flooded and erased as cultural resources. The Wontoe Monastery houses sacred Buddhist murals that date back to the 14<sup>th</sup> to the 17<sup>th</sup> century, that have high reference value for the study of Tibetan painting art.

On 20 and 21 February 2024, it is reported that Derge (Dege) county officials and security forces visited the Wontoe and Yena Monasteries in Wonpotoe (Wangbuding) township to assess the situation, and were met with a group of Tibetans who kneeled and cried in desperation, appealing the Chinese officials to stop and prevent their destruction.

#### *Forced displacement and relocation.*

The broader hydropower development on the Tibetan plateau will necessitate the displacement and relocation of thousands of Tibetans from their homes, which will be flooded and destroyed. It is reported that, in the Qinghai province alone, the authorities announced in 2009 that 120,000 residents in the upper reaches of the Yellow River will be relocated by 2030. The Kamtok (Gangtuo) project is further downstream.

The relocation orders related to the construction of the Kamtok (Gangtuo) dam require the forced displacement of Tibetans from their ancestral village, which will disrupt their livelihoods developed alongside the river for many generations, adversely impacting their rights to development and self-determination, to maintain their ways of life, to land and housing, to access and enjoy heritage, to exercise their religious and cultural practices, and their right to a clean, healthy and sustainable environment. These persons have developed distinct spiritual relationship with these lands and a sense of community that cannot be preserved if they are relocated.

In recent months, Chinese government employees have reportedly started to arrive in the region to prepare the ground for the resettlements. In some places, they organised meetings with local communities, asking them to comply with the relocation orders, not to protest or ask questions, and to follow the instructions. At the time of writing, a timeline to leave the area, information about the place of relocation, on whether communities would be moved together or be separated, and the arrangements for housing and compensation had not been shared with those concerned. It is also reported that no avenues have been made available for people to raise their legitimate concerns.

#### *Lack of meaningful consultation with and adequate information to affected persons and communities*

Tibetan protesters are concerned about the Chinese authorities' alleged failure to respect the right to information and to ensure adequate consultation of the local Tibetans, whose traditional livelihoods and customary ways of life are at risk of facing complete disruption with the planned dam construction.

In 2012, local resident communities did not have access to adequate information about the project, and that information was also not provided in the Tibetan language. A complete environmental impact assessment and a full evaluation of the project's potential impacts on health, living conditions, and adequate housing were reportedly neither developed nor sufficiently studied.

Communities living up- and downstream of the project site, who will also be affected by the dam construction, were also not adequately informed, consulted and given the opportunity to participate in decision-making processes related to the dam construction.

In October 2012, residents issued an appeal against the forced relocations that would result from the dam's construction, stating the government had deceptively promised to cancel the project unless more than 80 percent of locals agreed to it. There is no evidence this consent was ever given. The concerned communities have continued protesting against the project ever since.

In October 2022, it is reported that a group of approximately 100 Tibetans in Jomda county requested an audience with the county headquarters to call for the halt to the dam's construction. Only 8-9 residents were allowed to speak with county officials and could share their environmental concerns, their continued and profound connection with the land since ancient times, where they had developed their ways of life, monasteries and homes. Officials advised that the decision about the dam had not been finalised, and that the residents would be informed when a decision was made. No updates have since been shared.

Furthermore, it is alleged that similar lack of access to adequate information, meaningful consultation and participation in decision-making processes, are being observed in the context of the construction of other hydroelectric dams in the regions, where people who are forced to relocate due to these projects have not been able to raise their concerns and protest.

#### *Recent reprisals against protesters*

On 7 March 2022, a public notice issued by the people's court, people's procuratorate, public security bureau and judicial office was allegedly published in the Derge (Dege) County, warning against public gatherings and manifestations in public spaces (art. 1-4), the obstruction of the work on the dam (art. 5), the display of banners and ritual artefacts (art. 7), the submission of petitions and claims for rights (art. 8- 9), announcing related fines for minor offences, and detention of 5 to 10 years for protest organisers and participants.

On 15 April 2022, the Deputy Director of Kartze Prefecture visited the Kamtok (Gangtuo) dam site and allegedly announced a crackdown on all kinds of illegal and criminal acts, such as obstructing work and disturbing work, as well as the advancement of the overall resettlement and relocation work of Kamtok (Gangtuo) project.

On 13 February 2024, between 100 and 300 Tibetans peacefully protested outside the Derge (Dege) county government in Kardze (Ganzi) Tibetan

Autonomous Prefecture and were allegedly met with violent responses from the Chinese authorities.

Since then, the Chinese police have reportedly beaten and arrested hundreds of residents of Derge (Dege) county, including monks from local monasteries, who have been protesting against the construction of the hydropower dam on the Drichu River.

On 22 February, the Tibetan monks and civilians who had gathered at the Wontoe and Yena Monasteries, were severely beaten by the Chinese police, resulting in injuries that required hospitalization for many of those participating in the peaceful protest. It is unclear whether those injured and arrested were given appropriate medical care.

The police conducted several hundred arrests and detentions, reportedly without due process, in response to the peaceful exercise of the residents' the rights to freedom of expression, of peaceful assembly and of association. Community members and leaders who had not been participating in the protest were also arrested. It is also reported that some community members who visited the detention centres to appeal for the detainees' release were themselves detained.

In the following days, a large number of armed police officers was reportedly patrolling the streets of Wompotoe (Wangbuding) township. Chinese authorities completely also shut down internet access and censored information relating to the protest on social media platforms as part of an alleged widespread security clampdown in the area.

Although most detainees were released by 25 March 2024, at least five are known to remain in detention, who are accused of disrupting social order. In addition, there are other Tibetans who are suspected to be in detention but whose whereabouts remain unknown, and whose families and lawyers are unable to contact.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reports of the alleged violations and abuse of the human rights of Tibetan communities, leaders and religious figures living in the surrounding areas of the Kamtok (Gangtuo) dam's project site, who do not appear to have been consulted in a meaningful way, and whose free, prior and informed consent has not been obtained, for a project that directly affect them and will have an irreversible impact on many of their human rights, in particular their cultural rights to maintain their ways of life, to access and enjoy heritage, and to exercise their religious and cultural practices, as well as their rights to land, to their livelihoods and to adequate housing and to a clean, healthy and sustainable environment. Relocation without their free, prior and informed consent would amount to arbitrary displacement. We recall that meaningful participation in decision-making processes that have an impact on a person's and communities' way of life requires that information is available, accessible and provided in an appropriate form and language for the affected community; it also requires prior environmental and socio-cultural impact assessment, and fair and equitable benefit-sharing.

We are also concerned about the recent reprisals, use of force, arbitrary arrests and detentions, for some incommunicado, of hundreds of Tibetans for what appears to be directly related to their legitimate exercise of their freedom of opinion, expression, association and peaceful assembly and to their claims for respect for their rights to information and to participate meaningfully in public affairs, including by raising concerns and criticisms regarding government projects. These incidents underscore the alarming reality for people living in Tibet, who have faced similar allegations and consequences, for exercising their fundamental rights.

We are also extremely concerned about the dire and irreversible environmental and climate impacts that the dams could cause in the Tibetan plateau, to China and the region, due to the importance of the Drichu (Yangtze) river for the water, food and climate systems, already under pressure. Assuring an independent, adequate and comprehensive environmental and human rights impact assessment before any construction and development of the project, including assessing other potential alternatives for the energy needs and opportunities for fair and equitable benefit-sharing in accordance with communities' worldviews, in line with international law is of vital importance to prevent irreversible harm.

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 about all the environmental (including biodiversity and climate), socio-cultural and other human rights impact assessments conducted prior to the beginning of the work on the Kamtok (Gangtuo) dam, indicating how these took into consideration the irreversible destruction of significant Tibetan religious and cultural sites and practices in the area affected and the forced relocation of Tibetans. Please indicate all alternatives that were considered to avoid the destruction of cultural resources and residents' way of life, as well as alternative measures to avoid irreversible environmental (biodiversity and climate) impacts. In addition, how the decision to continue with the project is compatible with the international law obligations of China to protect the right of all to have, exercise and transmit their culture and heritage and to respect the diversity of heritage in its territory, to protect the right to a clean, healthy and sustainable environment, and to strengthen global response to climate change.
3. Please provide information about measures and actions that were taken since 2012 to adequately inform and involve in the decision-making all concerned persons and communities about the negative environmental and socio-cultural impacts and benefits of the construction of the

Kamtok (Gangtuo) dam, to seek their free, prior and informed consent, to allow them to propose alternatives to the project and to the proposed displacement, to respect their right to freedom of expression, of peaceful assembly and to take part in decision-making processes that have an impact on their way of life.

4. Please explain how the planned forced relocation due the construction of the Kamtok (Gangtuo) hydroelectric dam complies with current laws, policies and practices on resettlement. How has the planning been assisted or assessed by the National Research Center for Resettlement at Hohai University, which has a specific responsibility to look into resettlement occasioned by reservoir or other dam projects.
5. Please provide information on how your Excellency's Government plans to ensure the continued enjoyment by the displaced Tibetans of the right to adequate housing and development as well as related human rights. Please provide information on any provisions put in place to resettle and adequately compensate and rehabilitate affected communities for material and non-material losses, including on the resettlement plan, the selection of resettlement site(s) and how resettlement is to be carried out. Please provide to what extent the affected communities have been effectively participating in this planning.
6. Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to uphold its obligations to protect against human rights abuse by business enterprises, under its jurisdiction, and ensuring that business enterprises within its territory conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights.
7. Please provide information on additional steps taken by your Excellency's government to protect against human rights abuses by Huadian Jinsha River Upstream Hydropower Development Co., Ltd. as a state-owned enterprise.
8. Please describe the guidance, if any, that your Excellency's Government has provided Chinese business enterprises, including those involved in the development of the Kamtok (Gangtuo) hydroelectric power plant, on how to respect human rights throughout their operations in line with the UN Guiding Principles on Business and Human Rights. This guidance may include measures on, inter alia, conducting human rights due diligence, consulting affected stakeholders meaningfully, and remediating any adverse impacts.
9. Please provide information about the plans for the construction of the dam, including estimated timelines for relocation. Please indicate if any alternative to relocation and the complete destruction of the area was considered.

10. Please provide information on avenues made available for affected residents to legally raise their concerns or complaints about the development project, their displacement and relocation.
11. Please provide information on any steps taken by your Excellency's Government to ensure that the persons negatively affected by the Kamtok (Gangtuo) dam plant have access to effective, adequate and timely remedies, and including compensation, for the above-mentioned business-related human rights abuses.
12. Please indicate the rationale for the violent response of the police forces in Derge (Dege) County since 13 February 2024 against those protesting the dam.
13. Please provide detailed information with regard to the numerous arrests mentioned above and the charges against those remaining in custody, and indicate the measures undertaken by the Chinese authorities to ensure the application of due process and the effective protection of the rights of people in Tibet before the law.
14. Please indicate the measures undertaken by the Government of China to ensure the free exercise by Tibetans of their rights to freedom of opinion and expression, religion or belief, liberty and security, equality before the law, as well as their right to take part in cultural life without discrimination in China.

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.

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

Please be informed that a letter on this subject matter has been also sent to the involved business enterprise in China, Huadian Jinsha River Upstream Hydropower Development Co., Ltd.

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

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Special Rapporteur in the field of cultural rights

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Balakrishnan Rajagopal  
Special Rapporteur on adequate housing as a component of the right to an adequate  
standard of living, and on the right to non-discrimination in this context

José Francisco Cali Tzay  
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Nicolas Levrat  
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Nazila Ghanea  
Special Rapporteur on freedom of religion or belief

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to recall your Excellency's government's obligations under international human rights laws, norms and standards, as well as authoritative guidance on their interpretation. In particular, we would like to refer to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China 27 March 2001.

We also wish to draw the attention of your Excellency's Government to its obligations under article 27 of the International Covenant on Civil and Political Rights, and article 15 of the International Covenant on Economic, Social and Cultural Rights, concerning, respectively, the right of everyone to enjoy his or her own culture and to take part in cultural life. As underlined by the Committee on Economic, Social and Cultural Rights, States must refrain from interfering with the exercise of the right of everyone to seek, receive and impart information and ideas of all kinds and forms including art forms and to access to their own cultural and linguistic heritage and to that of others; they have obligations to respect and protect cultural heritage in all its forms and must adopt appropriate measures or programmes to support minorities or other groups in their efforts to preserve their culture (E/C.12/GC/21, paragraph 44, 48, 49 and 52.f). The Committee also stressed 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).

In this connection, we would like to draw your Excellency's Government's attention to the report of the Special Rapporteur in the field of cultural rights on cultural rights and development, in which she recalled 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). She highlighted that in many cases, "development" policies and strategies reflecting dominant cultural viewpoints or those of the most powerful sectors of society, with historic ties to colonialism and domination, are designed and implemented to the detriment of the most vulnerable in a manner that impedes the future sustainable development and survival of these persons and communities. She stressed that people and peoples must be the primary beneficiaries of sustainable development processes and recommended that States 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 right of affected people and communities to participate and 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; and (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).

We would also like to refer to the reports of successive Special Rapporteurs in the field of cultural rights relating to the right of access to and enjoyment of cultural

heritage (A/HRC/17/38) and to the protection of cultural heritage (A/HRC/31/59 and A/71/317). They stressed the significance of accessing and enjoying cultural heritage by individuals and communities as part of their collective identity and development processes. They underscored that the right to participate in cultural life implies that individuals and communities have access to and enjoy cultural heritages that are meaningful to them, and that their freedom to continuously (re)create cultural heritage and transmit it to future generations should be protected.

The mandate holders stressed that the right of access to and enjoyment of cultural heritage includes: (a) the right to know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others, and (b) the right to participate in the identification, interpretation and development of cultural heritage. In this connection, they have recommended that States recognize and value the diversity of cultural heritages present in their territories and under their jurisdiction, and acknowledge, respect and protect the rights of individuals and groups to feel associated (or not) with specific elements of cultural heritages; to access, enjoy and continuously (re)create the cultural heritages that are meaningful to them; and to transmit this heritage to future generations.

General comment 21 also recalls that States have the obligation to respect and protect cultural heritage in all its forms. Cultural heritage must be preserved, developed, enriched, and transmitted to future generations as a record of human experience and aspirations. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (E/C.12/GC/21, para. 50).

The Special Rapporteur stressed the duty of States not to destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned communities, as well as their duty “to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties” (A/HRC/17/38, paras. 78 and 80 a) and b). Furthermore, the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage stresses the responsibility of States to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, inter alia, the 1972 Convention for the Protection of the World Cultural and Natural Heritage, ratified by your Excellency’s Government on 12 December 1985, the 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works, the 1972 Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage and the 1976 Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (Section IV), as well as not to intentionally destroy their own heritage, “whether or not it is inscribed on a list maintained by UNESCO or another international organization” (Section VI).

In its resolutions 33/20, 37/17 and 49/7 on cultural rights and the protection of cultural heritage, the Human Rights Council noted that “the destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights.” The obligation to preserve and safeguard cultural heritage is also inscribed in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, stressing the responsibility of States not to intentionally destroy their own heritage.

As cultural heritage represents values linked with the cultural identity of individuals and groups, access to and enjoyment of cultural heritage also include “contributing to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes”. Concerned communities and relevant individuals should be consulted and invited to actively participate in the whole process of identification, selection, classification, interpretation, preservation/safeguard, stewardship, and development of cultural heritage (A/HRC/17/38, para. 80(c)). States parties should obtain the free and informed prior consent of concerned individuals or communities when the preservation of the cultural resources, especially those associated with their way of life and cultural expression, are at risk (E/C.12/GC/21, paragraph 55(e)).

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”.

States should also develop cultural heritage mapping processes within their territory and utilize cultural impact assessments in the planning and implementation of development projects, in full cooperation with concerned communities (A/HRC/17/38 para. 80(e)). 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 (A/77/290, para. 98(d)). The Special Rapporteurs have also underscored that States should make available effective remedies, including judicial remedies, to concerned individuals and communities who feel that their cultural heritage is either not fully respected and protected, or that their right of access to and enjoyment of cultural heritage is being infringed upon (A/HRC/17/38, para. 80(l)).

We would also like to draw the attention of your Excellency’s Government to its obligations under 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 housing, and to the continuous improvement of living conditions, and stipulates that States shall take appropriate steps to ensure the realization of this right. This article must be read in conjunction with article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind.

We wish to recall that, as clarified by the Committee on Economic, Social and Cultural Rights, in its general comment No. 7, forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons.

We furthermore wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18,

Annex 1) which specify that evictions can only take place in 'exceptional circumstances'; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines indicate that States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land; and should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions.

We would also like to draw the attention of your Excellency's Government to the Declaration on the Right to Development 1986. As the Special Rapporteur on the right to development stressed in his report, the focus should be on achieving holistic development – that is, economic, social, cultural, and political development – in which all human rights and fundamental freedoms can be realized and no one set of rights should take priority over the others (A/HRC/54/27, para. 18).

Moreover, article 2(3) of the 1986 Declaration provides that States have the duty to formulate appropriate national development policies “that aim at the constant improvement of the well-being of *the entire population and of all individuals*, on the basis of their *active, free and meaningful participation in development* and in the *fair distribution of the benefits resulting therefrom*” (emphasis added).

Article 19 of the ICCPR provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

We would like to draw the attention of your Excellency's Government to Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

In this regard, as indicated by the Human Rights Committee, attacks against individuals for exercising their right to freedom of expression, including through arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is incompatible with the ICCPR.<sup>1</sup> We would like to further remind your Excellency's Government that the right to challenge the lawfulness of detention before a court, protected under article 9 of the ICCPR, is a self-standing human right and a peremptory norm of international law, which applies to all forms of arbitrary deprivation of liberty.

Article 21 of the ICCPR states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of

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<sup>1</sup> CCPR/C/GC/34 para. 23.

others.” The Human Rights Committee previously affirmed that States “should effectively guarantee and protect the freedom of peaceful assembly and avoid restrictions that do not respond to the requirements under article 4 of the Covenant. In particular, it should refrain from imposing detention on individuals who are exercising their rights and who do not present a serious risk to national security or public safety” (CCPR/C/THA/CO/2, para. 40).

Additionally, we would also like to recall that article 22 protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the right of association but also have a positive obligation to facilitate and protect the right in accordance with international human rights standards (A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1). This means ensuring that freedom of association is enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2(1) of the ICCPR).

We also wish to bring to the attention of your Excellency’s Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law. We would also like to refer your Excellency’s Government to articles 3 and 10 of the Universal Declaration of Human Rights which respectively state that “everyone has the right to life, liberty and security of person”, “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

Article 27 of the Covenant states that: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”. Article 26 of ICCPR also prohibits any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds, including race, language, religion, national or social origin, property, birth or other status.

We would like to refer to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, and the Convention 169 of the International Labour Organization on Indigenous and Tribal Peoples.

The UN Declaration on the Rights of Indigenous Peoples in its article 1 states that Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

UNDRIP underlines that States shall 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.

Importantly, article 10 specifically prohibits forcible removal of Indigenous Peoples from their lands or territories without their free, prior and informed consent, and provides that relocation could take place only after agreement on just and fair compensation and, where possible, with the option of return.

UNDRIP further asserts the right of Indigenous Peoples to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (article 26), and furthermore states that Indigenous Peoples have the right to just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned, occupied or used and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent (article 28). Article 32(1) 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.

Article 7 of ILO Convention No. 169 states that the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social, and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. 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 like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

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

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfil 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).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (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). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (guiding principle 3). 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 occur.

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.

We would like to refer to the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) and recommendations contained therein elaborating on the duty of States to protect against human rights abuses involving those business enterprises that they own or control. This includes the following considerations:

*88. All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations.*

*94. States, as primary duty bearers under international human rights law, should lead by example. To show leadership on business and human rights requires action and dedicated commitment on many fronts. It also includes using all the means at the disposal of States to ensure that the enterprises under their ownership or control fully respect human rights throughout their operations. There is untapped potential for State-owned enterprises to be champions of responsible business conduct, including respect of human rights. The Working Group calls on States and State-owned enterprises to demonstrate leadership in this field.*

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



guaranteeing a “safe climate” and healthy biodiversity and ecosystems constitute substantive elements of this right.

We would also like to bring to the attention of your Excellency’s Government the Framework Principles on Human Rights and the Environment as detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The Principles state that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2); States should ensure the effective enforcement of their environmental standards against public and private actors (principle 12); and States should ensure that they comply with their obligations to Indigenous Peoples and members of traditional communities, 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 relocating them or 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).

Lastly, we would like to bring to the attention of your Excellency’s Government the international obligations to request and carry out environmental impact assessments as referenced in the Rio Declaration and in the Convention on Biological Diversity (art. 14) as further elaborated upon in the CBD Akwé: Kon Voluntary Guidelines for the Conduct of Socio-cultural and Environmental Impact Assessments (A/HRC/34/49; A/HRC/37/59)