

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

Ref.: AL OTH 7/2024

(Please use this reference in your reply)

1 March 2024

Dear Mr. Rodríguez,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the rights of Indigenous Peoples, pursuant to Human Rights Council resolutions 45/24, 53/3, 46/7 and 51/16.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning alleged **violations of the rights of Indigenous Peoples and people of African descent of the North Caribbean Coast Autonomous Region (NCCAR), South Caribbean Coast Autonomous Region (SCCAR), Alto Wangki and Bocay Special Regime Zone (ZRE) and Indio Maíz, including land rights, territory and resources, consultation and free, prior and informed consent for the adoption and implementation of the “Bio-CLIMA” reforestation project, financed by the Green Climate Fund (GCF), the Central American Bank for Economic Integration (CABEI) and the Global Environment Facility (GEF).**

Global Environment Facility (GEF)

According to the information received:

*Context of the North Caribbean Coast Autonomous Region (NCCAR) and South Caribbean Coast Autonomous Region (SCCAR)*

The North and South Caribbean Coast Autonomous Regions (NCCAR and SCCAR) are largely composed of primary forests, on which local Indigenous Peoples depend for their spiritual and physical subsistence. The Indigenous Peoples in the NCCAR and SCCAR, including those living in the Bosawás Biosphere Reserve, have communal property title to their territory conferred by a titling process. These territories were conferred in accordance with “Law No. 28 of 1987 on the autonomy statute of the regions of the Caribbean Coast of Nicaragua” and “Law No. 445 of 2003 on the communal property regime of the Indigenous Peoples and ethnic communities of the autonomous regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio and Maíz rivers.”

These laws guarantee Indigenous Peoples recognition of communal property rights, use, administration and management of traditional lands and natural resources through demarcation and titling processes. Likewise, these norms consecrate that the traditional rights of Indigenous Peoples and people of African descent prevail over titles granted in favor of third parties and require the regularization of indigenous territories over non-indigenous settlers (colonists), as well as corporations, who live and use the territories without a legal title or a leasehold with the indigenous communities.

According to the information received, the presence of third parties has caused conflicts between Indigenous Peoples and settlers for control of communal lands legally recognized as indigenous. This has created a climate of instability over land tenure, systematized violence against Indigenous Peoples, impunity for settlers who commit acts of violence, threats to Indigenous, non-Indigenous environmental and land defenders, and a negative environmental impact on Indigenous territories. Following this situation of violence, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Inter-American Commission on Human Rights (IACHR)<sup>1</sup> have issued official statements to the Nicaraguan government, calling for justice and demanding active protection of Indigenous Peoples from invaders.

Throughout 2022, three Miskito communities and one Mayangna community of the Northern Caribbean Coast obtained precautionary measures (No. 505-15) from the IACHR to safeguard the life and personal integrity of Indigenous Peoples from future invasions. As a result, they join eleven other indigenous communities that had already received precautionary measures between 2015 and 2019.<sup>2</sup> However, concern has been expressed that no action has been taken by the national authorities to enforce those measures, which may leave Indigenous Peoples in a situation of vulnerability in time to suffer invasions.

---

<sup>1</sup> <https://www.ohchr.org/en/press-briefing-notes/2020/02/press-briefing-note-nicaragua> and [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2023/243.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/243.asp)

<sup>2</sup> <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/032.asp>

By 2023, 24 indigenous and African descent territories have been titled, based on Law No. 445, over an area of 40,000 square kilometers, equivalent to 31% of the country's land area. Concerns have been raised that, the 'land clearing' stage, the last stage of the titling process, which consists of determining the legal status of the possessions of third parties occupying land within titled indigenous territories, has not been initiated, which has created an institutional vacuum.<sup>3</sup> Meanwhile, due to the development of economic activities, allegedly promoted or tolerated by the Government of Nicaragua, several extractive activities such as mining, forestry and cattle ranching have settled in indigenous territories without the consent of the affected Indigenous Peoples. Over the years, this expansion of the economic frontier has attracted several settlers and transnational companies in the titled territories of the Indigenous Peoples in NCCAR and SCCAR.

### *The Bio-CLIMA Project*

According to the information received, in November 2020, the Green Climate Fund (GCF) approved a loan of US\$37.9 million and a donation of US\$26.1 million to be granted through the Central American Bank for Economic Integration (CABEI). CABEI is the accredited entity responsible for the implementation of the Bio-CLIMA Project and the executing entity is the Ministry of Environment and Natural Resources together with other entities of the State of Nicaragua. The project, with a total budget of US\$116,642,221, also includes a loan of 44.3 million granted by CABEI and a donation of 8.3 million from the Global Environment Fund (GEF).<sup>4</sup> In addition, the financing proposal for Nicaragua and its complementary instruments were drafted by the Food and Agriculture Organization of the United Nations (FAO), contracted by CABEI.

The Bio-CLIMA project is considered an "integrated climate action to reduce deforestation and strengthen resilience in the Bosawás and Río San Juan Biospheres".<sup>5</sup> Its stated objective is to restore forests in Nicaragua's Caribbean region, channel investments towards sustainable forest management, halt deforestation, and increase the carbon dioxide absorption in the area.

In its decision to fund the project, the GCF established conditions for the allocation of such funding, including the (1) need to obtain the free, prior and informed consent (FPIC) of the affected Indigenous Peoples prior to project implementation, (2) to develop a follow-up and monitoring framework that clearly establishes a process to facilitate the negotiation and signing of Peaceful Cohabitation Regime Agreements (PCRAs), (3) to promote the involvement of a UN entity that would assume the role of an independent third party to monitor its implementation, and (4) to implement a detailed process that ensures that all FPIC procedures are rigorously documented and disclosed to the public through the implementing entity's website in order to increase transparency and allow for public scrutiny.

<sup>3</sup> <https://iwgia.org/en/news/5036-bioclima-the-project-that-threatens-indigenous-peoples-of-nicaragua.html>

<sup>4</sup> <https://www.bcie.org/operaciones-y-proyectos/proyecto-bio-clima/proyecto-bio-clima-presupuesto>, <https://www.greenclimate.fund/project/fp146>

<sup>5</sup> [GCF/B.27/02/Add.06/Rev.01](https://www.bcie.org/operaciones-y-proyectos/proyecto-bio-clima#:~:text=Proyecto%20Bio%20DCLIMA%3A%20Acci%C3%B3n%20Clim%C3%A1tica,Bosaw%C3%A1s%20y%20R%C3%ADo%20San%20Juan) and <https://www.bcie.org/operaciones-y-proyectos/proyecto-bio-clima#:~:text=Proyecto%20Bio%20DCLIMA%3A%20Acci%C3%B3n%20Clim%C3%A1tica,Bosaw%C3%A1s%20y%20R%C3%ADo%20San%20Juan>

The funding proposal also recognizes a number of risks to the project, including that it may exacerbate the situation of violence between Indigenous Peoples and settlers which has resulted in repeated homicides, massacres, forced displacement, and episodes of sexual violence in recent years.<sup>6</sup> Such violence stems from the socio-political situation in the project area and the accumulation of tensions arising from unresolved conflicts over land tenure and land use between Indigenous Peoples and settlers on the agricultural frontier<sup>7</sup>. However, concerns have been raised that the project does not acknowledge the current lack of representativeness of indigenous local governance in the region. Issues such as dependency, limitations, interference and unequal conditions comparing with governmental entities, may also be obstacles to obtaining free, prior and informed consent of Indigenous Peoples.

Indigenous Peoples and environmental civil society in Nicaragua have expressed concern that the Bio-CLIMA project, financed by the GCF, CABEI and GEF, may harm Indigenous Peoples and people of African descent living in the Northern Caribbean and Southern Caribbean coastal region of Nicaragua, and that despite the conditions set by the GCF for funding approval, neither they nor their legitimate representatives have been consulted during the planning and design of the project.

Concern has been raised that the project would undermine the land rights of Indigenous Peoples and people of African descent to encourage the development of “sustainable production” activities of crops and livestock, proposing a process of Agreements for the Peaceful Coexistence Regime (PCRA) with settlers who would also be beneficiaries of the project and that could legitimize their illegal occupation of indigenous territories. Therefore, Bio-CLIMA would encourage the economic involvement of Indigenous Peoples and settlers alike, allegedly ignoring that the latter have violently invaded and usurped the lands, causing in many cases, in addition to deforestation and food insecurity, forced displacement of Indigenous Peoples and people of African descent.

There are concerns that CABEI should have supervised the facilitation, negotiation and signing of the PCRA. However, in the absence of due diligence in the formulation of the project, the GCF and CABEI allegedly started from the erroneous premise that there is a regime of “peaceful coexistence” between the Indigenous Peoples and the non-indigenous settler population in the territories where the project is to be implemented, while the facts demonstrate a climate of systematic violence against Indigenous Peoples and people of African descent.

*The Bio-CLIMA project before the Independent Redress Mechanism (IRM) of the Green Climate Fund (GCF)*

On 30 June 2021, the Independent Redress Mechanism (IRM) of the GCF received a complaint about the Bio-CLIMA project. The complainants alleged that the project would harm the Indigenous Peoples and people of African descent of the NCCAR as: (i) there was no adequate consultation with the communities to obtain their Free, Prior and Informed Consent (FPIC) of the

<sup>6</sup> A/HRC/46/21, para. 49-52; A/HRC/49/23, para. 33-35; A/HRC/51/42, para. 64; A/HRC/54/60, para. 54-61.

<sup>7</sup> <https://www.greenclimate.fund/sites/default/files/document/gcf-b27-22.pdf>

affected Indigenous Peoples; (ii) the project would lead to environmental degradation and increased attacks on Indigenous Peoples by armed non-indigenous settlers; (iii) the actions of the accredited entity, the Central American Bank for Economic Integration (CABEI) do not appear to comply with GCF policies, particularly with regard to participation and information disclosure; (iv) the conditions that the GCF placed on the project prior to its approval are reportedly not defined and effectively fulfilled; and (v) the executing entity – the Nicaraguan government – would not be in a position to guarantee the effective fulfillment of its obligations in the implementation of the Bio-CLIMA project.<sup>8</sup>

The project was suspended in July 2021 when the IRM accepted the complaint as admissible and initiated an investigation into this situation (Bio-CLIMA case C-0006-Nicaragua). In the Case Compliance Assessment Report, issued on 24 March 2022, the IRM concluded that there is *prima facie* evidence of adverse impacts caused or likely to be caused to the complainant(s) by the project's non-compliance with GCF operating policies and procedures. The report concluded that the issues raised by the IRM are of a sufficiently serious nature to warrant a compliance investigation<sup>9</sup>. In this sense, the IRM initiated the compliance investigation, to further inquire into the matter and prepare a Compliance Report, the final case document, with specific recommendations.

On 30 August 2022, the IRM submitted its Final Compliance Evaluation Report in Bio-CLIMA case C-0006-Nicaragua to the GCF Board of Directors. The co-chairs and the GCF Board of Directors were responsible for deciding on its content and publication. During the 34<sup>th</sup> meeting of the GCF Board of Directors in October 2022, the Board met with CABEI and Government of Nicaragua officials, without the presence of members of civil society and affected Indigenous Peoples and people of African descent, and announced that the decision on the Report would be made at the next GCF meeting. However, in March 2023, during the 35<sup>th</sup> meeting of the GCF Board of Directors, no decision was made on the matter. On 13 July 2023, during its 36<sup>th</sup> meeting, the GCF Board of Directors made its decision regarding the Final Report submitted by the IRM.

The IRM's Final Compliance Evaluation Report concluded that, in its formulation, the Bio-CLIMA Project (i) violated several GCF safeguards and procedures and failed to comply with the due diligence requirements of the GCF environmental and social safeguards. The report also found that (ii) Indigenous Peoples and people of African descent were not adequately consulted in accordance with international standards and the requirements of the GCF Indigenous Peoples policy, and therefore their Free, Prior and Informed Consent (FPIC), essential to the project's approach, was not obtained. Additionally, the IRM asserted that (iii) the Bio-CLIMA project makes a deliberate decision to propose a single mechanism for territorial governance, the PCRAs, to the exclusion of other potential mechanisms that could be used by Indigenous Peoples. The IRM also notes that (iv) FAO (through its consultants commissioned by CABEI to develop the Bio-CLIMA project) was not involved in the process of initially obtaining FPIC from

---

<sup>8</sup> [gcf-b35-inf17.pdf \(greenclimate.fund\)](#)

<sup>9</sup> <https://irm.greenclimate.fund/sites/default/files/case/compliance-appraisal-report-publication-c0006.pdf>

Indigenous Peoples, and questioned its role.<sup>10</sup>

The IRM Report also warns that (v) the approach of the project could exacerbate the land conflict and violence against the Indigenous Peoples of the Northern Caribbean Coast of Nicaragua, and (vi) that should the project be implemented as currently formulated, it would result in Indigenous Peoples and people of African descent, who lost their lands, bearing the full cost of those losses and settlers gaining security for illegally occupied lands.<sup>11</sup>

On 20 July 2023, almost a year after the submission by the IRM, the Final Compliance Evaluation Report was published on the IRM website. The GCF Board of Directors closed the case initiated before the IRM, passed the competence to its Secretariat and informed that no funds would be disbursed for the Bio-CLIMA Project until CABEI addressed the non-compliance with GCF policies and procedures found in the Report.<sup>12</sup> According to the information received, subsequently, the GCF Secretariat, exercising the competence attributed by the Board of Directors, granted the Government of Nicaragua and CABEI 120 days (until 4 October 2023) to address the non-compliance with the Secretariat's policies and in a manner consistent with the relevant legal agreements between the parties.

In the days prior to its 37<sup>th</sup> meeting, the GCF Board of Directors issued a notice informing that it would hold an evaluation period for another 120 days, which expires on 31 January 2024. Such evaluation will take into account the “disclosure package” that the Board of Directors received from CABEI on 4 October 2023 and published on its website. It is alleged that the information contained in the package does not include any participation of the claimants who filed the complaint with the IRM, and that it was prepared solely from CABEI's point of view, excluding independent observers from the GCF and Nicaraguan civil society, who have a different perspective concerning the funding decision, approval and the Bio-CLIMA project itself.

*The informed participation and consultation carried out by the Government of Nicaragua and the Central American Bank for Economic Integration (CABEI)*

According to the information provided, CABEI carried out an informed participation and consultation process jointly with the Government of Nicaragua during August and September 2023. The United Nations Office for Project Services (UNOPS) fulfilled the role, according to the documentation submitted by CABEI, of “observer of the respect of the FPIC Principles, national legislation and compliance with international standards on indigenous rights”, while the United Nations World Food Program (WFP) provided logistical support. According to CABEI, 58 meetings of Consultation and Free, Prior and Informed Consent (FPIC) were held, in which 4,462 people (2,493 men and 1,969 women) from the 23 indigenous territories in the NCCAR, SCCAR, ZRE Alto Wangki and Bocay, and Indio Maíz regions participated.

---

<sup>10</sup> <https://irm.greenclimate.fund/sites/default/files/case/en-irm-case-c0006-final-compliance-review-report.pdf>

<sup>11</sup> <https://es.irm.greenclimate.fund/sites/default/files/case/es-irm-case-c0006-final-compliance-review-report.pdf>

<sup>12</sup> [https://www.greenclimate.fund/sites/default/files/document/irm-case-c-0006-summary-board-decision\\_1.pdf](https://www.greenclimate.fund/sites/default/files/document/irm-case-c-0006-summary-board-decision_1.pdf)



As a result of these meetings, the consent of “the 23 indigenous territories” for the implementation of the project was obtained.<sup>13</sup> However, the participation of Indigenous Peoples and Afro-descendant communities took place in August and September 2023, three years after the Bio-CLIMA Project was approved in 2020. In addition, according to reports, many of the consultations were carried out with “parallel” Indigenous Territorial Governments imposed on the communities and territories by the State itself, thus excluding their traditional and/or legitimately elected authorities.

From the information gathered by the source and published by CABEI, it appears that, in most cases, the assemblies were held in a speedy manner, without sufficient time for the Indigenous Peoples and Afro-descendants present to review the content of the project, the scope and the follow-up mechanism. The structure of the assemblies, established by CABEI, was as follows: an extensive presentation on the project, and a brief section for questions and comments where there would have been a reduced number of interventions, followed in all cases by its approval by consensus. There is no mention in the minutes of the assemblies of any information on the next steps concerning the participation of the affected Indigenous Peoples. Opportunities for participation were limited to a brief round of questions, comments and approval of the project.

Likewise, the assemblies would not have been culturally appropriate without taking into account the decision-making and deliberative modality of each community. According to the information provided, all written information distributed about the project, as well as the PowerPoint presentations, would have been distributed only in Spanish. The participants were also told that Bio-CLIMA is a low-risk project, when the Green Climate Fund itself had classified it in the highest-risk category.

Reportedly, the organizers did not promote free deliberation by the participants in the consultations, but rather favoured the decision to accept the project and hindered the expression of opposing positions. On one occasion, the meeting minutes reflected unanimous approval of the project without a vote being taken. During several assemblies, the few critical interventions against the Bio-CLIMA project by Indigenous Peoples and Afro-descendants were repeatedly “called to attention” by the organizers. On the other hand, according to the source, in several consultations the participants were informed that other assemblies had already approved the project, which could have led to a coercive effect.

Several of the assemblies were reportedly held in the presence of police officers carrying “heavy caliber” weapons, affecting the free nature of the consent given. According to indigenous leaders in the area, government institutions travelled to the consultation area with police presence, intimidating the participants to follow governmental guidelines.

Concerns have been raised that UNOPS detected several and serious “anomalies” in the consultation. According to the findings of UNOPS, “the consultations carried out did not comply with the principles for the

---

<sup>13</sup> <https://www.bcie.org/operaciones-y-proyectos/proyecto-bio-clima/participacion-y-consulta-informada>

development of FPIC of reasonable time since the time was very short between the presentation of the project, its evaluation and discussion (in an assembly on the same day) and the submission to a vote of consent from the regional level; nor with the principle of timely information”.<sup>14</sup>

With regard to the transparency of the consultation process, in September 2023, members of civil society requested information from CABEI to further understand its position and have more clarity on the process. Allegedly, they requested the terms of reference on which UNOPS and WFP were contracted to accompany the consultation process, as well as the selection process of the UN independent third party to facilitate and supervise the free and informed prior consultation. Both requests were reportedly responded to on 27 October 2023, stating that “the Bank is not responsible for this process and does not own this information”.

Without prejudging the accuracy of these allegations, we would like to recall that at the time when the Green Climate Fund, Central American Bank of Economic Integration and Global Environment Facility funding was approved between 2020 and 2021, the UN Human Rights Council urged the government of Nicaragua to respect its international obligation to seek free prior and informed consent as contemplated in the UN Declaration on the Rights of Indigenous Peoples, and to take effective measures, in consultation with Indigenous Peoples, to prevent and address the increasing violence committed against them, including the conduct of prompt and independent investigations into alleged killings and land confiscations by armed groups. We regret that these legitimate concerns regarding the promotion and protection of human rights in Nicaragua were not taken into account during the selection, planning and design of a project as impactful as Bio-CLIMA for members of the Indigenous Peoples and Afro-descendant communities of the North and South Caribbean Coast Autonomous Region of Nicaragua. We emphasize that it is imperative to put in place a robust and independent plan to safeguard human rights, and that such a project will be best implemented in consultation with and in trust of the local Indigenous Peoples and people of African descent on whose ancestral communal lands the project is to be implemented.

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

---

<sup>14</sup> [2266\\_NI\\_Anexo\\_No.\\_17\\_Compilacion\\_Consultas\\_CPLI\\_en\\_ZRE\\_Alto\\_Wangki\\_BocayESP23-LTE.pdf \(bcie.org\)](#)



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

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the reasons for the decision to finance the Bio-CLIMA project amid allegations of violations of the collective and individual rights of Indigenous Peoples to life, land, territories and natural resources of the NCCAR and SCCAR. In particular, please provide information on the Independent Redress Mechanism's conclusion concerning violations of the Green Climate Fund (GCF) safeguards and procedures; the lack of compliance with the due diligence requirements of the GCF's environmental and social safeguards; as well as its Indigenous Peoples policy.
3. Please provide information on whether the Global Environment Facility has conducted cultural, environmental and social impact assessments of the potential impacts of the Bio-CLIMA project on the affected Indigenous Peoples and people of African descent. If affirmative, please provide details, date and outcome of such assessments.
6. Please provide information on the human rights due diligence policies and processes established by the GEF to identify, prevent, mitigate and account for how they address their human rights impacts, in accordance with the UN Guiding Principles on Business on Human Rights.
5. Please provide information on how GEF provides for or cooperate in remediation of any human rights harms it has caused or contributed to and whether it has established an operational-level grievance mechanism in line with the effectiveness criteria of the UN Guiding Principles on Business and Human Rights.
6. Please provide information regarding the measures taken by GEF to ensure coherence between its projects and actions regarding international commitments on climate change and respect for human rights.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received 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.

We may publicly express our concerns in the near future, as we believe that the information received is sufficiently reliable to indicate that there is a matter that

warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with the Government and all its partners on this project to clarify the relevant issues.

Please be informed that a letter on this subject matter has also been sent to the Government of Nicaragua, the Central American Bank for Economic Integration (CABEI), the Green Climate Fund (GCF), the United Nations Office for Project Services (UNOPS) and the World Food Program (WFP).

Please accept, Mr. Rodríguez, the assurances of our highest consideration.

Barbara Reynolds  
Chair-Rapporteur of the Working Group of Experts on People of African Descent

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

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

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

## **Annex**

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

In connection with the above alleged facts and concerns, we would like to draw the attention of the Global Environment Facility to the applicable international standards, as well as authoritative guidance on their interpretation.

We would like to refer to the United Nations Declaration on the Rights of Indigenous Peoples approved by the General Assembly on 13 September 2007. Article 26 recognizes the right of Indigenous Peoples to the lands, territories and natural resources which they have traditionally owned, occupied or used and that States shall ensure the legal recognition and protection of those lands, territories and resources with due respect for their customs, traditions and land tenure systems. On the other hand, article 32 provides that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

We would also like to draw your attention to the Framework Principles on Human Rights and the Environment, which are detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The principles state that States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights (principle 1). States must respect, protect and fulfill human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2). And States should establish a safe and enabling environment in which individuals, groups of individuals and organs of society concerned with human rights or environmental issues can operate free from threats, harassment, intimidation and violence (principle 4).

In his report (A/HRC/54/31) the Special Rapporteur on the rights of Indigenous Peoples states that the shift to green finance is necessary and urgent but must embrace a human rights-based approach and warns that the increased interest from international carbon markets poses a threat to the land security of Indigenous Peoples, and the rising economic value of carbon sequestered on Indigenous lands promotes land-grabbing by both the public and private sectors. Therefore, the Special Rapporteur recommends that States to protect Indigenous Peoples from human rights abuses by business enterprises and financial actors; the right of Indigenous Peoples to provide or withhold their free, prior and informed consent regarding green finance initiatives affecting their lands, territories and resources after a meaningful and gender-inclusive consultation process. States should recognize that free, prior and informed consent is an ongoing process, requiring ongoing consultation throughout the life cycle of a project; Ensure that Indigenous Peoples directly and equitably benefit from green financing projects; Establish effective, accessible, culturally appropriate and independent mechanisms for Indigenous Peoples to seek justice and remedy in cases of human rights violations or environmental harm resulting from green financing projects; Establish monitoring and reporting mechanisms to track the impacts of green financing projects on the rights of Indigenous Peoples, including

regular consultations with the Indigenous communities affected; and provide access to information to Indigenous Peoples and ensure transparency at all levels of green finance projects.

The Special Rapporteur concludes that States should ensure that Indigenous Peoples have access to relevant information and are able to express their views freely and make decisions without coercion or manipulation; recognize that free, prior and informed consent is an ongoing process, requiring continuous consultation throughout the life cycle of a project; establish effective, accessible, culturally appropriate and independent mechanisms for Indigenous Peoples to obtain justice and redress in cases of human rights violations or environmental harm caused by green finance projects; establish effective, accessible, culturally appropriate and independent mechanisms for Indigenous Peoples to seek justice and redress in cases of human rights violations or environmental harm arising from green finance projects; establish monitoring and reporting mechanisms to track the impact of green finance projects on Indigenous Peoples' rights; facilitate Indigenous Peoples' access to information and ensure that green finance projects are transparent at all levels green finance projects.

As set forth in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), the UNGPs are based on the recognition of:

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

The Guiding Principles have been established as the authoritative global standard for business to prevent and address business-related adverse human rights impacts. The responsibility to respect human rights constitutes a global standard of conduct applicable to all businesses, both transnational and otherwise, regardless of size, sector, location, ownership and structure. It exists irrespective of the ability and/or willingness of States to meet their own human rights obligations and does not diminish those obligations. It is a responsibility additional to that of complying with national laws and standards for the protection of human rights.

Principles 11 to 24 and principles 29 to 31 provide guidance to companies on how to meet their responsibility to respect human rights and to provide remediation where they have caused or contributed to adverse impacts. The commentary to Principle 11 states that "Businesses should not undermine the ability of States to meet their own human rights obligations, or take actions that may undermine the integrity of judicial processes."

The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require that "enterprises: a) Avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur; b) Seek to prevent or mitigate adverse

human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts." (guiding principle 13).

To fulfil their responsibility to respect human rights, business enterprises should have policies and procedures appropriate to their size and circumstances, namely:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute."(guiding principle 15)

This process of identifying and assessing actual or potential adverse human rights impacts should include meaningful consultation with potentially affected groups and other stakeholders (guiding principle 18).

Also, principle 22 provides that "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. " The establishment of operational-level grievance mechanisms for those potentially affected by business activities can be an effective means of remedy provided that they meet certain requirements listed in principle 31.

In its report on development finance institutions and human rights (A/HRC/53/24/Add.4), the Working Group on Business and Human Rights recommended to the development finance institutions to:

- (a) Adopt and incorporate the United Nations Guiding Principles on Business and Human Rights in environmental and social frameworks and related policies;
- (b) Develop and implement human rights due diligence policies and processes throughout their operations and ensure that an intersectional perspective is integrated into these policies and processes. In so doing, it is important that human rights risks are analysed and monitored throughout a project life cycle and adapted to the sector, context, project, and clients;
- (c) Continually update human rights due diligence policies and processes by engaging in open and context-sensitive multi-stakeholder dialogue and consultations, including with stakeholders affected by development projects, human rights defenders, Indigenous Peoples, marginalised groups, and other groups at risk;
- (d) Ensure that project information is publicly available and, in particular, disseminated to all relevant stakeholders in a timely manner;

- (e) Publicly commit to the protection of human rights defenders;
- (f) Use leverage in business relationships to promote and ensure respect for human rights;
- (g) Require clients to:
  - i. Improve their own human rights due diligence policies and processes; and
  - ii. pay particular attention to groups in vulnerable situations, including through complying with the principle of free, prior and informed consent with respect to Indigenous Peoples;
- (h) Support clients and their existing or potential business partners, particularly small and medium-sized enterprises, to improve the human rights and environmental conditions in their operations;
- (i) Design and implement operational-level grievance mechanisms that address the risks faced by stakeholders adversely affected by development projects, in ways that protect their confidentiality, prevent reprisals and retaliation, and offer effective remedies;
- j) Establish remedy funds to address adverse human rights impacts from projects;
- k) Engage in global and regional standards-setting through stronger collaboration between multilateral and bilateral development finance institutions;
- l) Develop and support awareness-raising activities and capacity development initiatives to enhance the protection and realization of human rights.