

Mandates of 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 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 right to development; the Special Rapporteur on the right to food and the Special Rapporteur on the rights of Indigenous Peoples

Ref.: AL CHN 19/2023
(Please use this reference in your reply)

8 January 2024

Excellency,

We have the honour to address you in our capacities as 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; Working Group on Arbitrary Detention; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to development; Special Rapporteur on the right to food and Special Rapporteur on the rights of Indigenous Peoples, pursuant to Human Rights Council resolutions 52/10, 51/8, 53/3, 51/7, 49/13 and 51/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the allegation of **threats of eviction of Indigenous Peoples from their ancestral lands, as well as other residents of the affected villages, and subsequent loss of livelihoods for the implementation of an industrial development project in Rempang Island, Riau Islands Province, in Indonesia, without the free, prior and informed consent of the Indigenous Peoples, or the adequate consultation of the other affected residents.** The project is a joint venture between the government agency, Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam (BP Batam) and PT Makmur Elok Graha (MEG), which have partnered with Xinyi International Investment Limited, a subsidiary of Xinyi Glass Holdings Limited, a company domiciled in Hong Kong, China. **Additionally, there have been allegations of excessive use of force and intimidation against those opposing the planned evictions.**

According to the information received:

Rempang Island is home to at least three Indigenous Peoples: the Malays, the Orang Laut and the Orang Darat, together known as Indigenous Peoples of Tempatan. They have lived on the island since 1834. After Indonesia's independence in 1945, and officially since 1992, Rempang Island was recognized by the Government as part of Batam, the largest city in the province of Riau Islands Province.

Currently there are between 7,500 and 10,000 Indigenous Peoples living, cultivating land, and fishing by traditional methods in Rempang Island. Most of the affected populations live in 16 villages known as Kampung Tua (ancient villages), which have existed for nearly two centuries. Up to 80-90 percent of them are traditional fishers, men are fishermen and women collect shells and other resources from the coast. Their food practices are closely connected with

the coastal areas in which they live. Access to the ocean and coastal territories is essential for their cultural identity and their livelihoods. Products of fishing and cultivation are not only dedicated to personal consumption, but they are also sold in local markets of Rempang and of other nearby islands.

The development project: Rempang Eco-City

In 2004 the government granted to the company PT Makmur Elok Graha (MEG) a license to manage and develop Rempang Island, as well as two other nearby islands, namely Setokok and Galang. Since then, no industrial development progress had been announced.

On 12 April 2023, the Coordinating Minister of Economic Affairs launched a development plan called “Rempang Eco-City”, aimed at building an integrated industrial, trade, and tourism centre in Rempang Island. Rempang Eco-City is expected to occupy 757,200 km², amounting to approximately 46% of the total area of Rempang Island. The project is a joint venture between the government agency, Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam (BP Batam) and PT MEG, which has partnered with Xinyi International Investment Limited, a subsidiary of Xinyi Glass Holdings Limited, which is the world’s largest producer of glass and solar panels and is legally based in Hong Kong, China. On 23 of August 2023, the Coordinating Ministry of Economic Affairs issued Regulation 7/2023, through which it included Rempang Eco-City in the list of Indonesia’s National Strategic Projects for 2023.

The project is expected to turn Rempang Island into an industrial area, with shipping ports and other facilities built on the coastal areas, as well as the development of a downstream industry for the processing of silica sands.

Relocation plan

On 21 July 2023 at a town hall, Batam authorities announced the Rempang Eco-City project to the residents of Rempang Island, including a plan for relocating over 7,500 people from their ancestral land (16 villages) in Rempang Island to a new housing complex that the government plans to build in Galang Island. The affected villages are Tanjung Kertang, Tanjung Kelingking, Rempang Cate, Belongkeng, Pantai Melayu, Monggak, Pasir Panjang, Sungai Raya, Sembulang (divided into three small villages, namely Pasir Merah, Sembulang Hulu and Sembulang Tanjung), Dapur Enam, Tanjung Banun, Sijantung, Dapur Tiga, Air Lingka, Kampung Baru and Tanjung Pengapit. In total, the implementation of the development plan will affect at least 2,471 households. As part of the development plan, the government aims to offer 500 m² of land and a 45 m² house to every household affected by the development plan, with an additional compensation sum of IDR 120 million.

The housing complex, where affected Indigenous Peoples and other affected persons should relocate, has not yet been built. As a temporary solution, the government announced that they plan to provide each affected family with an

allowance of IDR 1.2 million per month and a further IDR 1.2 million per month to subsidize their rent.

The first phase of the project entails that 4 out of the 16 ancestral villages, covering an area of 200,000 km² and occupied by at least 700 households, are to be vacated. These villages are Pasir Panjang, Sembulang Tanjung, Sembulang Hulu and Blongkeng. BP Batam plans to use the land on which three of the villages are situated for a glass factory, and the land of the fourth village for a tower that would be the symbol of Rempang Eco-City. The government asked residents to register for relocation between 11 and 20 September 2023. The police initially indicated that the area of Rempang should be cleared by 28 September 2023 for a handover to PT MEG. However, on 25 September 2023, BP Batam annulled the deadline, because authorities were still in the process of disseminating information about the relocation to the residents.

Due to public pressure and growing rejection by Indigenous Peoples and other populations of the affected villages against the relocation, the government moved the deadline for clearance of the area to a future date to be determined. As of 13 December 2023, there has been no official communication of the new eviction date or the new deadline for relocation. Furthermore, the government has opted for relocating the affected Indigenous Peoples and other residents from the prioritized 4 villages to Tanjung Banon, another village in Rempang Island. The government has not yet built the housing complex destined for their relocation. No consent had been given by the residents of the involved villages, as well as no free, prior and informed consent from the Indigenous Peoples.

Authorities and officials from the BP Batam have reportedly started measuring and marking out the land for the development project.

Consultation with Indigenous Peoples and other affected residents

On 22 August 2023, BP Batam with Batam Mayor Muhammad Rudi – who is also the Chair of BP Batam – held a meeting in Rempang to listen to Indigenous Peoples and other affected residents and present the development plan, including the relocation scheme. The event was held in the presence of police and military personnel, including the Barelang district Police Chief and the Batam Regional Military Commander.

Following a closed-door meeting on 1 September 2023, BP Batam claimed that some members of Indigenous Peoples of Rempang agreed to hand over their land for the development project, four individuals were said to represent the Indigenous communities in the asset handover ceremony. Later, a representative of the Indigenous Peoples of Rempang stated that the four individuals who attended the event were not representatives of the Indigenous Peoples of Rempang and were not residents of Rempang Island.

On 6 September 2023, BP Batam held another meeting after which it claimed that 80% of residents that participated in the meeting had agreed to the relocation plan and the compensation scheme. Indigenous Peoples and other affected residents in Rempang Island affirmed to have never signed any

agreement of relocation and that most of them refused to attend the meeting with BP Batam because they reject the relocation plan. There have been allegations that some residents working as civil servants were pressured to accept the relocation plan by some village officials.

Since 13 September 2023, BP Batam authorities have been accompanied by police and military personnel, in conducting a door-to-door programme to present the development plan and convince the residents to accept the relocation. Some have expressed their discomfort and fear due to the presence of security officials during the house visits.

There have been additional occasions in which government officials visited Rempang Island and met with residents. While the government representatives claimed to have gathered the opinions of residents, the residents have reported that the meetings were a one-way dissemination of information. There has been no space for actual participation of the affected Indigenous Peoples in the decision-making process concerning the developmental project or the relocation plans.

Protests and state authorities' response

On 21 July 2023, in response to the announcement made by Batam authorities, Indigenous Peoples' representatives present at the town hall meeting verbally rejected the plan, especially rejecting the relocation from their ancestral land.

Between July and August 2023, amid growing rejection of the development plan, residents of Rempang Island have reported to have been subjected to threats and intimidation and of being accused by the police, inter alia, of crimes for impeding investment and illegal occupation of land.

On 23 August 2023, thousands of residents of Rempang Island gathered in front of the BP Batam office for a peaceful protest, calling for state authorities to stop the plan to evict the Indigenous Peoples from their ancestral land as well as other affected residents, to end intimidation and harassment of those objecting the plan, and to recognize the rights of the Indigenous Peoples. Furthermore, they argued that the Rempang Eco-City plan could be implemented without evictions, since the 16 villages occupy around 10% of Rempang Island.

On 6 September 2023, the residents received information that BP Batam planned to enter Rempang Island the following day to measure and mark out the land for the development project. On 7 September 2023, protesters used a log to block a part of the Bareleng Bridge, connecting Rempang Island to Batam city, as a response more than 1,000 personnel from police, the military and the public order agency were deployed to safeguard the land measurement and marking process. At least 60 police cars and armoured vehicles were deployed to the island.

The Indigenous Peoples and other residents of Rempang Island asked to start a dialogue to reach a mutual agreement, but the security personnel pushed ahead into the villages. A clash erupted while the residents resisted the entry of the

security forces; a few started throwing stones and water bottles at the security personnel, who responded by firing water cannons and tear gas. Reports indicate that officers also used rubber bullets against protesters and videos recorded by residents show that tear gas grenades were fired at eye-level towards protesters. Some of the tear gas grenades were fired in the direction of the gates of two schools, a local elementary school (SDN 24 Galang) and a junior high school (SMPN 22 Galang), causing the gas to enter the schools' compounds. Students and teachers panicked and ran out of the classrooms.

At least 25 students were taken to the hospital due to breathing difficulties and other symptoms, and around 20 other individuals were injured, with at least one man suffering head wounds from a rubber bullet. After the events, tear-gas cannisters were found on the roof and near the gate of the schools. Due to the incident, many students were left traumatized and in need of therapy.

At least eight individuals were arrested and charged after the incident, most were charged with violating Articles 212-214 of the Indonesian Criminal Code on resisting an official, acting in the lawful performance of their official duties, by violence or threat of violence and Article 2(1) of the 1951 Emergency Law on carrying sharp weapons.

Following the protest of 7 September, at least five security posts were set up in Rempang Island, including at the bridge allowing entrance to the island. At least 20-30 joint police and military personnel were deployed at each post. Residents reported being intimidated by the presence of the police and soldiers in the area. Some residents left their houses and hid in a nearby forest, some school students refrained from going to school due to fear of the state authorities.

On 11 September 2023, thousands of protesters, including members of the Malays Peoples from outside Rempang Island, gathered in front of BP Batam's office demanding the authorities to refrain from evicting Indigenous Peoples from their ancient lands in Rempang Island, and to withdraw the security forces from the island. The initially peaceful protest turned violent, resulting in a clash between protesters and security personnel, with some protesters taking refuge in the office of Malays Indigenous Council in Batam, where they were targeted by security personnel, who fired tear gas into the building compound. The police arrested 43 protesters after the incident; among which 35 were charged with violence and the rest were released.

On 7 and 11 October 2023, residents from Rempang Island gathered following the commemoration of Mawlid al-Nabi (celebration of Prophet Muhammad birth in Muslim religion) and they expressed their rejection of the relocation plan.

Since early October, police presence in Rempang Island has significantly decreased and the police post at the bridge connecting Batam City to Rempang Island has been dismantled. Four security posts remain and are guarded by security officers of BP Batam and a few local police officers and local district military command.

Detention of protesters

Eight individuals detained at Bareleng Police Station after the incident on 7 September 2023 were supposed to be released on bail following a request from their families, but the police cancelled their release following the 11 September 2023 protest. Their lawyer affirmed that he only met with them once, on 8 September 2023, to sign the document for legal representation. Since then, and until their release, he was denied access to meet with the detainees by the police. The families of the detainees were denied visiting them. On 16 September 2023, the eight individuals detained after the 7 September 2023 protest were released on bail under the condition that they must report to the Bareleng Police station twice a week.

The legal team representing the detainees arrested after the 11 September 2023 protest and their families were not able to meet with them until the beginning of October 2023. The Bareleng Police Chief claimed that restricting the detainees' access to their lawyers and family members was necessary for the investigation, because meeting them would affect the statements given by the detainees to the investigators. Nevertheless, since early October 2023 the detainees have been allowed to regularly access their legal counsel and to receive visits from their families. On 8 December 2023, the police handed over the dossier on the 35 detainees to the prosecutor's office for the preparation of trial. As of 13 December 2023, the 35 protesters arrested after the 11 September 2023 protest were still detained.

While we do not wish to prejudge the accuracy of the above allegations, the information described above raises serious concerns about the threat of eviction faced by the Indigenous Peoples and other affected residents of Rempang Island to implement the development project Rempang Eco-City, and the deficiencies in the consultation process with affected Indigenous Peoples and other residents, including failure to ensure free, prior and informed consent to the resettlement of the affected Indigenous Peoples. In addition, we are concerned about the alleged use of tear-gas against persons protesting the planned evictions resulting in the hospitalisation of some protesters and the alleged continued arbitrary detention of 35 persons involved in the protest.

We also note that Indonesia has developed plans to relocate and compensate the affected population. However, any relocation should first and foremost be avoided in order to be compliant with international human rights standards and we have not been provided with any information as to why the relocation of the residents of the 16 villages cannot be avoided, or at least significantly reduced. We are as well concerned that information received indicates that the housing complexes in Galang Island and Tanjung Banon, where the affected population is supposed to relocate, are yet to be built. In any case, relocation should occur only after the affected residents and affected Indigenous Peoples have been adequately consulted and Indigenous Peoples have given their free, prior and informed consent to the implementation of the development project and the terms of their compensation. If a relocation were to take place without the free, prior and informed consent of the affected Indigenous Peoples, it would amount to forced eviction. We are also concerned that the compensation offered appears to not take adequately into account losses related to land use, farming and fishing. The planned forced evictions would thus be in violation of the right to

adequate housing, food and the right to enjoy one's own culture as set out in articles 11 and 15 of the International Covenant on Economic, Social and Cultural rights and in articles 10, 26 and 33 of the United Nations Declaration of the Rights of Indigenous Peoples.

We wish to recall that under international human rights law, whereas some evictions may be justifiable, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by law and that all the legal recourses and remedies are available to those affected. We emphasize that appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes the rights to life, to non-interference with privacy, family and home and to enjoy one's culture.

We are, furthermore, concerned that the Indigenous Peoples who have lived in the 16 ancient villages for almost two centuries, cultivating the land and fishing in the vicinities, may not be adequately compensated for losses related to housing, land, including land for food production, income generated by fishing and cultivation, and that their resettlement undermines their right to their own culture, whose exercise is linked to their ancestral land as well as their right to participate in economic, political, social and cultural development (including self-determination over their natural wealth and resources) in line with the Declaration on the Right to Development.

Strong concern is also expressed over how your Excellency's Government may be failing to protect against human rights abuses by third parties, including business enterprises, under your jurisdiction. This duty to protect human rights requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication, as set out by the United Nations Guiding Principles on Business and Human Rights. Given that Xinyi Glass Holdings Limited is a company based in China, your Excellency's Government has a duty to exercise adequate scrutiny and oversight over the Xinyi Glass Holdings Limited operations and ensure that it fully respects human rights.

Further concern is expressed in relation to the alleged criminalisation, intimidation, excessive use of force and arbitrary detention of residents who have opposed the project and/or the manner in which it is implemented by Indonesian state authorities. Such attempts to silence and deter residents from protecting and promoting their rights and the rights of others contribute to a harmful and "chilling" effect on civil society more broadly. We are also concerned on the reports that detainees were denied adequate consultation with their legal teams and visits from their families for a prolonged period of time, in violation of the rights and protection of persons deprived of liberty as set out in articles 9 and 14 of the International Covenant on Civil and Political Rights.

In connection with the above alleged facts and concerns, please refer to the **Annex which details applicable international human rights law** and standards relevant to the present allegations.

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 therefore 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 highlight the steps that your Excellency's Government has taken, or is considering taking, in relation to this project, to protect against human rights abuse by business enterprises domiciled in China and its territories and/or within its jurisdiction, such as Xinyi Glass Holdings Limited. Please provide information on what measures your Excellency's Government has taken to ensure that such business enterprises conduct effective human rights due diligence. Such a process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights, as per the Guiding Principles on Business and Human Rights 17-21, and also helps to ensure that human rights defenders can operate in a safe and enabling environment, free from restrictions and attacks.
3. Please describe any guidance that your Excellency's Government has provided to domiciled business enterprises on respecting human rights throughout their operations in line with the UN Guiding Principles, including by setting out the Government's expectations as to how human rights due diligence should be conducted, how to consult meaningfully potentially affected stakeholders, and how to remedy adverse human rights impacts. Please also indicate whether any guidance was provided with respect to the duty to obtain free, prior and informed consent of Indigenous Peoples prior to the approval of business activities affecting their land use.
4. Please indicate the steps that your Excellency's Government has taken, or is considering taking, to ensure that business enterprises domiciled in your territory and/or jurisdiction establish or participate in effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or to which they have contributed.
5. Kindly provide information on the steps your Excellency's Government has taken, or is planning to take, to ensure that the overseas activities of Chinese companies are not adversely affecting Indigenous Peoples' right to participate in economic, political, social and cultural development (including self-determination over their natural wealth and resources) and their right to free, prior and informed consent in line with the United Nations Declaration of the Rights of Indigenous Peoples and the Declaration on the Right to Development.

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.

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

Please be informed that letters on this matter are also being sent to the Republic of Indonesia, PT Makmur Elok Graha (MEG) and Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam (BP Batam), domiciled in Indonesia and to Xinyi Glass Holdings Limited.

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

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

Matthew Gillett
Vice-Chair on Communications of the Working Group on Arbitrary Detention

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

Surya Deva
Special Rapporteur on the right to development

Michael Fakhri
Special Rapporteur on the right to food

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and while we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the international norms and standards applicable to the present case.

Regarding the involvement of China headquartered businesses in projects abroad that would result in forced evictions we wish to draw the attention of your Excellency's Government to its obligations under Article 17 of the Universal Declaration of Human Rights (UDHR), which guarantees everyone the right to own property and the right not to be arbitrarily deprived of their property. Furthermore, Article 25.1 of UDHR and Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by China in 2001, recognize the right of everyone to an adequate standard of living for themselves and their family, including housing. In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights clarified that this right to housing should be seen as the right to live in security, peace and dignity. It indicates that the right to housing includes, among others, legal security of tenure guaranteeing legal protection against forced evictions, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection in genuine consultation with affected persons and groups. Upon her visit to Indonesia, 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, specifically recommended that "Land policy should protect the interests of low-income households, indigenous communities and communities occupying land based on customary (adat) law" (A/HRC/25/54/Add.1, para. 81).

In both General Comment No. 4 and General Comment No. 7, the Committee on Economic, Social and Cultural Rights affirmed that forced evictions are prima facie incompatible with the requirements of the Covenant, are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. 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. In addition, legal remedies must be provided and the right to adequate compensation for any affected property exercised. Paragraph 15 of the same General Comment provides that if an eviction is to take place, procedural protections are essential, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Under no circumstances, evictions should result in homelessness, and the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves. We wish to underscore that, notwithstanding the type of tenure, all persons should

possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

In this regard, we also wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (NHRC/4/18, Annex 1), which specify that evictions must be authorized by law and ensure full and fair compensation and rehabilitation. All potentially affected groups and persons have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

We would also like to refer to General Comment 24 on States' obligations under the Covenant on Economic, Social and Cultural Rights (E/C.12/GC/24) in the context of business activities. The Covenant establishes specific obligations of States parties at three levels — to respect, to protect and to fulfil. These obligations apply both with respect to situations on the State's national territory, and outside the national territory in situations over which States parties may exercise control. "The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered in the context of investment projects. Indigenous peoples' cultural values and rights associated with their ancestral lands are particularly at risk. States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired".

We would like to refer your Excellency's Government to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which China voted in favour of at the General Assembly in 2007. The UNDRIP sets out international human rights standards relating to Indigenous Peoples' rights. Article 26 asserts the right of Indigenous Peoples to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired". Article 32 affirms that Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and resources and that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". UNDRIP furthermore 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.

We also recall that, in her report (A/74/183), the previous Special Rapporteur on the right to adequate housing stated that “The indivisibility and interdependence of the United Nations Declaration on the Rights of Indigenous Peoples and the right to housing under international human rights law should inform all housing-related laws, policies and programmes that affect indigenous peoples”.

We would like to highlight the relevance of 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, 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. In this regard, China has a duty to ensure that businesses operating within its jurisdiction respect human rights by taking steps to prevent as well as investigate, punish, and redress abuses through legislation, regulations, policies, and adjudication. Furthermore, China has an obligation to ensure access to effective remedies and remedial mechanisms for persons whose rights have been violated by business activities within its jurisdiction. 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.

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 (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 report includes the following considerations:

“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.”

“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.”

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 also wish to draw attention to the report of the previous Special Rapporteur on the right to adequate housing (A/74/183) in which she stated that, for Indigenous Peoples, the concept of home is not just about a built structure where one lives, but is about one’s place on the planet, defined through one’s lands, resources, identity and culture, which in turn requires that the right to housing must be interpreted and applied in a manner that is responsive to Indigenous Peoples’ experiences of housing and home.

Furthermore, the United Nations Declaration on Human Rights Defenders states that everyone has the right to promote and to strive for the protection and realization of human rights. We would also like to recall article 5 (a), which provides for the right to meet or assemble peacefully and article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

Moreover, we wish to draw the relevance of the Declaration on the Right to Development (GA Resolution 41/128). Article 1 of the Declaration provides that the “right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” This right “implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.” (Article 1(2)). Article 2(3) of the Declaration further provides that “States have the right and 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.”

The Declaration further requires that States should encourage popular participation in all spheres as an important factor in development and in the full

realization of all human rights (article 8.2). In this line, the ILO Convention 169 prescribes that Indigenous Peoples 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.

We also refer to the Guidelines and recommendations on the practical implementation of the right to development developed by the Special Rapporteur on the right to development (A/HRC/42/38). The Guidelines urge States to design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. They further recommend (para 37) that States should respect the right of indigenous peoples to self-determination to fulfil the right to development. The Guidelines also recommend (para 45) that all actors, including institutions, businesses and investors, who produce information about development projects should provide that information transparently. Specifically:

(a) Information about development projects should be shared with the affected communities as a matter of priority, in the language of those communities and in accessible formats. The information might need to be translated into local and indigenous languages;

(b) Information should be shared in a format that is accessible to target populations.