

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on minority issues; and the Working Group on the issue of human rights and transnational corporations and other business enterprises

REFERENCE:
AL OTH 14/2017

21 July 2017

Dear Mr. Graeme Craig,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on minority issues; and Working Group on the issue of human rights and transnational corporations and other business enterprises, pursuant to Human Rights Council resolutions 28/9, 25/5, 35/7.

In this connection, we would like to bring to your attention information we have received concerning the alleged planned expulsion and demolition of the Seven Sisters Indoor Market, in the London Borough of Haringey, for a regeneration initiative, announced to start in July 2017, which would threaten the livelihood and cultural life of the residents and shop owners mainly of minority origins.

According to the information received:

The London Borough of Haringey includes the Elephant & Castle and Seven Sisters Latin neighbourhoods, which have existed since the 1990s and are home to the country's largest concentrations of Latin Americans and Latin American-owned businesses. The Seven Sisters cluster features, apart from residential buildings, an indoor market situated in the old Edwardian department store called Wards Stores. It contains over 120 businesses, for the main part small family businesses, spread out on two floors (mezzanine).

Since 2008, proposed regeneration projects that involve demolition of the Seven Sisters indoor market and some of the surrounding residential buildings to build a modern mall, have caused disagreement between the local authorities of Haringey and their private real estate partners - Grainger PLC and Market Asset Management Ltd. (MAM Ltd.) - and the residents and shops owners of Seven Sisters. It is alleged that the regeneration project would mainly affect people with low-income belonging to minorities, would have a detrimental impact on the livelihoods of 120 shop owners and their employees, and would involve relocation of an estimated 160 residents and the destruction of the public space for social and cultural interactions among the people of the area.

Shared space for economic, social and cultural interaction

The majority of the residents and shop owners in the area in question are British citizens but are members of a minority and for most of them, English is a second language. They are able to work in small family businesses in the market and earn subsistence wages, even without strong command of English.

More than 55% of the business owners of the indoor market are of Latin American or Hispanic origin or descent. The remaining portion comes from 21 different origins, making the borough very rich in terms of cultural diversity. Because of this diversity and of its spatial organization on two floors with open areas, the indoor market is considered not only as a commercial space but also as an informal social and cultural space, in particular for the London Latin American minority. Many of the shops and the covered areas between them are used as places where people of different generations meet, where neighbourhood children gather and play after school and where an array of social activities are regularly organised, bringing together people from different origins. The Seven Sisters indoor market, also called the “Latin village” because of the important role it plays for London Latin Americans, is considered by the shop owners, their families and surrounding residents to be a cultural center, offering opportunities to network and a sense of belonging. The interactions experienced there are described as fostering a constructive intercultural dialogue and the permanent dynamic processes that are an integral part of cultural diversity.

Legal battle around the regeneration project

In February 2008, the authorities of Haringey and Grainger PLC submitted a planning application for the area, which included expulsion of the shop owners and some of the residents, and demolition of the site, and replaced them with new housing at increased rents. A civil society coalition, including concerned residents and shop owners as well as groups of citizens from the wider area, such as the Wards Corner Community Coalition, challenged the application through legal action. On 14 July 2009, the High Court ruled against the claimants and for the planned demolition, without provision for the residents. This decision was appealed. On 22 June 2010, the Court of Appeal ruled against the planning application because the authorities of Haringey failed to present proof of an adequate Equalities Impact Assessment required by the 1976 Race Relations Act and to give due regard to the “impact on equality of opportunity between persons of different racial groups, and on good relations between such groups”.

The Haringey authorities and Grainger PLC submitted a new planning application accompanied by a section 106 agreement. This application included demolition of the site but preserved the indoor market “in its entirety” and foresaw modest financial compensation for businesses that existed on the site in 2008. However, it excluded businesses outside the indoor market and on its second floor. For those businesses, rents after the regeneration works would be set according to market value. The civil society coalition challenged the legality of this agreement and, in July 2011, this second planning application was rejected.

In 2015, Transport for London, a State-owned enterprise which is the freeholder of the marketplace, awarded MAM Ltd. a lease for the market. It is alleged that this was done without any competitive tendering. The civil society coalition planned to challenge the legality of this process in a new legal case. Before they could do so, on 22 September 2016, a Compulsory Purchase Order was submitted.

In October 2016 and although a decision about the Compulsory Purchase Order has not been taken, Grainger PLC, MAM Ltd. and Haringey Council formed a steering group. This group reportedly includes some shop owners invited by Grainger PLC, MAM Ltd. and Haringey Council but who were not chosen as representatives by the concerned shop owners.

It is reported that the increased market value that the regeneration project would bring to the area would result in the impossibility for current residents and shop owners to remain in the neighbourhood, due to their low income. This would lead to the economic marginalization of most of the small traders and business owners. It is also alleged that the social and economic consequences on the livelihoods and social and cultural life of the concerned persons, including women and children, mainly belonging to minorities were never fully considered in the compensation plans proposed in the later projects, not in either the planning equality impact assessment of 2012 or the Compulsory Purchase Order equality impact assessment of 2015.

On 8 April 2017, the residents and shop owners organised a public protest against the demolition of the site. A campaign was also launched by the civil society coalition to raise the money to ensure the legal support necessary to help defend their rights and have their voice heard.

Neglect of the site

It is alleged that Transport for London, as well as Grainer PLC, which has bought some residential units, and MAM Ltd., which holds the lease and manages the market since 2015, have neglected the buildings of the area so as to strengthen the argument in favour of the regeneration project.

Two council homes, purchased by Grainer PLC, have reportedly been left empty for 10 years after the families living there were displaced. This has raised particular concern considering the scarcity of social housing. Residents and shop owners have repeatedly requested the management to remove graffiti and repair broken windows, allegedly without success. In 2017, the Director of MAM Ltd. was the object of an investigation by Transport for London concerning several incidents of inappropriate behaviour, abusive language towards the shop owners and poor market management. This abusive behavior, which was confirmed by the investigation, has been recalled in the current hearing about the Compulsory Purchase Order.

The reported neglect has had a severe impact on the appearance of the area, and the conditions of work and the environment for social interaction of the people using the space. They fear it will attract anti-social behaviour and crime, making the area more vulnerable and unsafe. Moreover, it is feared that the disarray of the

site may have a negative impact on the forthcoming visit of the state inspectorate and the current decision process about the Compulsory Purchase Order.

While we do not wish to prejudge the accuracy of these allegations, we express concern about the gentrification project which, if followed through, would result in the expulsion of the current residents and shop owners from the place where they live and secure their livelihoods and would have a deleterious impact on the dynamic cultural life of the diverse people in the area. We also express concern at the failure to undertake a full social and equality impact assessment of the project's short and long-term consequences for the residents of the area, including on their rights to an adequate standard of living and to take part in cultural life, and of the apparent lack of meaningful consultation and inclusion of the concerned people in the decision-making process regarding the future of their neighbourhood. We are furthermore concerned that this project seems to have a disproportionate impact on people belonging to minorities and constitutes indirect discrimination in the exercise of their human rights.

In connection with the above alleged facts and concerns, please refer to the **Reference to international human rights law Annex** attached to this letter, which cites international human rights law instruments and standards relevant to these 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 be grateful for your cooperation and your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please indicate how the concerns of the residents, shop owners and associated neighbours have been taken into consideration, including whether and how alternatives which would have less severe consequences on the livelihoods of shop owners and employees and on their right to participate in cultural life have been considered.
3. Please indicate whether and how concerned people have been consulted about the plans entailing the described demolitions. Also indicate how the tendering process for the lease of the market and the decision to award it to MAM ltd. was compatible with the human rights international standards.
4. Please provide information on measures taken to protect and promote the existence and expression of the diverse minority identities affected by the situation, and the dynamic coexistence and mixing achieved by the "Latin village". Should the project be implemented, what measures have been foreseen to provide guarantees for the continuation of the cultural activities and social interactions?

5. Please specify particular measures that have been taken to prevent poor, marginalized and minority persons from being disproportionately impacted by regeneration projects.
6. Please provide details and information about the results of the investigations into poor market management which has been carried out in relation to this site and indicate the measures Transport for London has taken to ensure the site is not neglected and the shop owners are not exposed to abuse.
7. Please provide information about the measures that Transport for London has taken, or is considering to take, to ensure that its human rights position and further policies will be in line with the UN Guiding Principles on Business and Human Rights.
8. Please provide information as to what human rights due diligence has been undertaken by Transport for London.
9. Please provide information as to what effective remedies measures, including adequate compensation, in line with the UN Guiding Principles on Business and Human Rights, have been taken, or that Transport for London is considering to take.

We would appreciate receiving a response within 60 days. Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please note that this communication has been also addressed to the Government of United Kingdom of Great Britain and Northern Ireland, for their information, as well as to Grainger PLC and Market Asset Management ltd.

While awaiting a reply, we urge that all necessary interim measures be taken to respect and protect the human rights of the concerned people of the Seven Sisters cluster.

Furthermore, we may publicly express our concerns in the near future as, in our view, the information is sufficiently reliable and indicates a matter warranting immediate attention. If we do so, the press release will indicate that we have been in contact with you to clarify the issues in question.

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

Karima Bennoune
Special Rapporteur in the field of cultural rights

Rita Izsák-Ndiaye
Special Rapporteur on minority issues

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to application international human rights norms and standards, as well as authoritative guidance on their interpretation.

The corporate responsibility to respect human rights covers the full range of rights listed in the Universal Declaration of Human Rights. In this regard, we wish to draw your attention to article 25 of Universal Declaration of Human Rights which recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Article 11, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates that States “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, and requires them to “take appropriate steps to ensure the realization of this right.” Furthermore, article 15 of ICESCR recognizes the right of everyone to take part in cultural life.

In addition, we would like to draw your attention to the right to access information as part of the freedom of opinion and expression as established in article 19 of UDHR and article 19 of International Covenant on Civil and Political Rights (ICCPR) Furthermore, the right to take part in the conduct of public affairs is stipulated in article 21 of UDHR and article 25 of ICCPR. Article 27 of the International Covenant on Civil and Political Rights relating to the rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public. The right to participate effectively in cultural life is also recalled in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 2, paras. 1 and 2.

The Guiding Principles clearly outline that private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.

In this connection, we recall that the Guiding Principles have identified two main components to the responsibility to respect human rights for business enterprises, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly

linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13). This dual-requirement is further elaborated by the requirement that the business enterprise put in place:

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

Each of these is elaborated below.

Policy Commitment:

The first of these requirements, a policy commitment, must be approved by the company’s senior management, be informed by human rights expertise (internal or external) and stipulate the human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services. The statement of policy must be publicly available and communicated internally and externally and reflected in operational policies and procedures necessary to embed it throughout the business enterprise (Guiding Principle 16).

Human Rights Due Diligence:

The second major feature of the responsibility to respect is the “human rights due-diligence”, the procedures for which have been deemed necessary to “identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships” (Guiding Principle 18). Adequate human rights due diligence procedures must include “meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation” (Guiding Principle 18).

To prevent and mitigate against adverse human rights impacts, the findings of the human rights impact assessment should be effectively integrated across the relevant internal functions and processes of a company (Guiding Principle 19). Responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise, and internal decision-making, budget allocations and oversight processes should enable effective responses to such impacts.

Any response by a company to address its adverse human rights impacts should be tracked to ensure that it is effective. Tracking should be based on appropriate

qualitative and quantitative indicators, and drawing on feedback from internal and external sources including affected stakeholders (Guiding Principle 20). In addition, information about activities taken to address any adverse human rights impacts, and how effective those actions have been, should be communicated externally, as this communication provides a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors. (Guiding Principle 21).

Remediation:

The Guiding Principles acknowledge that “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”. Where a company identifies that it has “caused or contributed to adverse impacts” it “should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Business enterprises should establish or participate in operational-level grievance mechanisms “to make it possible for grievances to be addressed early and remediated directly” (Guiding Principle 29). Operational-level grievance mechanisms should reflect eight criteria to ensure their effectiveness in practice, as outlined in Guiding Principle 31: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights-compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue. Lastly, operational-level grievance mechanisms must not be used to preclude access by individuals and communities to judicial or other non-judicial grievance mechanisms (Guiding Principle 29).