Carla Fredericks Remarks, Expert Group Meeting on "Indigenous Peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent" organized by UN DESA.

Thank you for inviting me to speak today. My name is Carla Fredericks, and I am the CEO of the Christensen Fund, a private foundation based in the United States with a mission to support the inherent rights, dignity and self determination of Indigenous Peoples throughout the world. I am an enrolled tribal member of the Mandan, Hidatsa, and Arikara Nation.

In my life, I have had the privilege and honor to work extensively with indigenous communities to address their concerns with respect to FPIC, and in my current role, we provide resources to communities to assert their human rights.

I would like to express that I view FPIC as a right and not a process. As we all are aware, the right of communities to either give or withhold consent, FPIC is enshrined in several places in the declaration and should be respected fully. That said, I'm going to talk today about FPIC as a business consideration and the experience of businesses when asset value of corporations suffers.

By way of background, it is a basic tenet of business law that corporations exist to produce value for investors. In the 2021 world of climate change, worldwide threats to the very existence of civil society and justice, and an endless pandemic, companies also continue to accelerate the rate of climate change and infringe the rights and territories of Indigenous Peoples. These policies are plainly misaligned with considerations of community, climate justice, human rights, and racial equality-- and markets punish these bad acts.

I offer today a bit of a different perspective on grievance and remedial mechanisms. The mechanisms we have discussed today are crucial to protect the human rights of Indigenous Peoples, but the market itself punishes companies and management that do not act to protect and respect human rights. In fact, the monetary drop in value of a company is a market correction that can be thought of as an extrajudicial remedy, at least to punish the companies for bad behavior.

In May 2020, the second-largest mining company in the world, Rio Tinto, destroyed a series of ancient cave structures in the Juukan Gorge in Western Australia; these caves were rich with artifacts that were not only sacred to two Australian Indigenous groups but also priceless archeological treasures. Rio Tinto has a long and occasionally controversial history of resource extraction, but it has continuously touted its human rights and environmental commitments and accomplishments. Rio Tinto has committed itself to acting in concert with the UN Guiding Principles on Business and Human Rights and the UN Declaration on the Rights of Indigenous Peoples, including seeking the free, prior and informed consent of Indigenous Peoples before

engaging in development that affects the land and rights of Indigenous Peoples. Rio Tinto has itself stated that no development should occur without "express approval" of Indigenous peoples.

And yet, despite challenges from Indigenous groups and activists, a clear lack of FPIC, and the apparent contravention of the company's own policies regarding development, Rio Tinto destroyed the Juukan caves.

The markets acted quickly to create a monetary remedy. The company quickly announced punishment in the form of taking away bonuses of the CEO and two other executives, and in September 2020, after significant shareholder pressure, the executives were terminated. The shareholders made clear that the corporation's management was taking unnecessary financial risks by not meeting its environmental and social commitments, and therefore could not protect the value of the company.

Rio Tinto's error was not just destroying sacred land and creating lasting environmental damage, but doing so in a way that was harmful to the company's reputation and value. There was not a grievance process undertaken, but the shareholders of the company took steps of its own to address the problem.

In the case of the Dakota Access Pipeline, senior executives were highly incentivized to complete construction of the pipeline, despite vociferous opposition by Indigenous Peoples, environmentalists, and the investing public — including investors with significant assets under management.28× The construction of the pipeline quickly became a national and international lightning rod for human rights and environmental concerns and another example of the United States prioritizing business interests and fossil fuel development over the rights of Indigenous Peoples and the integrity of the environment.

Because of public opposition and legal opposition to the pipeline, the company's stock price experienced wild volatility during the course of construction, resulting in significant material losses to the company and its shareholders. Banks financing construction of the pipeline also experienced financial losses and reputational harm as customers moved billions in funds to other banking institutions. Some of the banks at that moment took remedy onto their own hands, and took swift action. In some cases, the banks themselves backed out of the project at a likely loss to their own shareholders as well. The market's version of remedy was to punish the company in the only way companies really experience punishment-- loss of monetary value.

These examples show that companies are experiencing capital losses, which is the market's version of a grievance mechanism. The markets punish the "check the box" approach to FPIC, because it does not provide an adequate framework to protect against operational and human rights risks. Practices consistent with respecting FPIC not only encourage healthier long-term

growth, but also help companies avoid the pitfalls of corporate action that are at odds with public statements — and protect shareholder value.

But we have to remember that corporate punishment is only a deterrent at best, and not a remedy itself.

I offer a few recommendations to address these issues.

First, in terms of remedy, implementation of frameworks and corporate self-help is woefully insufficient. Applying the UNGPs, Companies must respect, protect, and remedy human rights, not force investors to take matters into their own hands. And for investors, they must understand their own obligation to the UNGPs to go beyond market remedy and corporate punishment. Investors have a unique opportunity as owners of these companies to ensure that there are protections in place that also specifically lay out mechanisms for real remedy for the Indgenous Peoples harmed.

Second, the existence of these remedies must be part of any due diligence assessment to close the loop on systems of corporate decision making. To address the question of remedy, we must consider the potential for harm BEFORE it has occurred, in recognition of the high risk of operating on our near indigenous territories. Investors must internalize and act to address and mitigate the impacts of human rights abuses of the companies they own, in recognition of the power they hold and the attendant obligation to protect human rights.

Finally, protection of human rights requires that everyone engage, and that we move to ensure that due diligence is undertaken to ensure that the corporation is acting truthfully to protect its shareholders and the planet we all share, as well as prepared at the outset to address remedy prior to harm being done.

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