

KRISHNAN & TSANG, SOLICITORS

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Our Ref.: KS/2024/CIVOTH/0265(4019)/KS/2024

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Your Ref.: AL/OTH148/2023

Date: 19 March 2024

By email ohchr-registry@un.org

United Nations Human Rights Office of the
High Commissioner (UN Human Rights)

Attn:

(1) Mr. 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;

(2) Mr. Matthew Gillett, Vice-Chair on
Communications of the Working Group
on Arbitrary Detention; &

(3) Mr. Robert McCorquodale, Chair-Rapporteur
of the Working Group on the issue of human rights
and transnational corporations and other business
enterprises.

Dear Sirs,

Re: Xinyi Glass Holdings Limited ("Xinyi/ Our Client")

We have instructions to act for Xinyi and write further to our letter of 01 February 2024 in initial response to your letter dated 8th January 2024 addressed to Mr. Tung Ching Sai, CEO of Xinyi.

We have been instructed by Our Client and Mr. Tung to respond by this letter, first, to put on record that they have an abiding and profound respect all along for the human rights of individuals and believe in the equality of the peoples of different countries, groups and races. They also respect your Office's efforts for and contributions to the protection of human rights.

As regards the eviction of the indigenous peoples of Rempang Islands by PT Batam and PT Makmur Elok Graha ('MEG'), Xinyi has had no knowledge of the eviction of the indigenous peoples in question of Rempang Islands. Nor had it any sort of arrangement or involvement with PT Batam and MEG, any Indonesian government agency or person whomsoever connected with or without the Indonesian government for the eviction of the indigenous peoples in question. In fact, for the record, Xinyi was just invited to invest in the project for developing a certain area of

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Rempang Islands as a solar industrial park (“Project”) and Xinyi’s subsidiary [i.e. Xinyi International Investments Limited (“XIIL”)] was simply just negotiating with MEG but did not reach any sort of consensus at the end of the day about their respective rights and obligations in the Project.

Xinyi did in fact respect and was concerned about the rights of the indigenous residents to ensure that their human rights and accommodation would not be affected by the locations of facilities intended to be built in the Rempang Islands area to be earmarked for the Project.

Xinyi therefore had no knowledge of any plan for the eviction of the indigenous peoples from the Rempang Islands area or the use of any sort of force or means of intimidation against them. Xinyi has much experience from making an investment in another province of Indonesia and this investment has never involved doing anything against the indigenous peoples in the province. As Xinyi also has investments in various provinces of Mainland China, it has respect and respected the differences in cultures and traditions of various indigenous residents in these different provinces. All along, Xinyi has been running its business in a peaceful and, as far as business circumstances allow, symbiotic relationship with any of the indigenous residents with its established business practice and culture of resolving any problems as may be encountered with the interests of such indigenous peoples through civilized and legal means.

For your information, according to the proposal of MEG, the area which they request BT Batam to allocate for the intended solar industrial park is 1,154 hectares, which is only about 1/14 to 1/15 of the total Rempang Islands area. According to the General Zoning Plan of BT Batam, the other portions of the Rempang Islands area consists of:- (1) Integrated Agro-Tourism Zone; (2) Integrated Tourism & Residential Zone; (3) Integrated Solar Farm Zone; (4) Wildlife and Nature Zone; and (5) Galang Village Zone, which, in total, occupy about 13/14 to 14/15 of the entire Rempang Islands area.

Xinyi therefore believes that BT Batam would arrange for the indigenous peoples to reside at the Agro-Tourism Zone, Tourism & Residential Zone, Solar Farm Zone, Wildlife and Nature Zone and Galang Village Zone so that they would not be affected by the solar industrial park proposed to be developed in the Integrated Industrial Zone.

According to the General Zoning Plan, Rempang Eco-City (one of the National Strategic Projects for 2023) did not plan to develop the whole of the Rempang Islands into an industrial area. Xinyi therefore believes that BT Batam and MEG would instead provide alternative accommodations for the indigenous peoples in other non-industrial zones, which consists of areas suitable for their residence, farming activities, wildlife, nature and Galang Village.

For shipping port and other facilities to be built on the coastal areas, MEG is not yet clear about the exact proposed locations for the port or the other facilities. Also, Xinyi did not know at all about the announcement on 21st July 2023 by the government authorities for the relocation of the indigenous

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peoples in question. Nor did Xinyi know anything about the plan and time schedule of the government in building any housing complex for them. At no time before or after such announcement did the government authorities, BP Batam or MEG communicate with Xinyi about the relocation. Xinyi therefore has no knowledge about the government policy or plan in relation to the relocation of the indigenous peoples in question. Moreover, Xinyi has no right or power to interfere with the pre-existing policy or plan of the local government. Xinyi even has no chance to voice out its own concerns or communicate with any government official designated to deal with any requisite application or approval for any permit or licence for the proposed building and operation of the port and other facilities.

Xinyi has no knowledge about any deadline for the government's clearance of any area in Rempang Islands or the government's failure to build a housing complex for the relocation of the indigenous peoples. Xinyi also has no knowledge about how and when the government officials started measuring or marking out any land for the development of any project. In fact, Xinyi is not yet in a position to ascertain or confirm the exact boundary and area of the 1,154 hectares of area which MEG proposes BP Batam to allocate to Xinyi's subsidiary (i.e. XIIL).

In addition, Xinyi has no knowledge about what happened on 21st July, 21st & 22nd August and 6th, 7th, 8th, 11th, 13th & 16th September, 7th & 11th October 2023 and as to how the protestors were treated or detained, which Xinyi had no knowledge of and were circumstances at any rate beyond its control or power. The government officials, BP Batam or MEG just took their own actions without any obligation or need to inform or consult Xinyi before deciding what to do and how to act. Xinyi has therefore no knowledge at all about any vigorous measures or excessive force used by the government officials to evict the indigenous peoples in question.

As already mentioned, Xinyi has much respect for the human rights and traditional cultures of the indigenous residents in question in the same way it has all along respected the human rights and traditional cultures of indigenous peoples of other places where it has made investments. Concern for the significance of operating business in an environmentally friendly and socially responsible way is central to Xinyi's business culture and practice.

Since Xinyi is still in discussion and so has not reached any sort of agreement with MEG regarding the substantive terms and conditions for the development of the solar industrial park of the Project, Xinyi has not started any partnership or joint venture with MEG at all. Up to the time of writing, MEG has not even arranged any responsible government official designated to deal with any application or approval for the construction and operation of the port and other facilities, which are in fact pre-conditions for the commencement of the Project, i.e. developing the proposed solar industrial park at the 1,154 hectares which MEG has not even made any application as yet to BP Batam to allocate; and MEG is not yet even in a position to get the approval of BP Batam for the transfer of the allocation of such 1,154 hectares (being 1/14 or 1/15 of the total of the Rempang Islands area) to Xinyi.

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In light of the circumstances explained above, Xinyi is grateful to your Office for drawing its attention to the matters 1 to 7 at pages 8 and 9 of your letter for observations and the Annex [Reference to International Human Rights Law & United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31) endorsed by the Human Rights Council in June 2011].

As a business enterprise with high moral standards and a social conscience, Xinyi will surely observe and comply with the Guiding Principles, especially that of the responsibility to respect human rights and avoiding infringements thereof (especially Principle 13) and the due diligence process laid down in Principles 17-21 and note the significance for remediation through legitimate processes under Principle 22.

Xinyi also notes the General Recommendation 24 (2017) for prevention of redressing infringements of Covenant rights caused by the activities of business entities over which they can exercise control.

We are instructed to stress that Xinyi and its subsidiary (XIIL) has not carried out any activity whatsoever in Rempang Islands or other relevant regions at all in connection with or contributing to the government's plan and acts involving the relocation, eviction, coercion, intimidation, use of excessive force, detention or anything which infringes the human rights of the indigenous peoples in question.

Xinyi will seriously consider the issues of human rights of the indigenous peoples in question of Rempang Islands in light of what you have reported in your letter happened in July to October 2023, which show that those indigenous peoples have expressed great discontent about how the government officials have acted in their hasty relocation [i.e. before building the necessary housing complex (es) to accommodate them] without adequately consulting or respecting their views.

Xinyi totally understands and respects the reasonable desire of the indigenous peoples in question for protecting their homes and villages and to continue their traditional fishing and farming livelihoods on their ancestral lands.

We are instructed by Xinyi to state categorically that it has not ever participated, directly or indirectly, in the government's plan and measures for the relocation and eviction of the indigenous peoples in question in the Rempang Islands areas at all. As already mentioned, Xinyi is not even entitled to have any say and/or make any proposal in relation to the government's plan or measures because the partnership or joint venture with MEG has yet to start at all because of very many outstanding issues still remaining unresolved and huge differences between the relative positions of the parties.

For avoidance of doubt, in response to the matters 1 to 7 for observations, we are instructed to clarify specifically as follows: -

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1. Xinyi cannot provide any additional information and/or comments other than those as are set out above.
2. As mentioned above, Xinyi was not aware of the issues related to the human rights of the indigenous peoples in question in Rempang Islands caused by the government's plan and measures for their relocation and eviction, etc., because Xinyi and its subsidiary (i.e. XIIL) have not started any partnership or joint venture with MEG. Since Xinyi and its subsidiary (XIIL) have not started any partnership or joint venture with MEG, they have not embarked on any activity in furtherance of the partnership or joint venture and so are not in a position to provide information about human rights' related due diligence policies and processes to identify, prevent, mitigate and remedy any adverse impact of any such activity taken by them. Furthermore, MEG has only proposed to apply for allocation of 1,154 hectares (about 1/14 or 1/15) out of the whole of the Rempang Islands area, which is only a very small part of the Rempang Eco-City project which also consists of other Integrated Zones that are non-industrial.
3. Also, as mentioned above, Xinyi has had no right or chance to take measures or provide consultations to avoid the relocation of the residents of the 16 villages in question on Rempang Islands as planned by the government (not planned by Xinyi), and Xinyi has not been adequately advised about how many villages and how many people exactly are involved or affected in the 1,154 hectares which MEG has proposed to apply to BP Batam to allocate for the Project.
4. Again, to repeat, Xinyi has had no right or chance to take measures or provide consultations. In any event, Xinyi would not ever provide consultations on employing unconscionable let alone illegal means and tactics involving intimidation or coercion. Xinyi has not even started to do anything in relation to the 1,154 hectares (which has not been allocated to MEG yet and so the allocation of this area has not been transferred to Xinyi at all!) which are only 1/14 or 1/15 of the whole of the Rempang Islands/Eco-City project. To-date, Xinyi is not even entitled to enter the 1,154 hectares' area!
5. Xinyi has not participated in any resettlement plan for the Rempang Eco-City project. To repeat, Xinyi has not been allocated the 1,154 hectares for the development of the solar industrial park, being only 1/14 or 1/15 of the whole of the Rempang Islands/Eco-City project. Xinyi has therefore no role nor any entitlement to participate in or be associated with any government measures and plan for adequate compensation to be afforded to any affected rights' holders.
6. Before BP Batam may allocate the 1,154 hectares area to Xinyi's subsidiary (XIIL), and, without adequate information about exactly how many villages and population in such 1,154 hectares area would be affected, Xinyi is not yet therefore as of today in a position to take any step to establish, implement and/or enforce operational-level grievance mechanism to

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address any actual and potential adverse impacts on the human rights of the indigenous residents in question.

7. Xinyi has no right nor power or control over the government measures or plans for the events which occurred in July to October 2023 in relation to the indigenous peoples in question. Before Xinyi's subsidiary (XIIL) may be allocated the 1,154 hectares area, and, without adequate information about exactly how many villages and population would be affected, Xinyi is not yet in a position therefore to take measures or plans to prevent recurrence of any such events in relation to the indigenous peoples in question.

As matters stand, we are instructed to invite your Office to pay attention to many false and untrue and therefore defamatory publications in the public media about the role of Xinyi or its subsidiary (XIIL) in relation to the government's measures and plans for the relocation, eviction, intimidation, coercion, detention and mistreatment of the indigenous peoples in question and the protestors, which are very unfair to Xinyi as they have adversely affected and besmirched its international corporate image and good reputation. Apart from concerns for the protection of the human rights of the indigenous peoples in question, the reputation of Xinyi and its subsidiary (XIIL) as well as their corporate officers also deserve protection and their rights too deserve to be respected.

We trust Xinyi's substantive response in providing the foregoing explanation and information in this further letter amply helps to clarify and correct a lot of the untrue and therefore defamatory accusations made against it, its subsidiary (XIIL) and their corporate officers by unfairly linking them up with the government's measures and plans in relation to the indigenous peoples in question in Rempang Islands.

Finally, we are also instructed to invite your Office to inform the public media about the foregoing clarifications and corrections in this further letter so as to stop the public media continuing to publish the false, unfair and therefore defamatory statements against Xinyi and its subsidiary (XIIL) in order to damage their international corporate images and good reputations.

All the rights of Our Client, its subsidiary (XIIL) and their officers are hereby fully and expressly reserved.

Yours faithfully,

Krishnan & Tsang
c.c. Client