

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers**

REFERENCE:  
OL OTH 9/2018

6 April 2018

Sir Huang Jie,

We address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 35/7, 34/18, 34/5 and 35/11.

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.<sup>1</sup> Special procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals and other communications. The intervention can 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 the arrest, the investigation and the detention of Mr. **Chen Wuquan**.

Mr. Chen Wuquan is an environmental defender and human rights lawyer, known for working on cases involving land appropriation and religious freedom.

According to the information received:

*Mr. Chen Wuquan*

In October 2017, Mr. Chen Wuquan initiated the “War to Protect the Sea” campaign, following the alleged illegal land appropriation and reclamation by the

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<sup>1</sup> Further information about the communication procedure is available at:  
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Donghai Investment Company, in tidal zones adjacent to his village. The Donghai Investment Company has reportedly been fined RMB 2.9 billion by the Ocean and Fishery Bureau of the Zhanjiang City because of this unauthorised activity. Despite this sanction, the company has continued its illegal reclamation operation. In response, Mr. Chen Wuquan demanded government action and urged villagers to mobilise through the “War to Protect the Sea” campaign aiming at defending the areas.

On 25 December 2017, armed police and other law enforcement agents reportedly numbering in the hundreds intervened against the “War to Protect the Sea” campaign, tearing up vegetation planted as a tide-break and detaining villagers.

On 9 February 2018, Mr. Chen Wuquan, and six others, were summoned by Zhanjiang City Dongshan Town Comprehensive Letters and Visits Center and interrogated for “obstructing public works”. One of the seven was released after being questioned. However, Mr. Chen Wuquan was taken into custody along with the five others.

On 11 February 2018, Mr. Chen Wuquan’s family was notified by the Zhanjiang City Public Security Bureau that he had been detained in Mazhang District Detention Centre on grounds of “picking quarrels and provoking troubles”. On 16 February 2018, his detention was formally confirmed.

Serious concern has been expressed to the Government of China over the alleged arrest, detention and criminal prosecution of Mr. Chen Wuquan, for reasons ostensibly related to his campaign against the adverse impacts of the Donghai Investment Company’s activities on human rights. We have expressed further serious concern over the alleged arrest, detention and criminal prosecution of five others involved in the “War to Protect the Sea” campaign and fear that such arrests represent a deliberate criminalisation of the activists for exercising their rights to freedom of peaceful assembly and of association, as well as their rights to freedom of expression and opinion.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your company to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above, as detailed in the **Annex on Reference to international human rights law** attached to this letter.

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 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 provide information as to what human rights due diligence has been undertaken by Donghai Investment operating in Guangdong, Zhanjiang,

Mazhang to identify, prevent, mitigate and address adverse human rights impacts related to this case, as set forth in the U.N. Guiding Principles on Business and Human Rights.

3. Please also provide information as to what steps Donghai Investment has undertaken to provide the impacted parties with access to an effective remedy, as set forth in the UN Guiding Principles on Business and Human Rights.

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.

We wish to inform you that a letter dealing with similar allegations and concerns has also been sent to the People's Republic of China's Government.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept the assurances of our highest consideration.

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

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

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

In connection with above alleged facts and concerns, we would like to draw the attention of the Donghai Investment to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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), 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.

Principles 11 to 24 and Principles 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. Moreover, the commentary of Principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes."

The Guiding Principles have identified two main components to the business responsibility to respect human rights, 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 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 (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).

Finally, the Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

We would also like to draw your attention to articles 3, 9, 13, 19 and 20 of the Universal Declaration on Human Rights (UDHR) which guarantee the rights to life, liberty and security of person, the right not to be subjected to arbitrary arrest or detention, and the rights to freedom of movement, opinion and expression and assembly and association.

We would also like to draw your attention to the Basic Principles on the Role of Lawyers, which stipulate that governments have the duty to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and that lawyers shall not suffer, or be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics (Principle 16).

We would like to refer to the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5(b) and 9 paragraph 3(c) which provide for the rights to promote and to strive for the protection and realization of human rights and fundamental freedoms, to form, join and participate in associations or groups, and to offer and provide professionally qualified legal assistance in defending human rights.