

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the right to food; and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences**

REFERENCE:  
AL CHN 9/2018

22 May 2018

Excellency,

We have the honour to 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 implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the right to food; and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 35/7, 36/15, 33/9, 32/8 and 33/1.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged human rights violations resulting from exposure of workers including children, to toxic chemicals while working in tobacco farms in Zimbabwe, specifically in Mashonaland West, Mashonaland Central, Mashonaland East, and Manicaland.**

According to the information received:

In 2005, China National Tobacco Corporation (China Tobacco) began to invest in the tobacco industry in Zimbabwe through its subsidiary, Tian Ze Tobacco Company (Private) Limited (Tian Ze). China Tobacco's main tobacco sources are state-owned companies in Zimbabwe, Brazil, and the United States. Tian Ze is a state-owned enterprise from Yunnan Province, People's Republic of China, registered and operating in Zimbabwe. Tian Ze operates a contract farming scheme in Zimbabwe, where the company lends inputs such as fertilizer, seeds and pesticides to a farmer in return for the crop grown. In 2017, there were 195 agricultural workers contracted by Tian Ze to grow tobacco in Zimbabwe.

Zimbabwe is the largest producer of tobacco leaf in Africa and the world's sixth-largest producer of flue-cured tobacco. In 2000, following land reform, the tobacco industry transformed from its then characteristic large-scale farming to include increased small-scale farming. Large-scale farming employs high levels of mechanization, overhead and drip-line irrigation, and permanent wage labor. Small-scale farms are characterized by basic

equipment, including ox ploughs and carts, hand sprayers, barns for curing tobacco, and baling equipment.

The majority of tobacco is grown in Mashonaland West, Mashonaland Central, Mashonaland East, and Manicaland. Tobacco production accounts for a significant part of the agriculture labor market, with tens of thousands of small-scale farmers, and thousands of hired workers on tobacco farms relying on tobacco cultivation for their livelihoods. Seasonal sales for 2017 indicate total revenue from auction and contract sales in Zimbabwe valued at USD 559 million from an area of approximately 80,000 hectares of planted tobacco, illustrating the significant contribution of tobacco production to the economy of Zimbabwe.

In 2018, there are approximately 100,000 registered tobacco farmers, comprising both large-scale and small-scale farmers. It is alleged that workers involved in tobacco production in Zimbabwe face serious health and safety risks. Workers have insufficient information, training, and equipment to protect themselves from exposure to pesticides and other toxic chemicals. Reports of workers hired on large-scale farms suggest that many workers, including some children, are coerced into working hours that are in excess of agreed time without overtime compensation. Some workers are denied their wages and forced to go weeks or months without pay. Workers who have refused to work overtime without additional pay have allegedly been dismissed or have been threatened with dismissal.

Chronic exposure to a myriad of toxic chemicals implicated by tobacco farming poses serious risks to human life and health. Tobacco farming can result in the exposure of workers to nicotine and toxic pesticides. Workers reportedly suffer from nausea, vomiting, loss of appetite, stomach pain, headaches, dizziness, skin irritation (particularly of the face), chest pain, blurred vision, eye irritation, respiratory irritation, and other symptoms of Green Tobacco Sickness (GTS), a type of nicotine poisoning that occurs while handling tobacco plants. Some of these adverse health impacts are reportedly developed from the application of pesticides on the tobacco farms. Long-term and chronic health effects of pesticide exposure include respiratory problems, cancer, depression, neurologic deficits, and reproductive health problems. Furthermore, nearby communities also report similar adverse health impacts from the use of pesticides on the tobacco farms.

It is reported that neither government officials nor company representatives have provided workers with adequate information about nicotine poisoning and pesticide exposure, or with sufficient training or comprehensive education to protect themselves. Some workers reportedly are not provided with, and often lack the means to procure equipment necessary to protect themselves, despite legal provision requiring employers to ensure that workers handling hazardous substances, including pesticides, are informed about the risks of the

work, and provided with proper protective equipment. Furthermore, there is insufficient information among nearby communities about pesticides used on the farms, which has direct bearing on the ability of these communities to make informed decisions and participate in public debates regarding risks to their health from contamination of the air, water and soil.

### *Children*

It is alleged that in the tobacco industry in Zimbabwe children are involved in work on farms and other parts of the production process and do so in hazardous conditions, often performing tasks that threaten their health and safety or interfere with their education. During the labor-intensive planting and harvesting seasons, high rates of absenteeism are recorded in schools near tobacco farms as children are engaged in work either as individuals or as part of their families. It tends to be the poorest and the most vulnerable people in rural areas that work as agricultural workers. A lack of social protection and minimum living conditions force parents to bring their children to work with them. Pre-set production volumes further force families to employ their children in order to reach these pre-set targets.

Children are exposed to pesticides while working on tobacco farms in Zimbabwe. Some children mix, handle, or apply pesticides directly. Others are exposed when pesticides are applied to areas close to where they were working, or by re-entering fields that had been very recently sprayed. Many of these children fall ill immediately after having contact with pesticides. Children are particularly vulnerable to the adverse health effects of exposures to toxic chemicals. Not only is a child's developing body more sensitive and vulnerable to toxic exposures, but children also ingest higher concentrations of toxic chemicals into their bodies than adults.

The exposure of children to pesticides has been associated with long-term and chronic health effects including respiratory problems, cancer, depression, neurologic deficits, and reproductive health problems. Due to the possible neurological effects of chronic exposure to pesticides and nicotine, these children may suffer neurodevelopmental impacts which could also reduce their capacities to pursue education. Children work long hours handling green or dried tobacco leaves and as a result suffer specific symptoms associated with acute nicotine poisoning and pesticide exposure. The symptoms of GTS are clearly visible in child laborers, and monitoring systems are inadequate to detect health impacts of chronic exposure to pesticides and other toxic chemicals.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reports of alleged infringement and violation of fundamental human rights to life, to health, and to access to information. Serious concern is expressed at reports that your Excellency's Government is failing to meet its international human

rights obligations to protect the rights of children and the rights of workers in the tobacco industry. This is underscored by the obligation under the international human rights framework for your Excellency's Government to protect against human rights abuse within its territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 on existing measures, including policies, legislation, and regulations your Excellency's Government has put in place to ensure that the company implements its responsibility to respect human rights.
3. Please provide information on additional steps taken by your Excellency's Government to protect against human rights abuses by this company as a state owned enterprise, including by requiring human rights due diligence, as set forth by the UN Guiding Principles on Business and Human Rights.
4. Please indicate specific initiatives taken to ensure that those affected by business-related human rights abuse within your jurisdiction and/or territory have access to effective remedy, in accordance with the UN Guiding Principles on Business and Human Rights.

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

Please be informed that a letter on the same subject has also been sent to the Government of Zimbabwe, the Government of Germany, the Government of Japan, the Government of Switzerland, the Government of the United Arab Emirates, the Government of the United Kingdom, the Government of the United States of America, and other allegedly involved companies, including China National Tobacco Corporation (China Tobacco).

We may publicly express our concerns in the near future as, in our view, the information upon which the press release would 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 would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, 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

Baskut Tuncak  
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Hilal Elver  
Special Rapporteur on the right to food

Urmila Bhoola  
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

**Annex**  
**Reference to international human rights law**

In connection with the alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Rights of the Child;
- The International Labour Organization Conventions;
- The World Health Organization Framework Convention on Tobacco Control;
- The Strategic Approach to International Chemicals Management Comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action; and
- The UN Guiding Principles on Business and Human Rights.

We wish to draw attention to your Excellency's Government's obligations under international human rights instruments to guarantee the right of every individual to life, liberty and security and not to be arbitrarily deprived of life, recalling Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), noting that your Excellency's Government signed the ICCPR on 5 October 1998.

In addition, Article 6 of the Convention on the Rights of the Child (CRC), which your Excellency's Government ratified on 2 March 1992, recognizes that every child has the inherent right to life and requires States parties ensure to the maximum extent possible, the survival and development of the child. It further requires States Parties to take all effective and appropriate measures to diminish infant and child mortality.

We would like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency's Government on 27 March 2001, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also guaranteed as a part of the UDHR Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting health of the individual, and in terms of health services. Also, Article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health and to facilities for the treatment of illness and rehabilitation of health, and further mandated that States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to among other objectives, "ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care".

Reference is made to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) which describes the normative content of Article 12 and the legal obligations undertaken by the States Parties to the ICESCR to respect, protect and fulfil the right to health. In paragraph 11 of General Comment No. 14, the CESCR interprets the right to health as “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information”.

Also, the CESCR in General Comment No. 14 indicates that States are required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose, they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil (para. 36). In relation to the right to healthy natural and workplace environments, General Comment No. 14 provides that improvement of all aspects of environmental and industrial hygiene comprises, inter alia, “preventive measures in respect of occupational accidents and diseases” and “the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health” (para 15).

In addition, the CESCR notes that “violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health, e.g. by employers and manufacturers of medicines or food...” (para 51).

Further, we would like to draw the attention of your Excellency’s Government to Article 24 of the CRC, which recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health and to facilities for the treatment of illness and rehabilitation.

We wish to draw the attention of your Excellency’s Government to Article 7 of the ICESCR, enshrining the right of everyone to the enjoyment of just and favorable conditions of work, including safe and healthy working conditions. General Comment No.14 of the CESCR provides that the improvement of all aspects of environmental and industrial hygiene comprises, inter alia, “preventive measures in respect of occupational accidents and diseases [and] the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”.

With particular reference to children, we would like to highlight Article 32 of the CRC which mandates States Parties to recognize the right of the child to be protected

from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. In this connection, States Parties are required to take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties are called upon in particular to provide for a minimum age or minimum ages for admission to employment; provide for appropriate regulation of the hours and conditions of employment; and provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

We would like to refer your Excellency's Government to Article 18 of the World Health Organization (WHO) Framework Convention on Tobacco Control ratified by your Excellency's Government on 11 October 2005, which provides that Parties shall have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories. In addition, reference is made to the International Labour Organization (ILO) Convention No. 182 (C182), to which your Excellency's Government ratified on 8 August 2002. In particular, Article 3(d) of ILO Convention 182 enshrines the right of the child to be protected from hazardous work "which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children." Further, according to Recommendation (No. 190), 1999 supplementary to ILO Convention 182, hazardous work includes "work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes ... damaging to their health; and work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer" (para 3).

In relation to the right to food, we would like to draw the attention of your Excellency's Government to Article 25 of the UDHR, 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." Furthermore, Article 11(1) of the 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."

The CESCR has further defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfill the right to food. The CESCR considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility.



The obligation to respect existing access to adequate food requires States Parties not to take any measures that result in preventing such access. The obligation to fulfill (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly.

The CESCR states that especially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food (E/C.12/1999/5, para. 13). Also, as a State Party to the ICESCR, Zimbabwe has an immediate minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights including the right to food (CESCR, General Comment 3, para.10).

We wish to appeal to your Excellency's Government to take all necessary steps to secure the right to information. We would like to refer your Excellency's Government to the fundamental principles laid down in Article 19 of the UDHR, and Article 19(2) of the ICCPR which guarantee the right to "seek, receive and impart information" as part of the right to freedom of expression. Also, Articles 13 and 24(d) of the CRC provide respectively that "the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice" and create an obligation for States Parties to "ensure that ... parents and children, are informed, have access to education and are supported in the use of basic knowledge of ... hygiene and environmental sanitation and the prevention of accidents". Further, Article 28 of the CRC provides for the right of children to education, and requires States Parties to, among other obligations, "take measures to encourage regular attendance at schools and the reduction of drop-out rates".

The right to information derives from the freedom of expression. However, the right to information has been recognized as a right in and of itself and one of the rights upon which free and democratic societies depend (E/CN.4/2000/63, para. 42). Access to information is a prerequisite to the protection of human rights, including worker rights, from hazardous substances, to public participation in decision-making and for monitoring governmental and private-sector activities. Public participation in decision-making is based on the right of those who may be affected to speak and influence the decision that will impact their basic human rights.

We would like to call the attention of your Excellency's Government to the importance of the right to information about hazardous substances to the general public, as emphasized in the Human Rights Committee's (HRC) Report of the Special Rapporteur (A/HRC/30/40) in paragraphs 7, 8 and 48, as well as in the HRC's General Comment No. 34 concerning Freedoms of Opinion and Expression (para.19). In addition, we would like refer your Excellency's Government to the HRC's General Comment No. 34 concerning Freedoms of Opinion and Expression. Paragraph 18 and 19 of General

Comment No. 34 indicates that the right to access to information includes “access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.” Also, Article 20(4) of the WHO Framework Convention on Tobacco Control provides that Parties shall, subject to national law, promote and facilitate the exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco...”

In order to fully realize the right to information for transparent public institutions, implementation through frameworks for measuring, monitoring, reporting and verification of information are necessary for Governments to ensure accountability on their obligations. States should ensure collection and proper management of information on working conditions, exposure levels, contamination, and long-term health implications of exposure to chemicals including toxic pesticides, especially with regard to workers and communities living near areas of use. In this connection, we wish to refer your Excellency’s Government to General Comment No. 14 of the CESCR provides that States should establish and maintain mechanisms to monitor implementation of policies and plans towards achieving the right to health (para 56). General Comment No. 15 of the Committee on the Rights of the Child provides that States should regulate and monitor the environmental impact of business activities that may compromise children’s right to health. Maintaining disaggregated information is necessary to understand specific events in the realization of the impact of particular actions on various groups including workers and children. The CESCR has in relation to various country evaluations recommended States to improve national statistics and data collection and disaggregation.

We wish to draw the attention of your Excellency’s Government to the Strategic Approach to International Chemicals Management comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action, to which your Excellency’s Government nominated a focal point, under which parties state that they are “determined to implement the applicable chemicals management agreements to which we are Party, strengthen the coherence and synergies that exist between them and work to address, as appropriate, existing gaps in the framework of international chemicals policy” (clause 8, Dubai Declaration) and “commit ... to respecting human rights and fundamental freedoms, understanding and respecting ecosystem integrity and addressing the gap between the current reality and our ambition to elevate global efforts to achieve the sound management of chemicals” (clause 10, Dubai Declaration). Paragraph 10 of the Global Action Plan identifies measures to strengthening knowledge and information, and in so doing promote achievement of the right to information in relation to chemicals, to include “stepped-up monitoring of the impacts of chemicals on health and the environment, harmonized risk assessments, efforts to implement the Globally Harmonized System of the Classification and Labelling of Chemicals, and the development and publication of national pollutant release and transfer registers”.

We would like to refer your Excellency's Government to Article 10 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, ratified by your Excellency's Government on 17 December 1991, which requires States to cooperate in monitoring the effects of the management of hazardous waste on human health and the environment; and to Articles 9 to 11 of the Stockholm Convention on Persistent Organic Pollutants, ratified by your Excellency's Government on 13 August 2004, which provides for collection and dissemination of information on persistent organic pollutants and their effect on human health and the environment, as well as implementation of public awareness programs for various categories of society including workers in general and children in particular.

Finally, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. 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."

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." This obligation requires that a State takes appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." In addition, this requires, inter alia, that a State should "provide effective guidance to business enterprises on how to respect human rights throughout their operations; encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts". (Guiding Principle 3).

The Guiding Principle 4 and its commentary also underline that "where a business enterprises is controlled by the State an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations". Given this responsibility, the "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, including, where appropriate, by requiring human rights due diligence".

The Guiding Principle 25 notes that “as part of their duty to protect against business-related human rights abuse, State must take appropriate steps to ensure (...) that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. The 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 cause or contributed to adverse impacts. The commentary of the Guiding Principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties.(...) The Guiding Principles a business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

In addition, the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017) states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.”.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.