

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 OTH 27/2018

22 May 2018

Dear Mr. Ling Chengxing,

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.

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.¹ 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, allegation letters, and other communications. The intervention may 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 of your company 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, and the alleged responsibility of your company as one involved in tobacco farming in Zimbabwe.**

According to the information received:

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

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 in your company's supply chain. Serious concern is addressed to reports that your company is failing to meet its international human rights obligations to protect the rights of children and the rights of workers in the tobacco industry.

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 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 your company to prevent, identify and remedy the adverse human rights impacts of the activities of businesses in your supply chain in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please provide information on steps taken by your company to provide for effective remedy or cooperate in remediation of adverse human rights impacts, which they have caused or contributed to, through legitimate processes, as set forth in the UN Guiding Principles on Business and Human Rights.
4. Please provide information on existing measures including policies your company has put in place to ensure occupational health and safety and the protection of workers in your supply chain from pesticides, industrial chemicals and other hazardous substances.

5. Please indicate specific initiatives taken to ensure the protection of agricultural workers in your supply chain exposed to hazardous substances. Please also indicate specific policies if any, relating to the handling and exposure of toxic chemicals and other hazardous substances in relation to agricultural workers in your supply chain. Please specify any measures your company has taken to ensure that workers in your supply chain are fully informed about the chemicals and other hazardous substances they handle or could potentially be exposed to and on the required precautions to avoid and respond to exposure.
6. Please provide information on any mechanisms or initiatives by your company in relation to data collection, measuring, monitoring, reporting and verification of information on health of workers in your supply chain and nearby communities, as well as on contamination of water, air, soil, and food.
7. Please indicate particular measures your company has put in place to uphold international human rights obligations to protect children from the worst forms of child labor including addressing work of children in an unhealthy environment where they are exposed to hazardous substances, agents or processes.

We would appreciate receiving a response within **60 days**. Your company'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 the People's Republic of China, 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 companies allegedly also involved.

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 company to clarify the issue/s in question.

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

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 above alleged facts and concerns, we would like to draw your attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The UN Guiding Principles on Business and Human Rights; and
- The UN Global Compact principles.
- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;

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.

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 caused 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".

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).

We wish to draw your company's attention to Article 7 of the International Covenant on Economic, Social and Cultural Rights (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 Committee on Economic,

Social and Cultural Rights (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”.

The CESCR has previously also stated that “corporate activities can adversely affect the enjoyment of Covenant rights”, including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the “obligation of State Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities” (E/C.12/2011/1, para. 1). Particularly, business enterprises are required to respect the right of everyone to the enjoyment of the highest attainable standard of physical and mental health enshrined by ICESCR Article 12. The CESCR describes the normative content of Article 12 of ICESCR in General Comment No. 14, noting that the private business sector has responsibilities regarding the realization of the right to health (para. 42).

In addition, reference is made to the International Labour Organization (ILO) Convention No. 182 (C182). In particular, Article 3(d) of C182 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).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.