

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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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; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 35/7, 37/8, 35/15, 32/32, 36/15, 34/5, 33/12 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of kidnapping and threats against the human rights defenders **Mr. Yaku Pérez Guartambel**, **Mr. Mario Gonzalo**, **Mr. Fárez Ramon**, **Mr. Víctor Hernández Siavichay** and **Mr. Manuel Gayllas**, due to their work defending indigenous people rights and the rights to health environmental and to safe water in the context of a China-based mining company activities, Junefiled Mineral Resources Holding Limited.

According to the information received:

The Ecuadorian company Ecuagoldmining South America SA, was established in 2015 in Cuenca by the Chinese investment company, Junefiled Mineral Resources Holding Limited. It operates the "Río Blanco" gold-silver mining, which covers an area of 3,308ha located at 3,900 meter high. The exploitation of the project began in 2017.

Mr. Yaku Pérez Guartambel is an indigenous leader and the President of the Confederation of Peoples of Kichwa Nationality from Ecuador (ECUARUNARI), an organization that promotes indigenous peoples' rights and the protection of

human rights defenders in Ecuador. Mr. Mario Gonzalo, Mr. Fárez Ramón, Mr. Víctor Hernández Siavichay, Mr. Manuel Gayllas and Mr. Yaku Pérez Guartambel are members of the Federation of peasant and indigenous people's organizations of the Azuay (FOA). This organization supports indigenous communities of Río Blanco in Molleturo, which are opposed to the mining activities of Ecuagoldmining South America S.A, due to the contamination the project could cause and the adverse impact it could have on the rights to health, to environment and to safe and accessible water. It is also alleged that participatory mechanisms have not been installed in potentially affected communities in the context of the project. No free, prior and informed consultation processes have been held to get the consent of indigenous peoples living in the areas.

On May 9, 2018, at around 7.30 a.m., a group of people linked to Ecuagoldmining South America S.A arrested Mr. Guartambel, Mr. Gonzalo, Mr. Ramón, Mr. Siavichay and Mr. Gayllas while they were driving to the community of Río Blanco in Molleturo. This group of people broke the windshield and busted the tires of the vehicle, accusing Mr. Guartambel of being responsible for setting fire in the mining site of Rio Blanco.

The perpetrators of the assault pushed the vehicle until the Cochapamba School. They urged Mr. Guartambel to get out of the car, and started to beat him, to spit on him, pulling his hair and forcing him to get undressed, while they threatened him with "crucifying him and burning him alive", in the presence of schoolchildren. Subsequently, the perpetrators forcedly brought the defenders to a house, where they were continuously threatened.

At approximately 2.30 p.m., following the intervention of the residents of Molleturo village, the authors of the attack were forced to release the defenders under the condition that the human rights defenders would not "return to Molleturo and would not oppose to the mining projects in the area". The authors of the attack added the defenders would be burnt alive if they do not comply with these requirements.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the alleged kidnapping, threats and aggressions against Mr. Guartambel, Mr. Gonzalo, Mr. Ramón, Mr. Siavichay and Mr. Gayllas, allegedly perpetrated by individuals related to the China-Based company Junefield Group SA. There are reasonable grounds to believe that these attacks could be directly linked to the human rights defenders' legitimate and peaceful work in defense of human rights, which would be compromised by China's mining projects "Río Blanco" in Molleturo. This is underscored by the obligation under the international human rights framework for your Excellency's Government to protect against human rights abuse that occur outside their territories caused by, contributed to or linked to the activities of business enterprises domiciled in their territory and/or jurisdiction. 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 the measures taken by your Excellency's Government to protect against human rights abuse that occur outside their territories caused by or contributed to or linked to the activities of business enterprises domiciled in their territory and/or jurisdiction, including (i) setting forth a clear expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their business operations (ii) ensuring that those affected have access to effective remedy.
4. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work, and exercise their rights to freedom of expression, freedom of peaceful assembly and freedom of association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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.

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 be informed that a letter on the same matter has also been sent to the Government of Ecuador, as well as the involved companies.

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

John H. Knox
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a
safe, clean, healthy and sustainable environment

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Annex

Reference to international human rights law

In connection to claims, and does not imply, in advance, a conclusion on the facts, we'd like to draw the attention of the Your Excellency's Government on standards and international standards applicable to the issues stated above.

We would like to refer to articles 6, 9, 19, 21 and 22 of the International Covenant on Civil and political rights (ICCPR), signed by Your Excellency's Government on 5 October 1998, that establish the rights to life, to liberty and security person, to freedom of opinion and expression, to freedom of peaceful assembly and to freedom of association.

We would like to remind Your Excellency's Government the General Comment No. 35 of the Human Rights Committee, which states that the right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. The right to personal security also requires States to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury.

We also wish to draw the attention of Your Excellency's Government the fundamental standards set forth in the United Nations Declaration on the right and responsibility of individuals, groups and institutions to promote and protect human rights and the universally recognized fundamental freedoms. In particular, would like to refer to items 1 and 2 which provide that everyone has the right to promote and ensure the protection and realization of human rights and fundamental freedoms in the planes national and international and that each State has the prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

In addition, article 12, paragraphs 2 and 3, stipulates that the State shall guarantee the protection of all persons against any violence, threat, retaliation, discrimination, negative in fact or in law, pressure or any other arbitrary action resulting from the exercise legitimate rights referred to in the present Declaration.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007. Article 7 of the UNDRIP provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. Article 26 states for the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and for legal recognition of those rights 'with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.' Furthermore, the article 32 provides that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own

representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”.

In addition, the United Nations Committee on the Elimination of Racial Discrimination in its General Recommendation No. 23 on the rights of indigenous peoples has repeatedly affirmed that discrimination against indigenous peoples is a matter that falls under the scope of the International Convention on the Elimination of all the Forms of discrimination. The Committee calls upon States parties to “provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics (4c); (...) and ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;(4d). The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources (5).”

We wish to remind to Your Excellency’s Government that in accordance with "Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework", endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, and redress such abuse through effective policies, legislation, regulations and adjudication. This requires States to "state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2).The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights.

In addition, the Committee on the Economic, Social and Cultural Rights in its General Comment 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.”.