

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 situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

REFERENCE:
AL OTH 38/2018

26 June 2018

Mr. Zhou Chu Jian,

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

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 information we have received concerning in relation to allegations of kidnapping and threats against the human rights defenders **Mr. Yaku Pérez Guartambel, Mr. Mario Gonzalo, Mr. Fárez**

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

Ramón, 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 Ramon, 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 prejudice the accuracy of these allegations, we express serious concern at the alleged kidnapping, threats and aggressions against by Mr. Guartambel, Mr. Gonzalo, Mr. Ramón, Mr. Siavichay and Mr. Gayllas, allegedly by people related to your company. The reasons for these attacks would be directly linked to the human rights defenders legitimate and peaceful work in defense of human rights, which would be compromised by you mining projects “Río Blanco” in Molleturo.

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 any human rights due diligence that may have been undertaken by your company to prevent, identify and remediate the adverse human rights impacts of the activities of businesses of your affiliates in accordance with the UN Guiding Principles on Business and Human Rights. Please provide information on steps taken by your company to establish any company-level grievance mechanisms to address adverse human rights impacts caused by your company and affiliates and to deal with the concerns of affected communities.
3. Please provide information on any steps taken by your company to identify, prevent, mitigate and remediate any adverse impact on the human rights of people living in the proximity of your company’s areas of activity, and in particular on the rights of indigenous peoples. Please provide information on the nature and extent of participatory mechanisms and consultation processes conducted with potentially affected community members, including indigenous people living in the project areas. If no consultations or dialogues were initiated, please explain why.
4. Please provide detailed information on any measures your company has taken to prevent and account for any allegations of kidnaping, intimidation and harassment of Ms Yaku Pérez Guartambel, Mario Gonzalo, Fárez Ramón, Víctor Hernández Siavichay and Manuel Gayllas by people related to your affiliates.

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.

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 subject has also been sent to the Governments of Ecuador and China and to the company Ecuagoldmining South America SA.

Please accept, Mr. Zhou Chu Jian, 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

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

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

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 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), after years of consultations involving governments, civil society and the business community.

The Guiding Principles have been established as the global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights. "The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (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).

To fulfill their responsibility to respect human rights, business enterprises should have in place:

- “(a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute."(15 guiding principle)

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 China 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 you the General Comment No. 35 of the Human Rights Committee, which States that the right to personal security protects persons against physical or psychological injuries inflicted in a deliberate way e, regardless of whether the victim whether or not deprived of liberty. The right to personal security also requires

States parties to take appropriate measures against threats of death against persons of the public sphere and, more generally, to protect the people from foreseeable threats against life or physical integrity from any State or private agent. States parties shall take measures both to prevent future injuries as retrospective measures such as the application of criminal law, in response to injury as inflicted.

We also wish to draw your attention 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.

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”.