

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 the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on minority issues

REFERENCE:
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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; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 35/7, 37/8, 34/18, 32/32, 34/5 and 34/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the excessive use of police force against Tibetan environmental human rights defenders participating in a peaceful protest against mining operations in Kham Yushul, Yushul Tibetan Autonomous prefecture, Qinghai Province.**

Several recent communications and a press release raised concerns about allegations of violations of Tibetans' fundamental rights. These previous communications raise particular concerns that violations of the civil and political rights of Tibetans tend to be inter-related with overarching violations of their economic, social and cultural rights. In this regard, we would like to refer to the communications of 10 February 2017 and 16 February 2018 on the arbitrary detention of Mr. Tashi Wangchuck, a Tibetan language defender, which also raised broad concerns about discrimination against the Tibetan minority. Particular concerns were raised about violations of the Tibetans' rights to freedom of opinion and expression and the full exercise of their economic, social and cultural rights. We acknowledge your Excellency's Government's response of 27 March 2017 to the communication of 10 February 2017 but regret that the reply failed to address how restrictions on Tibetans, such as Mr. Wangchuck, comply with international human rights norms. We further regret the lack of a reply to the communication of 16 February 2018. UN human rights experts amplified their concerns for Mr. Wangchuck, and general discrimination against the Tibetans, in a [press release](#) dated 6 June 2018 on the sentencing of Mr. Wangchuck to five years in prison.

According to the information received:

On 7 July 2018, Chinese police allegedly resorted to excessive use of force to violently disperse a peaceful protest involving approximately 100 Tibetan environmental human rights defenders who were demonstrating against alleged environmentally-harmful mining activities in Kham Yushul, Yushul Tibetan Autonomous prefecture in Qinghai Province. Police allegedly assaulted protesters and used tear gas to disperse the crowd. Several protesters were reportedly left unconscious, with at least one protester hospitalised as a result of injuries sustained from the beatings and tear gas.

Approximately 60 local residents reported the excessive use of force by the police to the provincial authorities and appealed to them to intervene. However, the authorities allegedly did not respond.

The protest was organised in opposition to mining activities in the Tibetan plateau which allegedly lack the free, informed and prior consent of the local population and are harming the environment by polluting major rivers. The authorities allegedly neglected to accurately inform the local population about the mining activities by initially claiming that the digging was for the purpose of a road building initiative.

While we do not wish to prejudge the accuracy of these allegations, we would like to raise our concerns about the excessive use of police force and violence in order to disperse Tibetan environmental rights defenders engaging in peaceful protests. We are particularly concerned that the actions of the police were a disproportionate and direct retaliation against the environmental rights defenders legitimate exercise of their rights to peaceful assembly and association. In addition, we wish to express our serious concern over the negative impact of certain reported types of developmental projects in Qinghai Province on the right of people, and in particular of members of the Tibetan minority, to an adequate standard of living.

We express wider concerns about the repression of the Tibetan community's human rights and fundamental freedoms, including freedom of opinion, expression, assembly and association, as well as alleged violations of their economic, social and cultural rights. In this regard, we echo the concerns expressed in the aforementioned press release of 6 June 2018 which reiterated that "Governments should under no circumstances undermine or repress legitimate human rights advocacy and action (...)" while reminding the People's Republic of China of previous requests for further information on specific measures being taken to promote and protect the human rights of the Tibetan minority.

Furthermore, we wish to echo concerns raised by the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, in his opening statement and global update of human rights concerns at the 38th session of the Human Rights Council on 18 June 2018. In relation to the rights of the Tibetans, the High Commissioner warned that in the Tibetan Autonomous Region, the "human rights situation is reportedly fast deteriorating."

In addition, in his opening statement to the 36th Session of the Human Rights Council in September 2017, the UN High Commissioner for Human Rights commended China's emphasis on "the contribution of development to the enjoyment of all human rights" but suggested that it "should include a greater focus on vulnerable groups, in particular among the Tibetan, Uyghur and other marginalised populations." We would like to reiterate this call in light of the allegations in this communication.

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 on any investigation into the violence and excessive use of force allegedly exercised by the police in order to disperse the protest. If no investigation is underway or if it is inconclusive, please explain why.
3. Please inform us why the authorities allegedly failed to respond when local residents reported the police violence.
4. Please provide further information on the allegations that the authorities neglected to inform the local population of the planned mining activities, claiming instead that the digging was for road construction.
5. Please provide information on measures taken by the Government to hold consultations with the local populations, in particular with the Tibetan minority, potentially affected by the mining activities? If so, please indicate when the consultations were held, who participated in them, and what steps the Government has taken to integrate the results of the consultations into the decision-making process?
6. Please provide details on the measures taken by the Government to ensure that pollution caused by the mining activities does not interfere with the full range of potentially affected human rights including the rights to water, health, and a safe, clean, healthy and sustainable environment?
7. Please indicate what measures have been taken to ensure that the Tibetan minority is able to exercise its rights to freedom of association and economic, social and cultural rights in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

8. Please specify in this context how the development is contributing to the enjoyment of the affected community's human rights and the steps which are being taken to ensure the Tibetans' free and meaningful participation in development projects affecting their communities and livelihood.
9. Please advise about the steps taken by the Government to ensure that business enterprises respect human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.
10. Please indicate what steps have been taken to ensure that people who have been violently repressed by the Police and people who may be affected by the mining activities are compensated and have access to effective remedy.

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 accept, Excellency, the assurances of our highest consideration.

Dante Pesce

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

David Kaye

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Fernand de Varennes

Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We would like to refer to articles 19, 21, 22 and 27 of the International Covenant on Civil and political rights (ICCPR), signed by Your Excellency's Government on 5 October 1998, that establishes the rights to freedom of opinion and expression, freedom of peaceful assembly and to freedom of association, as well as the right of persons belonging ethnic, religious or linguistic minorities, to enjoy in community with the other members of their group, their own culture, to profess and practice their own religion, or to use their own language. We would like to refer your Excellency's Government to article 20 of the Universal Declaration of Human Rights (UDHR) which guarantees that everyone has the right to freedom of peaceful assembly and association.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which China has been a party since 27 March 2001, establishes in article 1 that "all peoples (...) may "freely pursue their economic, social and cultural development", and in article 12 the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

We would like to refer also to the Human Rights Council resolution 31/32 which in paragraph 10 underlines the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples. The Council also recognized the important and legitimate role of human rights defenders in identifying and raising awareness of human rights impacts, the benefits and risks of development projects and business operations, including in relation to workplace health, safety and rights, and natural resource exploitation, environmental, land and development issues, by expressing their views, concerns, support, criticism or dissent regarding government policy or action or business activities, and underlined the need for Governments to take the measures necessary to safeguard space for such public dialogue and its participants.

We also wish to remind your Excellency's Government of the obligations to respect of the right to equality without discrimination enshrined in article 7 of the UDHR and in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which China acceded to on 29 December 1981.

Furthermore, we would like to draw the attention of your Excellency's Government to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities. In its article 1.1, the Declaration requires that States protect the existence and the national or ethnic, cultural or religious identity of minorities within their respective territories and encourage

conditions for the promotion of that identity. Article 2.1, stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, and in article 2.2, persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a 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 also wish to refer to the Framework Principles on human rights and the environment of the Special Rapporteur on human rights and the environment (A/HRC/37/59, annex), which summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Namely, the Framework Principle 1 provides that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights. In the same vein, Principle 2 reiterates that States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment. Principle 4 holds that States should provide a safe and enabling environment in which human rights defenders that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence. Principle 8 reaffirms that, to avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.

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" (UNGP), endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business

enterprises. This requires taking appropriate steps to prevent, investigate, and redress such abuses through effective policies, legislation, regulations and adjudication. The Guiding Principle 3 notes that “in meeting their duty to protect, State should (...) b) Ensure that laws and policies governing the creation and ongoing operation of business enterprises do not constrain but enable business respect for human rights.

The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate, as set forth by the UNGP. 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).

The Guiding Principles also recognize the important and valuable role played by independent civil society organisations 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.