



TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 27 September 2018

A/TO: His Excellency
Mr. Jianhua Yu
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
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REF: AL CHN 18/2018

PAGES: 13 (Y COMPRIS CETTE PAGE/INCLUDING THIS PAGE)

OBJET/SUBJECT: **JOINT COMMUNICATION FROM SPECIAL PROCEDURES**

Please find attached a joint communication sent by the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the situation of human rights in Cambodia; 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; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the human rights to safe drinking water and sanitation.

We would be grateful if this letter could be transmitted at your earliest convenience to His Excellency Mr. Wang Yi, Minister for Foreign Affairs.



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Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the situation of human rights in Cambodia; 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; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL CHN 18/2018

27 September 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 situation of human rights in Cambodia; 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; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/7, 36/32, 37/8, 34/18, 32/32, 34/5, 33/12 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged deprivation and clearance of agricultural and forest lands from at least 946 families in 25 villages of Preah Vihear Province in Cambodia due to concession of their lands to the five Cambodian subsidiaries of a China-based sugarcane enterprise, Guangdong Hengfu Group, without consultation with affected community's members, including indigenous peoples. We would furthermore like to bring attention to information received concerning the alleged judicial harassments and attacks suffered by some communities' members for raising their concerns in this context.

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His Excellency
Mr. Wang Yi
Minister for Foreign Affairs

According to the information received:

a) Context

From 1993 until 2012, the Government of Cambodia granted economic land concessions to private companies. These economic land concessions constitute long-term leases that allow the beneficiary to clear land in order to develop industrial agriculture, as stipulated by article 49 of the 2001 Land Law. Land concessions areas shall not be more than 10,000 hectares and the maximum duration is limited to 99 years, according to articles 59 and 61 of the Land Law.

As a result, out of 6.5 million hectares of arable land, about 2.7 million hectares of land are now under concession management

b) Granting of economic land concession

In 2011, 42,420 hectares of land in Preah Vihear Province were reportedly leased to five Cambodian sugarcane producers enterprises: Lan Feng International Company Limited, Rui Feng International Company Limited, Heng Non International Company Limited, Heng Rui International Company Limited and Heng You International Company Limited. These five companies are subsidiaries of a China-based enterprise, Hengfu Group Sugar Industry (hereinafter “Hengfu”). Hengfu is based in Guangdong, China. It is primarily owned by, and receives financing from, Chinese entities, both state-owned and private. It has also received loans from foreign banks, including BNP Paribas (France) and Korea Development Bank (Republic of Korea). According to the information received, the land concession was issued as follows:

- Lan Feng International Company Limited was granted an area of 9,015 hectares in Prame commune and To Su commune.
- Rui Feng International Company Limited was granted 8,841 hectares in Mlu Prey Muoy, Mlu Prey Pir and Sangke Pir communes.
- Heng Non International Company Limited was granted an area of 6,649 hectares in To Su, S’ang and Putrea communes.
- Heng Rui International Company Limited was granted an area of 9,160 hectares in To Su commune and Sang Pir commune.
- Heng You International Company Limited was granted an area of 9,111 hectares in Mlu Prey Muoy, Chhep Muoy, Cchep Pir and Sangke Muoy communes.

These lands account for a total of 42,422 hectares, which exceeds significantly the legal limit of 10,000 hectares for a single entity.

These economic land concessions reportedly encroach on agricultural, grazing and forest lands of members from 25 villages in Preah Vihear Province, accounting for at least 946 families and 23,000 individuals. 731 of these families have land certificates issued by commune authorities for individual land holdings. At least seven of the 25 villages are inhabited by people who self-identify as Kui indigenous peoples. Among these communities, three communities from the villages of Boh Thom, Sre Preang and Prame are in the process of securing collective land titling.

None of the community members were consulted prior to the issuance of the economic land concession, nor for the environmental impact assessment concluded in 2016, thus infringing the relevant provisions of the Land Law (2001), the Sub Decree on the Environmental Impact Assessment Process (1999) and the Sub-Decree on Economic Land Concessions (2005).

c) Clearance and contamination of agricultural and forest lands

As a result of the economic land concessions to Hengfu for sugarcane plantations, a minimum of 76.46 hectares of land used for cultivation by 946 families from 25 villages was cleared, including rice paddies, upland fields and forest lands. Consequently, these families have lost their livelihood and the access to non-timber forest resources. They have also reportedly suffered impact on areas of cultural and spiritual significance due to the destruction of ancient temples and the deforestation of sacred forests. Moreover, they have also suffered from the destruction of ponds¹ and the contamination of streams and rivers (O Preal, O Popoam and Stung Sen river) due, reportedly, to the waste and chemicals used on the sugarcane fields. These ponds and river were sources of water used for human consumption and water crops. The contamination of rivers and ponds has also led to the loss of fish and other aquatic life that people rely on for food. Moreover, health concerns have been raised, as people complain of itchiness after bathing in some places.

It was reported that no or little compensation has been given to the affected families. The only compensation given was to families which already had titles to their land, but the compensation provided was reportedly inadequate, only a few hundred dollars per hectare of land taken. In virtue of the Leopard Skin policy, some social land concessions were granted to some communities in the Hengfu concession area. However, people who got their land titled were subsequently pressured by the company to sell it, or the company took it and then paid compensation.

¹ (Trapeang Yaeng, Trapeang Antit Pouv, Trapeang Russei, Trapeang Beng, Trapeang Sangke Thom, Trapeang Ben Kandak, Trapeang Krakah, Trapeang Ampil, Trapeang Khtom Khang Lech, Trapeang Brey Thom, Trapeang Akheum, Trapeang Snao, Trapeang Popoul, Trapeang Pring, Trapeang Thmor, Trapeang Andong, Trapeang Chakrom, Trapeang Taduong, Trapeang Chrey, Trapeang Sangke Pen, Trapeang Sangke, Trapeang Kcheay, Trapeang Tram Sosor, and Trapeang Areak.)

Following this, in May 2014 and January 2015 the communities filed complaints before the Preah Vihear Provincial Court against the companies and submitted their cases to local commune and district authorities and Preah Vihear provincial authorities to resolve land disputes.

It was also reported that the company has ceased paying rent to 45 families in Prome village from whom it has been leasing land. In addition, land titles and lease agreements have not been returned to the villagers when requested. The company stated that payments have been delayed, due to the large number of people and the ensuing time required to work on the accounting, but that the rents would be paid in June 2018.

d) Indigenous peoples and collective lands

At least seven of the 25 villages self-identify as Kui indigenous peoples.

The Cambodian Government has made progress in adopting legislative and policy frameworks supportive of the rights of indigenous peoples, including the National Policy on the Development of Indigenous communities, adopted by the Government of Cambodia in 2009, which seeks to ensure that the cultures of indigenous peoples throughout the country are safeguarded and their living conditions are approved in a consistent manner across all sectors.

In terms of collective land rights of indigenous peoples, the 2001 Land Law contains provisions on the protection of indigenous peoples' lands and allows indigenous peoples to apply for collective land titles rather than individual titles, and prevents the sale and transfer of indigenous lands.

The Land Law Sub-Decree 83 establishes a three-step procedure that indigenous communities must follow in order to obtain collective land title. First, communities must apply to be recognized as indigenous communities with the Ministry of Rural Development (MRD); second, they must apply to be registered with Ministry of Interior (MoI) as legal entities; and third, they must apply to register their land collectively with the Ministry of Land, Urban Planning and Construction (MLMUPC).

In this framework, in 2010 members of the seven indigenous communities started the process of community land registration for the same pieces of lands subsequently granted to Hengfu. In 2013 the communities were all recognised as being indigenous by the Ministry of Rural Development and were registered as legal entities by the Ministry of Interior. In 2014, three communities from the villages of Boh Thom, Sre Preang and Prame submitted their application for the community land registration with the Ministry of Land, Urban Planning and Construction. In 2016, they reached the final stage of collective land titling. However, the titles have not been given yet and their request for interim protection of their communal lands has been denied.

e) Freedom of expression and assembly

Since the beginning of the operation, the affected communities have tried to organize themselves to express their concerns about these concessions and the subsequent loss of their land, spiritual and economic resources. Since 2013, they have also organized various protests to raise their concerns and call on the government for actions. In 2014, in the absence of any support from local or national authorities, the community members decided to remain on the rice fields to prevent any further clearing of their lands and they seized bulldozers and sent these bulldozers to the commune office for a solution. Land rights defenders are constantly threatened through lawsuits filed by Hengfu subsidiaries and criminal charges are allegedly misused against them to discourage them, most typically accusing them of destruction of private property, intentional violence, defamation, disinformation and incitement to commit felony. Currently, at least 14 community leaders and environmental human rights defenders have been charged for these crimes.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the alleged serious consequences on the affected communities of the concessions and the subsequent loss of their lands, resources and spiritual sites by the Cambodian subsidiaries of Hengfu, without any consultation with affected communities or provision of adequate compensation. Serious concern is raised about allegations that your Excellency's Government is failing to meet its international human rights obligations to protect the rights to food, drinking water and sanitation, culture, safe and healthy environment and the rights to the lands, territories and resources, which indigenous peoples have traditionally owned, occupied or otherwise used. This is underscored by the obligations under the international human rights framework for your Excellency's Government to protect against human rights abuse by business enterprises domiciled in its 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 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 share information about what expectations Your Excellency's Government has set for Chinese businesses operating abroad to respect

human rights abroad, especially where such businesses receive support from the State and or state-owned enterprises.

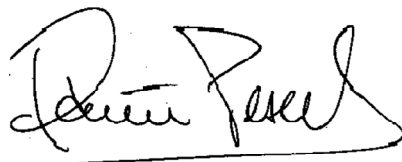
3. Please highlight the steps that the Government has taken, or is considering to take, to protect against human rights abuse by business enterprises, including Hengfu's overseas subsidiaries, and ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their adverse impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights.
4. Please provide information regarding the measures that your Excellency's Government is taking or considering to take to ensure that those affected by the activities of Hengfu's overseas Cambodian subsidiaries have access to effective remedies as per the UN Guiding Principles.

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 matter has also been sent to the Government of Cambodia and the involved companies.

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




Rhona Smith
Special Rapporteur on the situation of human rights in Cambodia



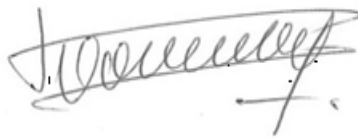
David Boyd

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



David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression



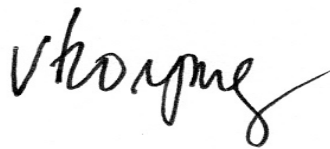
Clement Nyaletsossi Voule

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



Léo Heller

Special Rapporteur on the human rights to safe drinking water and sanitation

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw the attention of your Excellency's Government to article 25 of the Universal Declaration of Human Rights (UDHR) 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 International Covenant on Economic, Social and Cultural Rights (ICESCR) – which Cambodia ratified on 26 May 1992 - 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 Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR, 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 Committee 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.

We furthermore recall the explicit recognition of the human rights to safe drinking water and sanitation by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Furthermore, the United Nations General Assembly in its resolution 70/169 of 2015 recognized that "the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use", and that "the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living".

We would like to also draw your attention to articles 9, 17, 19 and 22 of the International Covenant on Civil and Political Rights, signed by China on 5 October 1998, which guarantee the rights to liberty and security of person, to not be subjected to arbitrary or unlawful interference with one's family or home, to freedom of opinion and expression and to freedom of association.

We would like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

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.

In connection with the above alleged facts and concerns we would 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.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with the affirmative vote of China. We would like to emphasize that this instrument provides an authoritative statement of international human rights standards related to indigenous peoples. The UNDRIP elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include equality and non-discrimination, life and personal integrity, culture, health and property, all of which are recognized in the principal human rights treaties ratified by the Russian Federation and mentioned above.

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.' Article 10 affirms that indigenous peoples 'shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.'

Furthermore, the UNDRIP provides for the rights of indigenous peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. In that regard, Article 28 states that 'indigenous peoples have the right to

redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.’

Additionally, we would like to refer to article 17 of the ICCPR, which protects the right to privacy and provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy. The General Assembly also emphasized that unlawful or arbitrary surveillance as a highly intrusive act, which violate the right to privacy and may contradict the tenets of a democratic society’ (A/RES/68/167). The Human Rights Committee stated in its General Comment 32 (par. 8) that the positive obligations on States Parties under ICCPR are only fully discharged if individuals are protected by the State, not just against violations of their rights by its agents, but also against acts committed by private persons or entities.

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 12 reaffirms that States should ensure the effective enforcement of their environmental standards against public and private actors.

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.”

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). 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). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19).

Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

The Guiding Principles also recognise 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.

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.”.