

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Independent Expert on the promotion of a democratic and equitable international order

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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 extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Independent Expert on the promotion of a democratic and equitable international order, pursuant to Human Rights Council resolutions 35/7, 35/15, 34/18, 34/5 and 36/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning death threats and attempted kidnappings against [REDACTED], as well as allegations of possible acts of reprisals for [REDACTED] cooperation with the World Bank and its Inspection Panel on human rights, in relation to [REDACTED] work documenting and denouncing human rights impacts of the ProRoutes project in the Democratic Republic of the Congo. The project is funded by the World Bank and implemented by the Société Zhengwei Technique Coopération, a subsidiary of the Chinese company Weihai International Economic & Technical Cooperative Co., Ltd.

[REDACTED] the *Réseau d'aide aux Femmes et Enfants Nécessiteux* (Support Network for Women and Children in Need - RAFEN). The organisation is based in Goma, and documents, monitors and denounces human rights violations against women and children.

According to the information received:

In early 2017, RAFEN began to document human rights violations related to the High-Priority Roads Reopening and Maintenance Project in the DRC (ProRoutes). RAFEN was informed of several abuses perpetrated by employees of the Zhengwei Technical Cooperation Company (SZTC), in charge of building the Bukavu-Goma road, as part of the ProRoutes project. The documented abuses include many cases of sexual and gender-based violence committed by SZTC employees against women and girls living around the ProRoutes project construction sites. RAFEN also documented cases of child labour by SZTC, as well as the refusal to pay for the services and goods of local construction companies.

In August 2017, ██████████, together with one of ██████ colleagues, sent a request for an evaluation of the ProRoute project to the World Bank's Inspection Panel. Following the publication of the inspection request on 27 September 2017, ██████████ began receiving death threats by telephone. ██████ received further death threats on 20 November 2017 after the members of the Inspection Panel visited the project's construction sites. On 21 November 2017, the Panel published conclusions confirming that human rights violations had indeed occurred in the context of this project. On 27 November 2017, the World Bank announced the suspension of reimbursements for all civil engineering works in the ProRoutes project due to the seriousness of the allegations. Since then the project has resumed its work, with the support of the World Bank. ██████████ informed the members of the Investigation Panel and representatives of the World Bank several times of the threats made against ██████.

In early 2018, ██████████ RAFEN accompanied survivors of the documented human rights abuses related to the ProRoutes project to court. On 26 February and 9 April 2018, ██████ was the target of two kidnapping attempts by unknown persons wearing helmets. On 9 November 2018, ██████████ escaped a third kidnapping attempt, during which ██████ was beaten and wounded.

On 6 and 8 February 2019, ██████████ received threats by telephone. He refused to participate in a meeting organised by the World Bank with civil society actors scheduled for 12 February 2019, because of a lack of adequate security measures in place.

On 9 and 12 February 2019, a group of representatives of SZTC, the local village chief and the captain of the city police visited ██████████. It is reported that they offered US\$8,500 in compensation for the exploitation of the Tongo-Butale quarry, and demanded that ██████████ refrained from discussing the project and bringing the case to court. When ██████████ refused to accept the money, they were threatened with eviction from the village on the grounds that they had blocked the development of their community. Rumours that the family was working against the interests of the community also circulated in the village after the event.

It is reported that the World Bank is in regular contact with ██████████ and other potentially threatened stakeholders.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reported threats and acts of harassment against ██████████, which appear to be linked to his work that documents and denounces the adverse impact on human rights of the ProRoute project. We furthermore wish to express our serious concern at the alleged involvement of employees of the Chinese company in the actions against ██████████ and the alleged human rights

abuses that occurred within the context of the activities of the company. Our concerns in this case are heightened by the fact that the threats, attempted kidnappings and related physical attacks against ██████ are linked to ██████ reporting of human rights abuses to the World Bank and its Inspection panel and appear to be acts of intimidation and reprisals for ██████ cooperation with the latter institution.

We underscore 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 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 light of the allegations of reprisals for cooperation with the World Bank on human rights issues, we reserve the right to share this communication – and any response received - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official appointed by the Secretary general to lead efforts within the United Nations system to address this issue.

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, 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 Weihai International'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 Weihai International's overseas subsidiaries have access to effective remedies as per the UN Guiding Principles.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on the same matter has also been sent to the Government of Democratic Republic of the Congo, Weihai International Economic & Technical Cooperative Co., Ltd., and the World Bank.

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.

Surya Deva
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Livingstone Sewanyana
Independent Expert on the promotion of a democratic and equitable international order

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to 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 also like to refer 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.

Article 9 Paragraph 1, of the UN Declaration on Human Rights Defenders establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

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 also like to refer to Human Rights Council Resolutions 12/2, 24/24 and 36/21, which reaffirm the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council calls on States to prevent and refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies [as well as the issuance of appropriate guidance to national authorities] in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations. The Council also urges States to ensure accountability for any act of intimidation or reprisal by ensuring impartial, prompt and thorough investigations of any alleged act of intimidation or reprisal in order to bring the perpetrators to justice; to provide access to effective remedies for victims in accordance with their international human rights obligations and commitments; and to prevent any recurrence.”

Furthermore, 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 independently of the ability and/or willingness of States to meet their own human rights obligations and does not reduce those obligations.

"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.”(Guiding Principle 15)

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.

We would like to recall that the Committee on the elimination of all forms of discrimination against women, in its General Recommendation 35 on gender-based violence, states that under general international law, as well as under international treaties, a private actor’s acts or omissions may engage the international responsibility of the State. It also recalls that article 2 (e) of the Convention on the Elimination of all

Forms of Discrimination against Women explicitly provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. This obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women, including actions taken by corporations operating extraterritorially.

Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws.¹ The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women.² Such failures or omissions constitute human rights violations.

The Committee on the Rights of the Child in its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, paras. 43-44, requires states to take the steps necessary to prevent human rights violations perpetrated abroad by corporations over which they may exercise influence,

Finally, the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017) states that the "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".

¹ *Goekce (deceased) v. Austria*, para. 12.1.2, and *V.K. v. Bulgaria*, para. 9.4.

² General recommendation No. 19, para. 9.