

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

REFERENCE:
AL OTH 15/2019

12 April 2019

Dear Sir/Madam,

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.

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 (including companies) 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 **death threats and attempted kidnappings against human rights defender Mr. [REDACTED]**, as well as **allegations of possible acts of reprisals for his cooperation with the World Bank and its Inspection Panel on human rights**, in relation to his work documenting and denouncing human rights impacts of the ProRoutes project in the Democratic Republic of Congo. The project is funded by the World Bank and implemented by the Société Zhengwei Technique Coopération, a subsidiary of your company, Weihai International Economic & Technical Cooperative Co., Ltd.

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

Weihai International Economic & Technical Cooperative Co., Ltd.

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

According to the information received:

In early 2017, RAFEN began documenting 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, Mr. [REDACTED] together with one of his 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, Mr. [REDACTED] began receiving death threats by telephone. He received further death threats on 20 November 2017 after the Inspection Panel visited the project's construction sites. On 21 November 2017, the panel published conclusions confirming that human rights violations had 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 World Bank has approved the restart of the project's activities. Mr. [REDACTED] informed the members of the investigation panel and representatives of the World Bank several times of the threats made against him.

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

On 6 and 8 February 2019, Mr. [REDACTED] 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 two of Mr. [REDACTED] brothers at their homes. It is reported that they offered US\$8,500 in compensation for the exploitation of the Tongo-Butale quarry, and demanded that Mr. [REDACTED] [REDACTED] refrained from discussing the project and bringing the case to court. When the brothers 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.

It is reported that the World Bank is in regular contact with Mr. [REDACTED] and other potentially threatened stakeholders.

We are deeply concerned about the reported threats and acts of harassment against Mr. [REDACTED] and his family, which appear to be directly linked to his work in connection with the documenting and denouncing the adverse impact on human rights in the context of the activities of your company's engagement in the ProRoute project. Our concerns in this case are heightened by the fact that the threats, attempted kidnaps and related physical attacks against Mr. [REDACTED] are linked to his reporting of human rights abuses to the World Bank and its Inspection Panel and appear to be acts of intimidation and reprisals for his cooperation with the latter institution. We furthermore wish to express our serious concern at the alleged involvement of employees of your company in these actions and the alleged human rights abuses that occurred within the context of the ProRoutes project.

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 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 as to what human rights due diligence has been undertaken by your company to prevent, identify and remedy the adverse human rights impacts of your activities, in line with the UN Guiding Principles on Business and Human Rights. In particular, please indicate if

an independent external human rights assessment on the project ProRoutes has been carried out, and if relevant, provide information regarding the findings and any actions taken to prevent, mitigate and redress adverse human rights impacts.

3. Please provide information about existing measures, including policies, that your company has put in place in order to prevent sexual and gender based violence committed by your employees.
4. Please provide information on steps taken by your company to provide for effective remedy or cooperate in remediation of adverse human rights impacts including the alleged acts of sexual and gender based violence and child labour, committed by your company and some of its employees, through legitimate processes, as set forth in the UN Guiding Principles on Business and Human Rights.
5. Please provide information about existing measures, including policies, that your company has put in place in order to prevent and address acts of reprisals or intimidation committed by your employees for cooperation with the United Nations on human rights.
6. 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, acts of reprisals or intimidation against human rights defenders for cooperation with the United Nations on human rights and to deal with the concerns of affected communities.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from you 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, the Government of China, 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, Sir, 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 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)

When carrying out human rights due diligence in order to identify, prevent, mitigate and account for how the companies address adverse human rights impacts that the business enterprises may cause or contribute to, or be directly linked to, the companies should draw on internal and/or independent external human rights expertise; and involve meaningful consultation with potentially affected groups and other relevant stakeholders. (Guiding Principle 17-21)

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 also like to draw your attention to articles 9, 17, 19 and 22 of the International Covenant on Civil and Political Rights, 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.

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

Finally, 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.”