

**Mandates of the Special Rapporteur on the situation of human rights in Myanmar; 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 minority issues and the Special Rapporteur on the human rights to safe drinking water and sanitation**

REFERENCE:  
AL OTH 24/2020

17 April 2020

Dear Sir or Madam,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; 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 minority issues and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 40/29, 35/7, 37/8, 34/18, 34/6 and 42/5.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. 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. 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 the attention of your company information we have received concerning the **environmental impact of the Tan Lay**

**Htaung cement plant in Myaing Kalay village, Kayin State, and the criminal complaint filed against Mr Tha Phoe, a Karen environmental activist.**

According to information received:

The Tan Lay Htaung cement plant in Myaing Kalay village is run by the Myanmar Economic Corporation (MEC) and was built in the 1980s. It was expanded more than a decade ago to increase its capacity to produce over 4,000 tonnes of cement per day.

In 2016, officials from the plant reportedly explained to nearby minority Karen communities that running the plant on gas was not sustainable in the long term due to potential shortfalls in supply, so it would be converted to coal. Local communities opposed this change, but there was no public consultation process.

From around October 2018, coal for the plant was transported from Pho Sho port to the cement factory. In light of the reported information that around 200kg of coal will be needed to make one ton of cement, the plant is estimated to burn at least 800 tonnes of coal per day. There does not appear to have been an Environmental Impact Assessment (EIA) carried out to assess the impacts of the change from a gas-fired to a coal-fired kiln.

In early October 2019, three villages located near the cement plant experienced water sources changing colour, the death of fish and health issues such as itching skin when they bathed. Villagers report that this had never happened in the past. Relevant government departments then undertook water testing and announced on Facebook that water sources remained suitable for irrigation, domestic use and aquatic life. We are not aware of what sources were tested, nor what results were obtained since these have not been made public.

By late October 2019, the water colour changes had spread to other villages and in some areas the water had turned black. Further water testing was carried out by an independent environmental laboratory. The results of those tests revealed that:

- The water in wells was within acceptable limits provided that it was filtered.
- Water from three ponds / streams had phosphate and chlorine levels above the U.S. Environmental Protection Agency (EPA) Surface Water Standard for Aquatic Life.
- Water from at least one stream had excessive levels for biological oxygen demand (BOD) and chemical oxygen demand (COD).

-High BOD and COD, together with phosphates, reduce oxygen levels and these exceedances along with the high chlorine levels caused the death of the fish.

-High chlorine levels could lead to skin problems for humans, such as inflammation, reddish skin, blisters and itching.

It is also noted that many affected villagers may not have access to household filtration to make the water in wells safe to drink. Testing by another laboratory has further shown exceedance of acceptable levels for total solids, turbidity and iron as well as of pH.

As of late January 2020, 27 villages near the factory had discoloured water in their wells, for which they blame the cement factory.

On 6 March 2020, a representative of the military responded to questions asked by members of Parliament regarding the cement plant and water pollution, stating that the water was within acceptable limits.

Karen environmental defender Tha Phoe has been advocating for improved environmental protections regarding dams on the Salween River and has been working with local Karen minority communities in Kayin State since 2013. He attended an traditional Karen ceremony in January 2020, during which local residents and village monks came together to pray for protection from pollution. Police from Myaingkalay and Hpa-an police stations attempted to arrest Tha Phoe on the evening of 6 March 2020. The deputy chief of the Hpa An General Administration Department had earlier filed a complaint in the Hpa An Township Court under section 505(b) of the Penal Code. Reportedly, Tha Phoe did not receive a summons to attend court and did not receive official written notification of the claim against him. Hence, no information on what conduct of Tha Phoe may have undertaken the complaint relates to.

We are concerned that the Tan Lay Htaung cement plant in Myaing Kalay is having a negative impact on the environment and multiple human rights of the Karen minority. We are also concerned about the complaint against Tha Phoe, which seem related to his activities as an environmental rights defender.

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 additional information about the above allegations.
2. What approval process was followed to replace a coal-fired kiln to the gas-fired kiln at Tan Lay Htaung cement plant? Were social and environmental impact assessments and/or human rights due diligence conducted as per all applicable national and international standards? If not, please explain why not.
3. Please provide information on the nature and extent of consultations or dialogues conducted with residents of Karen minority villages and other relevant stakeholders affected by the cement plant. If no consultations or dialogues were initiated, please explain why.
4. Please provide information about how the cement plant's operation complies with the Environmental Conservation Law 2015 and Myanmar's obligations under the International Convention on Economic, Social and Cultural Rights, in particular articles 11 and 12.
5. Please provide information about the steps taken by your company, to conduct human rights due diligence appropriate for a State-owned enterprise – in line with the UN Guiding Principles on Business and Human Rights – to prevent, mitigate and remediate adverse impacts.
6. Please provide information about steps taken by your company to provide effective remedies to the ethnic minority Karen communities affected by the cement plant's operations.
7. Please provide information about the measures that your company has taken, or is considering to take, to ensure that environmental rights defenders such as Mr Tha Phoe can express themselves freely without fear of any intimidation, including arising from criminal cases.
8. 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 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 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.

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 Government of Myanmar.

Please accept, dear Sir or Madam, the assurances of our highest consideration.

Yanghee Lee  
Special Rapporteur on the situation of human rights in Myanmar

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

David R. 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

Fernand de Varennes  
Special Rapporteur on minority issues

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 would like to refer your Company to articles 19 and 20 of the Universal Declaration of Human Rights, which protect the right to freedom of expression, and the rights to freedom of peaceful assembly and of association, respectively. Further, we would like to refer to Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. Article 11 recognizes the right of everyone to an adequate standard of living, which includes the rights to water, sanitation and food. Article 12 recognizes the right of everyone to the highest attainable standard of health.

Furthermore, we would like to refer to the United Nations “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, which note that States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. They also recognise the important and valuable role played by independent civil society organisations and human rights defenders. Furthermore we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved.