

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
AL MNG 1/2020

10 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 34/5, 35/7, 37/8, 34/9, 42/9, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government, information we have received regarding allegations of physical and sexual harassment of a woman human rights defender, Ms. **Mungunkhun Dulmaa**, for her work defending the land and environmental rights of her community in connection with the establishment of the Steppe Gold mine in the province of Dornod.

Ms. Mungunkhun Dulmaa is a woman environmental human rights defender and herder. She has advocated against the social and environmental impact that the establishment and operations of a gold mine run by Steppe Gold mining company may have on her community in Tsagaan-Ovoo District in the eastern province of Dornod, Mongolia.

According to the information received:

Steppe Gold Limited is a Canadian gold mining company listed on the Frankfurt and Toronto stock exchanges. It reached an agreement with the Government of Mongolia in 2017 to establish a mine in Tsagaan-Ovoo District as part of the Mongolian Government's plan to increase gold production by two to three tonnes annually. The site covers an area of 426,000 hectares and commenced gold production in March 2020.

Despite conducting an environmental impact assessment, since the early stages of production herding families who live close to the mine have reported difficulty breathing and eyesight problems from the large amounts of dust in the air. The livestock of the local communities are allegedly suffering from poor health, with many developing lung infections. According to information received, Steppe Gold will have access to the local water wells for production, which will leave water polluted for a number of days after use.

A number of land disputes arose in 2018 from the Mongolian authorities' land allocation to Steppe Gold. Thirteen herding families claim to have obtained land certificates in 2012 for an area of land given to Steppe Gold after generations of use by their families. This allegedly occurred as a result of an oversight by the local administration, when in 2012 the Soum Land Officer of Tsagaam-Ovoo Soum gave the 13 households land certificates for the area during and after Steppe Gold's exploration period. The Land Officer was allegedly unaware of the mining project at the time. In addition, article 40.1.6 of the Mongolian Land Law requires landowners to provide proof that they have used the land for a defined purpose within a two-year period in order to be able to lay claim to it. According to information received, many nomadic herding families do not have the resources to prove their use of the land, such as by installing fences, nor do they have the means to inform themselves about the laws pertaining to land use, often resulting in the invalidation of their land certificates. All court decisions and appeals to the Supreme Court have upheld the company's claim to occupy the land, and most families are receiving compensation from Steppe Gold for the loss of land of up to 20 million tugriks (approx. 7,100 USD).

On 21 August 2018, a group of herders living in the Tsagaan-Ovoo District held a peaceful protest against a fence put in place by Steppe Gold on an area of land used by the local herding communities as pasture for their livestock. The land also is used for the production of 15 types of medicinal and culinary herbs.

During the demonstration, a human rights defender was handcuffed and beaten by private security personnel from a company hired by Steppe Gold. Ms. Mungunkhun Dulmaa filmed the incident on her phone. While she was recording, she was allegedly grabbed by three private security personnel, who snatched the phone from her hands. She managed to retrieve it, place it in her bra and run away. The private security personnel allegedly chased her, took her phone out of her bra and began to beat her. She was brought to the security office of the Steppe Gold mining company where she was detained for approximately five hours. Ms. Mungunkhun was sexually harassed by the private security personnel who pretended to continue to search for her mobile phone on her person, despite having already confiscated it. When she was released, her mobile phone was returned to her but the video had been deleted.

Ms. Mungunkhun had undergone surgery for appendicitis shortly before the incident took place. The physical assault allegedly damaged her stitches and she had to return to the hospital for re-stitching. The doctor refused to issue her a medical certificate for her injuries.

Ms. Mungunkhun reported the incident to the police officer in charge of the Tsagaan-Ovoo District. The officer told her that he would look into the case but she has received no acknowledgement of submission of the police report and to date, no information has been received regarding the status of the investigation.

According to the information received, on 8 May 2019, representatives from Steppe Gold acknowledged that there were verbal arguments following a protest on 21 August 2018. However, they denied that any physical violence took place.

On 22 October 2019, Ms. Mungunkhun attended an event in the city of Ulaanbaatar at which a report was launched that detailed the harassment to which Ms Mungunkhun was subjected. While attending the event, Ms. Mungunkhun allegedly received death threats via text message, threatening that if she continued to protest against the mining company, she risked losing her life. Since the attack she had received numerous threats and intimidations for her vocal advocacy against the mine. A lawyer representing Steppe Gold who attended the conference apologised on behalf of the company and pledged to provide Ms. Mungunkhun with compensation.

According to information received, on 20 February 2020, Steppe Gold offered a job to Ms. Mungunkhun in the company as a seamstress, however she refused. At the time of writing, Ms. Mungunkhun has allegedly not received any compensation for the physical and sexual violence perpetrated against her or the loss of her land.

Without prejudging the accuracy of the allegations, we wish to express our concern over the land and environmental disputes arising from the establishment of the Steppe Gold mine as well as the attack against the woman human rights defender Ms. Mungunkhun Dulmaa by private security personnel hired by the company. We are concerned that the actions and inactions of the company in response to these issues, including lack of an effective human rights due diligence process, set a worrying precedent for its cooperation with local communities, particularly with regards to ongoing health problems experienced by locals and their livestock. We also raise concern over the physical and sexual violence perpetrated against Ms. Mungunkhun for her peaceful human rights work, and the reported absence of investigations from the company and the authorities to hold those responsible to account for their alleged actions. We are furthermore concerned that Ms. Mungunkhun was not provided with any compensation beyond the offer of employment in the company, which would have compromised her ability to conduct her herding way of life and defend her community's environmental and land rights. We are also concerned that article 40.1.6 of the Mongolian Land Law requiring landowners to provide proof that they have used the land may have a

discriminatory effect on nomadic herding families, which often results in the invalidation of their land certificates, affecting their land rights and their right to housing.

We would also like to encourage your Excellency's Government to continue the process towards the enactment of the proposed law on the protection of human rights defenders in Mongolia, which has made some promising steps in May 2020. The adoption of the law could play a decisive role in recognising human rights defenders like Ms. Mungunkhun for the unique role they play in the protection of human rights in the country. Such recognition would create a more safe and enabling environment for human rights defenders to carry out their work, allowing for investigation and appropriate compensation in instances where their rights are violated.

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 detailed information about, and where available results of, any State investigation underway into the sexual and physical harassment of Ms. Mungunkhun by private security personnel. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Mongolia's international human rights obligations.
3. Please provide details on the environmental impact assessment undertaken by Steppe Gold, including how the participation of local communities was ensured. Please indicate what mitigation and redress measures have been adopted to prevent air and ground water pollution and to guarantee the health of local communities and their livestock.
4. Please provide further information on status of the draft law on human rights defenders in Mongolia, and what steps have been taken in recent months towards its enactment.
5. Please provide details on the measures in place to ensure that land certification requirements do not have a discriminatory effect on Mongolian herders, and that they are made aware of the measures they must take in order to lay legal claim to land ancestrally in their possession in order to protect their land rights and their right to housing.

6. Please indicate what additional measures the Government of your Excellency has taken in order to implement its duty to protect human rights and to ensure availability and access to effective remedy, as outlined in the UN Guiding Principles on Business and Human Rights.
7. Please outline steps the Government of your Excellency has taken, or is considering to take, to set out clearly the expectation that all businesses respect human rights throughout their operations, including by conducting human rights due diligence and remedying adverse human rights abuses.
8. Please provide information regarding the progress in the development of a National Action Plan on Business and Human Rights by your Excellency's Government.
9. Please provide information regarding the national regulatory framework pertaining to private military and security companies, including *inter alia* licensing regimes, vetting procedures, human rights training, independent monitoring mechanisms and transparency measures.

We would appreciate receiving a response within 60 days. After this time, 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 matter has also been sent to the Government of Canada and the company involved.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Balakrishnan Rajagopal

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Chris Kwaja

Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Mongolia on 18 November 1974, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

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 would also like to remind your Excellency's Government of article 9 of the Declaration of Human Rights Defenders which states that "everyone whose rights or freedoms are allegedly violated has the right [...] to complain to and have that complaint promptly reviewed in public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay."

With regards to the draft law on human rights defenders, we would also like to refer again to Human Rights Council Resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law (OP 5).

We would also like to recall your Excellency's Government of the report of the Working Group on Discrimination against Women and Girls on eliminating discrimination against women in political and public life with a focus on political transition in its paragraph 65 that Women defenders are often the target of gender-specific violence, such as verbal abuse on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder by community members; and has recommended States to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

Furthermore, the Working Group on the use of mercenaries, in its report (A/74/244), called on States to ensure that personnel of private military and security companies who have committed acts of sexual and gender-based violence are investigated and brought to justice, including in relation to crimes committed in previous years whether at home or abroad, and that effective remedies are accessible to women, girls, men, boys and LGBTI victims of human rights abuses by private military and security companies.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. 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.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

In this regard, Mongolia has a duty to ensure that foreign businesses operating within its territory, such as Steppe Gold Limited, respect human rights by taking steps to prevent as well as investigate, punish, and redress abuses through legislation, regulations, policies, and adjudication. Furthermore, Mongolia has an obligation to ensure access to effective remedial mechanisms for persons whose rights have been violated by business activities within its territory. 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.

In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships [...] meaningful consultation with potentially affected groups and other relevant stakeholders (Guiding Principle 18).

Furthermore, we wish to recall concerns expressed by the Working Group on the use of mercenaries over the lack of transparency with regard to the actors engaged in securing extractive operations and their respective roles, responsibilities and chains of command. The ambiguity surrounding the provision of security services in the extractive industry reinforces the lack of accountability and the unchecked power experienced by victims of human rights abuses and violations with respect to extractive corporations and their affiliates, including private military and security companies (A/HRC/42/42).

We wish to remind your Excellency's Government that the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Mongolia on 18 November 1974, stipulates in its article 11.1 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". In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights has stated that the right to housing should not be interpreted in a narrow or restrictive sense by assigning to it a meaning of "merely having a roof over one's head", but it should rather be seen as the right to live somewhere in security, peace and dignity. The Committee has also underscored the State's obligation to ensure security of tenure and legal protection against forced eviction, harassment and other threats, "notwithstanding the type of tenure" (paragraphs 7 and 8).

We would also like to recall your Excellency's Government of article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Mongolia on 6 August 1969, which states everyone's right to equality before the law in the enjoyment of their right to housing. The Committee on the Elimination of Racial Discrimination (CERD) has recommended States to take measures to ensure that other nomadic people, such as the Roma people in Europe, can enjoy their right to housing and keep their traditional nomadic lifestyle, such as camping places for caravans, with all necessary facilities (General Recommendation No. 27). It also expressed its concern when the designation of lands for nomadic people affected their enjoyment of economic, social and cultural rights (Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, 48th Session, 1996, para. 15). In its General Comment No. 27, the CERD said that States have the obligation to take action against discriminatory practices by "local authorities and private owners" affecting Roma's right to housing and other economic, social and cultural rights.