

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 OTH 50/2020

10 July 2020

Mr. Tumur-Ochir,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council¹ to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the system of Special Procedures, 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 Human Rights Council² to seek clarification on information we have received regarding allegations of physical and sexual harassment of woman human rights defender Ms. **Mungunkhun Dulmaa**, and lack of appropriate compensation, 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, Mongolia

Ms. Mungunkhun Dulmaa is a woman environmental human rights defender and herder. She has advocated against the social and environmental impact that the

¹ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/SpecialProcedures.aspx>

² Special Procedures can decide to intervene directly with Governments and non-state actors, including private 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. Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

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.

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 stage 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, where 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 of 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 for the loss of land from Steppe Gold of up to 20 million tugriks (approx. 7100 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 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 no investigation has been launched into 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 actions and inactions of the company in response to the issue, 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 the perpetrators to account for their alleged actions. We are furthermore concerned that Ms. Mungunkhun was not provided with 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.

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 investigation undertaken into personnel from the security company hired by Steppe Gold for their alleged role in the sexual and physical harassment of Ms. Mungunkhun. Please also indicate why Ms. Mungunkhun is yet to receive compensation despite a pledge by the company to do so.
3. Please provide information about the human rights due diligence policies and processes put in place by your company to identify, prevent, mitigate and remedy adverse human rights impacts throughout your operations, in line with the UN Guiding Principles on Business and Human Rights.
4. Please provide information about specific due diligence or impact assessment measures taken by your company concerning the mine in Tsagaan-Ovoo District. In particular, please highlight how your company conducted meaningful consultation with affected stakeholders before and after the establishment of the mine. Please indicate whether any steps were taken to avoid negative social, cultural and environmental impacts on the communities located in the area of the project, including by seeking their free, prior and informed consent for the project on their lands.
5. Please provide details on the environmental impact assessments undertaken by your company. Please indicate what steps have been taken to prevent air and ground water pollution and to guarantee the health of local communities and their livestock.

6. Please provide information regarding any policies and procedures in place within the company regarding security arrangements, as well as if and where public information is available regarding such arrangements. Please also indicate whether the company includes human rights-related clauses and conditions, in particular in relation to vetting and training of personnel, in its contracts with private military and security companies.
7. Please provide information on steps taken by your company to establish effective operational-level grievance mechanisms, in line with the UN Guiding Principles, to address adverse human rights impacts caused or contributed to by your company throughout your operations globally.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company 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 Governments of Mongolia and Canada.

Please accept, Mr. Tumur-Ochir, 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 remind your Company of its responsibilities under the Guiding Principles on Business and Human Rights (A/HRC/17/31). The Guiding Principles have established themselves as the authoritative global standard for business to prevent and address negative business-related impacts on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all businesses, wherever they operate. It exists independently of the ability and/or willingness of States to meet their own human rights obligations and does not diminish those obligations. It is an additional responsibility to that of complying with national laws and regulations protecting human rights.

The Principles 11 to 24 and Principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. "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).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (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)

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).

Also, Principle 22 provides that "Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes". "Establishing grievance mechanisms at the operational level for those potentially affected by business activities can be an effective means of redress provided they meet certain requirements listed in Principle 31 (Commentary on Guiding Principle 22).

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) which discusses the obligation of States to protect individuals against human rights abuses by companies that they own or control. In particular, we would like to highlight the following conclusions and recommendations: “All businesses, whether public or wholly private, have a responsibility to respect human rights. This responsibility is distinct from, but complementary to, the State's duty to protect against human rights abuses by business enterprises.”

Furthermore, we wish to recall recommendations made by the Working Group on the use of mercenaries in its 2019 thematic report (A/HRC/42/42) in which it called on extractive companies to make public information regarding security arrangements in their operations. This should include key aspects of contractual agreements with private military and security companies, memoranda of understanding with State security forces, and rules and procedures guiding in-house security, and should publicize agreements and rules on the use of force by security providers. They should also issue periodic reports, including detailed information regarding the number and nature of complaints, the alleged involvement of security providers, and how complaints have been addressed. Investigation policies and procedures should also be publicly available. Moreover, extractive companies should include human rights-related clauses and conditions in their calls for tenders and contracts with private military and security companies, notably with regard to expectations of professional and human rights-compliant conduct by private military and security personnel. This should include detailed rules on the use of force, the frequency and content of human rights training, expectations regarding vetting of employees, reporting on security incidents, appropriate coordination with State security forces, specific standards and certification required by private military and security companies, and restrictions and requirements for subcontracting security services.

In this context, we would like to highlight that international human rights law protects individuals' right to freedom of opinion and expression under article 19 of the International Covenant on Civil and Political Rights (ICCPR), which states 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."

Furthermore, we would like to recall articles 5 of 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, which provide that, for the purpose of promoting and protecting human rights and fundamental freedoms, everyone whose rights or freedoms are allegedly violated has the right, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress where there has been a violation of that person's rights or freedoms.