

**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 CAN 4/2020

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 woman human rights defender Ms. **Mungunghun Dulmaa** for her work defending the land and environmental rights of her community in connection with the establishment of a mine operated by Steppe Gold, a Canadian-based company, listed on the Toronto Stock Exchange.

Ms. Mungunghun 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 Canada based 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, 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. 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 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 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 Canadian-based company in response to these issues, including lack of an effective human rights due diligence process, sets 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.

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 highlight the steps that your Excellency's Government has taken, or is considering to take to protect against human rights abuses by business enterprises domiciled in its territory and /or jurisdiction, including by conducting effective human rights due diligence, in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please advise the steps taken by the Government to protect human rights defenders speaking up about adverse human rights impacts related to Canadian companies operating overseas such as Steppe Gold.
4. Please indicate what measures the Government has taken to ensure that Canadian companies operating abroad are not causing or contributing to abuses of international norms and standards that Canada has undertaken to uphold, including with regard to the environment and the right to adequate housing.
5. Please provide information regarding the measures that your Excellency's Government has taken, or is considering to take, to ensure that those affected by the overseas activities of Steppe Gold Limited have access to effective remedies as per the UN Guiding Principles.
6. Please indicate when the Canadian Ombudspersona for Responsible Enterprise (CORE) is due to launch its complaints procedure. Please also provide details on the status of any investigation underway by CORE or other Governmental bodies to address the allegations in this letter.
7. Please advise how the Government is undertaking its commitments as a member of the Voluntary Principles on Security and Human Rights, notably with regard to promoting respect for human rights in the context of security services within the extractive industry.

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 matter has also been sent to the Government of Mongolia 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 the attention of your Excellency's Government on the international standards and norms applicable to the matters previously exposed.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Canada on 19 May 1976, establishes extraterritorial obligations of States parties as stated by the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017). Accordingly, “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.”

We would also like to draw attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31). The Guiding Principles clarify that according to international human rights obligations "States must protect against human rights violations committed within their territory and/or jurisdiction by third parties, including business" (Guiding Principle 1). This requires States to "clearly state that all companies domiciled in their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). "In compliance with their obligation to protect, States must: (b) Ensure that other laws and regulations governing the creation and activities of companies, such as commercial law, do not restrict but rather encourage respect for human rights by companies; (d) Encourage and if necessary require companies to explain how they take into account the impact of their activities on human rights. (Guiding Principle 3). States should also take appropriate measures to ensure, through appropriate judicial, administrative, legislative or other appropriate channels, that when such abuses occur in their territory and/or jurisdiction, those affected have access to effective redress mechanisms" (Principle 25). The Guiding Principles also emphasize that "States must ensure [...] that no obstacles are placed in the way of legitimate and peaceful activities of human rights defenders" (commentary on Guiding Principle 26).

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).

In addition, the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017) states that “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”.

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). In addition, the Working Group on the use of mercenaries has 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 (A/74/244).

We also wish to recall recommendation by the Working Group on the use of mercenaries in its thematic report (A/74/244) in which it highlighted the responsibility of private military and security companies to enact appropriate policies, procedures and mechanisms that fulfil the duty of care towards their staff, prevent abuses by their staff of members of the community and protect the latter from sexual harassment and other forms of sexual and gender-based violence. In addition, such companies should engage the most appropriate means for the pursuit of accountability and effective remedies for victims of abuses by their personnel, recognizing that State judicial and non judicial remedies, where they exist, are the most suitable avenue for addressing serious human rights abuses. Critically, there is a need to carefully reflect on the appropriateness of remedial processes with victims themselves and with local experts, including women leaders, and to benefit from their knowledge and understanding of their specific context to design or revise the grievance mechanism, process and outcomes, in line with international human rights standards.

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).