

Mandates of 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; and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
UA OTH 85/2020

22 December 2020

Dear Mr. Sorenson,

We have the honour to address you in our capacity as 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; and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 44/15, 37/8, 43/14 and 42/20.

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 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 **the imminent threat of eviction of around 155 families belonging to the indigenous Mro community due to the (i) construction of a luxury tourist resort in the Bandarban district of the Chittagong Hills Tracts, (ii) absence of consultations with the affected indigenous peoples prior to construction**

Marriot International

activities, and (iii) intimidation of community members and human rights defenders peacefully protesting the project and defending their traditional lands.

According to the information received:

On 12 September 2020, a joint venture of the 24th Division and the 69th Brigade of Bangladesh Army, the Army Welfare Trust and R&R Holdings Limited (a subsidiary of Sikder Group, domiciled in Bangladesh) announced plans to construct a tourism complex on a 800-1000 acre plot of land in Chimbuk, Bandarban district of the Chittagong Hill Tracts. The mega project will reportedly consist of a Marriott hotel, an amusement park, an artificial lake, residential quarters for personnel, and a comprehensive utility infrastructure including cable cars to transport tourists across twelve hills in the area. Water, power and other utility services for the mega project as planned require the construction of an extensive network of buildings, roads, drainage and sewage system. Such constructions would likely harm the biodiversity and the ecological balance in the area.

The construction initiated in September 2020 and is foreseen to take place on the traditional lands of the Mro indigenous peoples. The Mro derive their subsistence from their lands, territories and resources and depend it for their traditional cultivation and activities. The area also holds key elements to their identity, unique culture and spirituality, including orchards, temples, sacred cremation grounds, and holy stones. It has been reported that the freedom of movement of the Mro community has been restricted in the Chimbuk hills and that the army is denying them access to their traditional lands for grazing and access to their water resources.

It is alleged that the ancestral villages of Kapru Para, Dolapara and Erapara, in total around 155 families, are directly affected and face imminent threats of forced evictions. It is also feared that the adjoining villages of Markinpara, Longbaitanpara, Riamanairpara and Menringpara will be affected, and that an estimated additional 116 villages will be affected indirectly. According to information received, approximately 10,000 people will be at risk of eviction due to the construction of the resort.

Concerns have been raised that the indigenous community affected has not received information nor been consulted in relation to the planned project on their traditional lands. The community fears imminent forced evictions by the army without prior notice. Past experience from Bandarban district makes people fear that evictions may take place suddenly without prior notice. In 2006, the Mro were subject to forced evictions overnight by the army in Tonkaboti area of the Bandarban hill district without prior notification. The Mro community has to date not been compensated for their lands they lost and fear a repeat of similar actions by the army.

It is reported that since the announced construction on 12 September 2020, several demonstrations and cultural manifestations were held by the Mro, in protest against both the construction activities and evictions. According to information received, on 7 October 2020 the Mro community submitted a memorandum to the Prime Minister urging to halt the construction activities.

Reports suggest that irregular land leasing practices are occurring. According to information received, construction activities have already commenced following the signature of a Memorandum of Understanding (MoU) between the Army Welfare Trust and the Bandarban District Hill Council regarding an area of 20 acres for a 40-year lease. It is reported that the Army Welfare Trust and the Sikder Group-owned R&R Holdings Ltd. have agreed on a thirty-five-year lease on a profit-sharing basis. Information however also indicates that the lease transfer is currently pending approval by the central government, which implies that construction activities are currently occurring without legal authority.

Information indicates that no procedures were put in place to undertake good faith consultations and to seek the free, prior and informed consent from the affected indigenous community, and that the requirements of the Constitution of the Republic of Bangladesh, provisions of the CHT Regulations 1900, the CHT Regional Council Act 1998, the Bandarban Hill Council Act 1989, and the Chittagong Hill Tracts Land Commission Act 2001 have not been complied with. It is alleged that on 9 October 2020, the affected indigenous peoples appealed for redress to the highest executive of the State through the District Commissioner, without success.

According to the allegations received, since 2015 when the tourist megaproject was initially proposed, indigenous leaders defending the community land rights have urged authorities not to approve the construction of the tourist complex. There have been various measures to prevent the Mro community, particularly leaders and students, from protesting against the megaproject. Community members allege to have been subjected to intimidation, accusations of being “hill terrorists,” and received death threats, or threats of arrest for participating in alleged “terrorist activities”.

On 13 November 2020, the community reportedly organised a protest rally and a form of cultural expression known as a “human chain”, in Cheragi hill, attracting community members of all ages. According to information received, on 17 November 2020, approximately 70-100 members of the affected community were intimidated and coerced by military and intelligence personnel to form separate human chain gatherings in Alikadam Upazila Sadar and Bandarban District Sadar, with the opposite objectives of expressing support for the tourist complex. Two Mro community members reportedly were forced to publicly read aloud a statement in favour of the army and the luxury tourist complex and later received death threats for reporting to the media that the statements were made under duress.

While we do not wish to prejudge the accuracy of these allegations, we note with concern the alleged violations of the rights of the Mro indigenous community. We are particularly disturbed by the imminent risk of evictions of the Mro from their traditional lands, territories and resources, the lack of good faith consultations and of the failure to obtain free prior and informed consent, and the significant and irreversible damage that the tourist complex would pose to indigenous peoples, their traditional lands, their culture, their environment and their livelihoods. The steps taken to intimidate and threaten Mro community leaders and students appears to constitute deliberate measures intended to restrict their peaceful and legitimate work in defense of human rights. We would also like to express our concern regarding the reported attempts to mischaracterize their efforts to peacefully defend their land as terrorism or terrorist activities, and consider this to be an attempt to deter human rights defenders from carrying out their work.

We would like to draw to your attention relevant international standards that are applicable to the issues brought forth by the situation described above. Bangladesh is party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

While we are aware that Bangladesh abstained from voting on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) upon its adoption by the General Assembly in 2007, we would like to emphasise that this instrument sets international human rights standards relating to indigenous peoples' rights. Article 26 of UNDRIP asserts the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and sets out in article 29 that indigenous peoples have the right to the conservation and protection of the environment.

Article 20 of UNDRIP provides the right of indigenous peoples to 'maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.'

UNDRIP affirms in article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and resources and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'. UNDRIP furthermore underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 10 asserts that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and only after agreement on just and fair compensation and, where possible, with the option of return.

In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights clarified that the right to housing (Article 11(1) of ICESCR) should be seen as the right to live in security, peace and dignity. It indicates that the right to housing includes, among others, legal security of tenure guaranteeing legal protection against forced evictions, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection in genuine consultation with affected persons and groups. The Committee also declared that forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances.

Also in relation to article 11(1) of the ICESCR, the Committee stated in its General Comment No. 7 that indigenous peoples suffer disproportionately from the practice of forced eviction. In this connection, we would like to bring to your attention the report on the right to housing for indigenous peoples by the former Special Rapporteur on the right to adequate housing, which calls upon States to declare a moratorium on forced evictions affecting indigenous peoples in order to ensure that no one is left without shelter (A/74/183). We would also draw your attention to the report of the Special Rapporteur on the right to adequate housing on Covid-19 and the right to adequate housing (A/75/148) and the “COVID-19 Guidance Note: Prohibition of evictions” by the former Special Rapporteur on the right to housing, which both call for a moratorium on all evictions during the pandemic.

In addition we would like to highlight that the Guiding Principles and Guidelines on Development-based evictions and displacement (A/HRC/4/18, Annex I) set out detailed international human rights standards before, during and after considering any resettlement, including standards relating to restitution, return and compensation, including effective access to justice. In particular, any effort must be made to avoid any evictions, as far as possible. Similar legal requirements can also be found in the Guiding Principles on Internal Displacement (A/CN.4/1998/53/Add.2) that must be fully respected.

We would also like to refer you to the United Nations Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realization of human rights and indicates State’s prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (articles 1 and 2) and details the State’s obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of their legitimate exercise of their rights as human rights defenders (article 12). We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors

against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Furthermore, we would like to call your attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. 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.

Lastly, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. The Principles state that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2); and States should ensure the effective enforcement of their environmental standards against public and private actors (Principle 12). Furthermore, Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your company to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. 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 of your activities, in line with the United Nations Guiding Principles on Business and Human Rights.
3. Please provide information about specific due diligence or impact assessment measures taken by your company concerning the construction of the luxury tourist resort in the Bandarban district of the Chittagong Hills Tracts. In particular, please highlight how your company conducted meaningful consultation with affected stakeholders.

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, in particular to the indigenous Mro community, including by seeking their free, prior and informed consent for the project on their lands.

4. Please provide information on whether your company has established an operational-level grievance mechanism, in line with the United Nations Guiding Principles, to address adverse human rights impacts caused by your company throughout your operations. Please also provide any information on whether such grievance mechanisms has been used to address any of the concerns or impacts identified by the stakeholders concerning the Bandarban project, and any outcomes or remedy provided as a result.

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 responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company to clarify the issue/s in question.

This communication and any response received from your company will be made public via the communications reporting [website](#) within 60 days. 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 subject has also been sent to the Governments of Bangladesh and of the United States of America, as well as to another company involved in the abovementioned allegations.

Please accept, Mr. Sorenson, the assurances of our highest consideration.

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