

Mandates 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; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL OTH 182/2021

26 March 2021

Dear Mr. Ivan Mechetin,

We have the honour to address you in our capacities as 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; Working Group on the issue of human rights and transnational corporations and other business enterprises; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/9, 44/15, 45/3, 44/5 and 43/20.

We are a group of 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 perspective. We are part of the special procedures system of the United Nations, which has 55 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 allegations of **violations of international humanitarian law and international human rights law committed by your company during the ongoing armed conflict in the Central African Republic (CAR) including alleged extrajudicial killings, enforced disappearances and torture.**

Since the presidential election of 27 December 2020, we have received an increased number of allegations of human rights abuses with regard to the operations of private military and security personnel, sometimes referred to as

“Russian advisors” or “Russian trainers”, among others related to Lobaye Invest SARLU.

It is reported that your company is financing the training of Central African Armed Forces (FACA), which allegedly relies on them to sustain its military capacities and operations, as well as protecting officials and mining facilities, and that Russian personnel are directly conducting it. The military training provided includes instruction on: the advanced use of various up-to-date means of Electronic Warfare (EW); coordination of actions between land and air operations; as well as partisan/guerrilla-type subversive activities, maskirovka, sabotage, and recruitment (verbovka) of foreign agents. Lobaye Invest, in particular, pursues control of mineral concessions.

In addition to providing training and logistical support, private contractors were seen on several occasions to participate directly in hostilities and even sustaining visible body harm, being wounded or killed. Reports also suggest grave human rights abuses, including rape, summary executions and targeted killings, torture, forced disappearances, murders and other abuses that could be reportedly attributed to the private military and security personnel operating jointly with the Central African Armed Forces (FACA).

Furthermore, personnel contracted by your company are directly involved in hostilities without carrying clear military identifications, making it extremely challenging for civilians to distinguish them and protect themselves. This in itself constitutes a violation of international humanitarian law and rules. Furthermore, since the end of January 2021, witnesses report that private military and security personnel is using full face cover when they are in public.

According to the information received:

Indiscriminate targeting and civilian casualties

Civilian casualties and indiscriminate targeting by Russian private military and security personnel have been reported on the 28th of December 2020 in Grimani (5 civilians), 10 January 2021 near Boali area (4 civilians), and on the 15th of February 2021 (16 civilians).

It has also been reported that between 15 and 16 February 2021, Russian private military and security personnel participated in a military operation in Bambari city (Ouham prefecture) to dislodge the Coalition of Patriots for Change (CPC) rebels. After the operation, different testimonies confirmed deaths of three civilians including a 13-year-old girl and 26 people wounded. Russian private security personnel were accused of using excessive force and shelling protected sites such as a mosque and IDP camps.

Enforced disappearances:

Enforced disappearances have been allegedly reported by Russian private security personnel in PK12 up to PK16 areas, and the 4th and the 8th districts since the end of December 2020. It is further reported that civilians caught in the middle of hostilities have been arrested by Russian personnel and presented in the national broadcast TV station as rebels.

Torture and summary executions:

It is further reported that torture and mass executions of prisoners have since the end of December 2020 been performed by Russian private personnel, in the 4th District/Landja-Mboko.

Looting of private and public properties

There have been allegations of looting of private and public properties by Russian private military and security personnel in Lobaye, Ombera M'Poko, Nana Mambere and Ouam prefectures. It is reported that Russian private military and security personnel systematically looted every town, village and marketplaces they liberated from the Coalition of Patriots for Change (CPC). Motorbikes, mobile phones, money and other valuable items were systematically taken away from local population in Bossembele and Yaloke towns (Ombera M'Poko), Boda and surrounding villages and markets (Lobaye).

Lack of transparency concerning the status, rules of engagement, roles and command and control mechanisms

Examples of such events occurred during the battle of Bossangou on 3 January 2021 and on 13 January 2021 in Bangui.

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned about the conduct of private military and security personnel, including the personnel contracted by your company, some of which seems to fall within the international definitions of mercenaries. We are notably concerned about the impact of your involvement on the hostilities in the Central African Republic and activities in populated areas, in contravention with international humanitarian law and human rights law, allegedly amounting to war crimes. We are concerned that such actors supporting the FACA may have contravened the jus cogens norm prohibiting arbitrary deprivation of life including allegedly through summary executions of persons *hors de combat* as well as the jus cogens norms prohibiting arbitrary detention, torture or other cruel, inhuman or degrading treatment or punishment.

Moreover, we are concerned about the lack of clarity, and consequently, accountability regarding those responsible for the recruitment, financing and deployment and regarding the extent to which the private military and security personnel was integrated within operational and tactical chains of command within the FACA. This lack of clarity undermines the prospects of holding perpetrators of human rights violations to account.

We also note that the deployment of your personnel appears to have contributed to the rapid escalation and intensification of hostilities, in turn resulting in civilian harm and suffering. During armed conflicts, all actors are obliged to respect the applicable rules of international humanitarian law, in particular the norms related to the treatment of persons and the conduct of hostilities.

In this context, we wish to note that the deployment and use of private military and security personnel in the armed conflict may threaten several human rights,

including, among others, the right to life, freedom from torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and freedom from arbitrary arrest and detention as outlined in the Universal Declaration of Human Rights. It is also suspected that personnel in question is violating international humanitarian law and rules.

Lack of transparency seriously impedes the ability of victims to seek justice and effective remedies for human rights abuses committed and contributes to a context of impunity in the current hostilities.

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 on the legal basis for your company's presence in the Central African Republic and on your role in the country and the nature of your activities, including in combat operations.
3. Please also provide information on evacuations of wounded and dead.
4. Please provide detailed information on your company's management and ownership structures, as well as the chains of command.
5. Please provide detailed information regarding the human rights due diligence policies and processes put in place by your company to identify, prevent, mitigate and account for how the company addresses potential and actual adverse impacts on human rights caused or contributed to through your company's activities, or directly linked to the company's operations or services by the company's business relationships, in line with the UN Guiding Principles on Business and Human Rights. In particular, please provide specific information on whether heightened human rights due diligence is exercised in high-risk operating environments, such as conflict-affected areas.
6. Please provide information about specific due diligence or impact assessment measures taken by your company concerning the operations of Lobaye in the Central African Republic. Please also indicate how your company tracks the effectiveness of its measures to prevent and mitigate adverse human rights impacts, including through meaningful consultation with affected stakeholders.
7. Please describe selection, vetting and training requirements in place for your company's personnel and how these are implemented.

8. Please highlight the measures that your company is taking, or is considering taking, to ensure non-repetition of past alleged violations and abuses considering the apparent links with allegations in the Central African Republic.
9. Please provide information on steps taken by your company to establish operational-level grievance mechanisms, in line with the UN Guiding Principles, to address adverse human rights impacts caused by your company throughout its operations in the Central African Republic and globally.

This communication and any response received from your Excellency's Government 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.

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.

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.

Please note that letters expressing similar concerns were sent to the Governments of the Central African Republic and the Russian Federation, and, to the extent possible, to the enterprises concerned.

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

Jelena Aparac

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

Dante Pesce

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

Tae-Ung Baik

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your company to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to recall that both international humanitarian law and international human rights law continue to apply in a situation of armed conflict, and there are therefore certain obligations to respect fundamental human rights recognized in customary international law, including the Universal Declaration of Human Rights, the Geneva Conventions of 1949 and the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”). Rules of customary international law are universally binding at all times.

The Customary Rules are applicable to all parties to the non-international armed conflict. Under these Rules, parties must distinguish between combatants and civilians and direct attacks only against combatants (Rules 1, 6 and 7). Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited (Rule 2). Indiscriminate attacks are also prohibited (Rule 11). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14). Parties to the conflict must “do everything feasible to verify that targets are military objectives” (Rule 16) and take all feasible precautions to avoid and minimize incidental loss of civilian life (Rule 15).

In its general comment No. 31 (CCPR/C/21/Rev.1/Add.13), the Human Rights Committee finds that States’ obligations to protect and fulfil human rights extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private companies, and to take positive steps to fulfil human rights. Furthermore, in order to fulfil its obligations, a State must take appropriate measures “to prevent, punish, investigate or redress the harm caused by ... acts of private persons or entities” (para. 8).

We should like to recall that the International Convention for the Protection of All Persons from Enforced Disappearance considers "enforced disappearance" to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law (article 2).

Similarly, the preambular part of the 1992 Declaration on the Protection of all Persons from Enforced Disappearance, enforced disappearances occur when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose

the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law. Furthermore, enforced disappearance has been defined as a crime against humanity in article 7 (1) (i) of the Rome Statute of the International Criminal Court.

As set forth in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), all business enterprises have a responsibility to respect human rights. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Guiding Principles have identified two main components to the business responsibility to respect human rights. This 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; [and] (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 lay down a 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. Key features of human rights due diligence and emerging good practices are elaborated in a recent report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/73/163). This for example includes the need for business enterprises to exercise heightened human rights due diligence “in high-risk operating environments” (ibid, para 14(c)).

To fulfil their responsibility to respect human rights, Principle 15 outlines that business enterprises should have in place “processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute”. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to effective remedy. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

Principle 29 states that “[t]o make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted”. Moreover, as underlined in the commentary to

Guiding Principle 29, operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice (as set out in Guiding Principle 31) and they should not be used to preclude access to judicial or other non-judicial grievance mechanisms.