

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Ref.: AL OTH 54/2023

(Please use this reference in your reply)

19 May 2023

Dear Mr. Umurhan,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 44/15, 50/17, 52/4, 51/16 and 45/17.

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 the 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 the attention of your company information we have received concerning alleged human rights violations and abuses against members of the Kokoya community in Bong County, Liberia, in relation to both a toxic spill by MNG Gold Liberia Inc., subsidiary of Avesoro Holdings Ltd, and to the use of excessive force, intimidation and arrest by the Liberian National Police of community members, including environmental and indigenous defenders and civil society activists, who demanded accountability for related human rights abuses and environmental harm.

Avesoro Holdings

According to the information received:

Toxic spill

MNG Gold Liberia Inc. (hereafter MNG Gold) is a subsidiary of Avesoro Holdings Ltd, which is domiciled in the United Kingdom of Great Britain and Northern Ireland. MNG Gold has operations in Liberia and received a permit for gold mining exploration on 28 August 2015 from Liberia's Environmental Protection Agency.¹ On 27 September 2017, MNG Gold's Tailing Storage Facility's (TSF) spilled three million gallons of toxic chemicals, including cyanide, mercury, and lead in its Kokoya mine, in Bong County.

According to a report to the Liberian Senate from the National Bureau of Concessions of Liberia (NBC),² the "catastrophic failure at the Tailing Storage Facility [...] led to a 3 million gallon diverse toxic chemicals release including cyanide, mercury and lead which are highly dangerous to the community, flora and fauna and will remain in the environment for many decades to come."³ In fact, according to the World Health Organization, there is no level of exposure to mercury or lead that is known to be without harmful effects. Even small amounts of exposure to lead can cause serious health problems, including permanent disabilities. In addition, mercury is persistent, bioaccumulates and causes irreversible health and neurological damage. Further, mercury goes through the food chain, so rural populations, and especially children, could be affected. Very high levels of lead or mercury can be fatal. Cyanide is also a rapidly acting, potentially deadly chemical.

The spill had a serious impact on the health of the communities in the immediate area, exacerbated by the lack of prompt action by the company in the aftermath of the spill. According to information received, MNG Gold's management was aware that there were dozens of people in the spillage area seeking medical treatment, but it took hours to put in place the necessary urgent medical response. As a result of this delay, numerous community members, including children and women, were left unattended. The report of the NBC to the Senate indicated that emergency medical treatment should be a component of any Health, Safety and Environment Emergency Contingencies planning relating to cyanide and mercury poisoning, or Standard Operating Procedures for pollution emergencies.⁴

No impartial assessment to examine the full impact of this spillage has been conducted, including on groundwater, soil, streams, waterways and agricultural land. According to the report of the NBC, the "multitude of toxic chemicals present in the spill", some of which present a "complex chemical breakdown and their resultant transformation over time" require "constant

¹ Permit no. EPA/EC/ESIA/001-0815

² Report to Senate from The Director-General, National Bureau of Concessions on "Magnitude of the deleterious effects of the pollution on the environment and communities in Liberia by the Turkish-Liberian concessionaire entity MNG".

³ Ibid, p. 1
Ibid, p. 3

monitoring before and after any remedial interventions”.⁵ The NBC concluded that MNG Gold Management had demonstrated “wanton, reckless and inconsiderate dispossession of the emergency medical needs of the community”.⁶

Under section 4 of the Liberian Environmental Management Protection Act of 2002, environmental management includes: the precautionary principle; the polluter-pays principle; the principle of inter-generational equity; and the principle of public participation. Despite this, MNG Gold has not provided effective remedy for the damages caused by the toxic spill, where members of impacted communities in Kokoya, including Kpelle and Bassa Indigenous Peoples, suffered the environmental degradation of their ancestral lands and contamination of drinking water. Community representatives filed a lawsuit against MNG Gold with an initial demand for compensation of 11 million US dollars. However, the case was settled out of court and MNG Gold eventually agreed to pay 450,000 US dollars. According to the NBC, mining companies in Ghana and Argentina had to pay fines of 5 million and 9.3 million US dollars respectively for comparable toxic spills.

Excessive use of force

On 5 November 2018, a Chinese contractor for MNG Gold, China Gezhouba Group Co Ltd, was driving a vehicle which crashed with a motorcyclist within the concession area, killing the driver of the vehicle, the passenger on the motorcycle, and two bystanders. The incident prompted members of the community, who were already outraged by the lack of accountability and adequate reparation for the toxic spill, to protest peacefully at the MNG Gold site, demanding an immediate investigation into the deaths caused by the local contractor. The protests resulted in some damages to the MNG Gold facilities, which could not be properly investigated. According to information received, the Liberian National Police (“LNP”) responded with a disproportionate use of force during and after the protest, including severe beatings, threatening demonstrators with guns, and handcuffing demonstrators while transporting them to the Sanniquellie Central Prison. The police arrested an undocumented number of individuals in connection with the protest, including many who had not participated in the demonstrations, and also peaceful protesters who were not involved in the damage to MNG Gold property. The arrests took place at different times, including several days after the demonstration, during the day and at night, and at various locations. The State then indicted 83 individuals and prosecuted 44 more for crimes, including armed robbery, arson, and terroristic threat.⁷

Significant procedural and evidentiary irregularities were reported in the investigations and conviction of individuals in connection with the protest, including environmental and indigenous defenders as well as civil society

⁵ Ibid, p. 5

⁶ Ibid, p. 3

⁷ The police charge sheet cites 67 defendants as having been officially arrested and charged, but six more names were written in by hand, bringing the total number of defenders charged with the same crimes to 73. A single indictment document, however, names 83 individuals, 10 of whom are not accounted for in the police charge sheets available in the case files. Other court documents go on to reference 85 to 86 charged individuals, again, suggesting that the prosecution materials were riddled with inaccuracies. During pre-trial formalities, some of the accused were set free and only 44 individuals were ultimately tried in court. Of those who faced trial, 24 were found guilty and the remaining 20 were acquitted.

activists, who were arrested following this incident. For example, individuals were initially taken to Gbarnga police station and were subsequently transferred to Saniquellie prison, located in a different county, with no explanation. The judge refused their requests to present individual defence and reduced the number of witnesses in the subpoena from 27 to 10. The witnesses who were allowed to testify faced logistical challenges in accessing the Court due to its location far from Bong County and due to a lack of resources necessary to travel to the Court.

Further, those held in custody reported being stripped naked, tied up, and denied access to drinking water. Some also reported being beaten, including with sticks, which resulted in severe injuries and, in some instances, in permanent disability. Two detainees died shortly after being released from prison on medical grounds, four other community members have been released on medical grounds and one more is currently critically ill and in need of urgent medical care. Seventeen community members and activists are currently still in prison, many of whom are showing signs of malnutrition and other forms of illness.

In cases where sentences were not imposed, the criminal prosecution of community members and activists resulted in serious financial burdens and generated significant social, economic, and psychosocial challenges for the accused, their families and communities in Bong County, who already live in extreme poverty and are in a situation of extreme physical and economic marginalization.

The information received indicated that MNG Gold should have been aware that such a level of repression and intimidation would have negative impacts on the right of communities and its members to express their concerns, and that it should have ensured an environment in which community members could put forward their grievances safely.

Without prejudging the accuracy of these allegations, we express our most serious concern regarding the human rights and environmental impacts of MNG Gold's activities, and in particular the toxic spill of September 2017. We are also concerned about information received regarding the ill-treatment of community members held in custody and the conditions of those who are still in detention. We remain preoccupied that such conditions of detention may amount to arbitrary arrest and detention, violation of the right to a fair trial, inhuman and degrading treatment and, in some instances, to torture. We are seriously concerned by the alleged use of criminal prosecution and judicial harassment to intimidate and silence environmental and indigenous defenders as well as civil society activists, and to silence community members' voices who are demanding that the Liberian Government and MNG Gold protect and respect human rights in the context of mining operations, including the rights to a clean, healthy and sustainable environment, to water and sanitation, to health, and to Indigenous Peoples' right to access and use their ancestral lands. We are also concerned about the effect that such harassment has had, and continues to have, on the right to freedom of expression and the right to peaceful assembly of impacted communities. We would like to highlight the important role of States and business in ensuring conducive environments for effective stakeholder engagement.

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 indicate measures taken to ensure that your subsidiaries comply with national and international environmental laws and human rights standards.
3. Please advise about the steps taken to ensure that your company's subsidiaries respect human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.
4. Please explain what measures your company has taken to ensure that its subsidiaries enable environmental and indigenous human rights defenders to carry out their peaceful and legitimate activities without fear of judicial harassment, or other restrictions. In particular, please indicate how your company and its subsidiaries have incorporated the recommendations made by the Working Group on business and human rights to businesses in its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2).
5. Please indicate what actions have been taken by your company to ensure a proper investigation will be conducted with regards to damages that resulted from the protests, and to ensure accountability and access to an effective remedy for the human rights violations related to your subsidiary's activities, including the allegations of environmental harm and the use of excessive force during peaceful assemblies, described in this letter. This includes guarantees of non-repetition regarding the operations of your subsidiary, MNG Gold.
6. Please indicate the steps that your company has taken, or is considering to take, to ensure that its subsidiaries establish or participate in effective operational-level grievance mechanisms in line with the UNGPs, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.
7. Please indicate the steps that your company has taken, or is intending to take, to guarantee that its subsidiaries ensure environmentally sound management and disposal of hazardous substances and wastes.

We would appreciate receiving a response within 60 days. Past 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.

We may publicly express our concerns in the near future, as we believe that the information received is sufficiently reliable to indicate that there is a matter that warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with company to clarify the relevant issues.

Please be informed that letters on this matter have been also sent to business enterprises that are involved in the allegations above, including MNG Gold, as well as to the home-States of all involved companies (Liberia and the United Kingdom of Great Britain and Northern Ireland).

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

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

Clement Nyaletsossi Voule
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José Francisco Cali Tzay
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Marcos A. Orellana
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management and disposal of hazardous substances and wastes

Annex

Reference to international human rights law and standards

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. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. 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.

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. Moreover, the commentary of principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. (...) Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require 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 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. 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”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. 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).