

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food and the Special Rapporteur on the human rights of internally displaced persons

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(Please use this reference in your reply)

25 September 2023

Mr. Chen Defang,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 49/23, 53/3; 49/13 and 50/6.

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 59 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.

We would accordingly like to bring to your attention information we have received concerning **the impacts of Wanbao's continued operation of the Letpadaung Copper Mine, including the forced eviction and displacement of civilians, collaboration with Myanmar military forces, financial support for the Myanmar military through the mine's joint shareholder structure and business revenues, and environmental damage.**

The Letpadaung Copper Mine has been the subject of prior communications from Special Procedures: MMR 12/2012, MMR 6/2013, MMR 14/2013 and MMR 1/2014.

According to the information received:

Wanbao Mining Limited

The Letpadaung copper mine is a joint venture between Wanbao Mining Limited, a subsidiary of an arm of China's state-owned defence company, China North Industries Group Corporation Limited (NORINCO), military conglomerate Myanmar Economic Holdings Company (MEHL), a company of the Myanmar military, and Myanmar state-owned enterprise ME1. MEHL is a major conglomerate owned by the Myanmar military with 40% of shares owned by the Directorate of Defence Procurement and 60% by active and veteran military personnel. ME1 is a state-owned enterprise under the Ministry of Natural Resources and Economic Conservation responsible for granting permits, entering joint ventures with mining companies, and collecting taxes from mining projects. The Myanmar military regime seized control of Myanmar's state-owned enterprises following the coup d'état in February 2021, acquiring control over and collecting revenues from the businesses including ME1.¹

The Letpadaung copper mine is operated by Wanbao Mining's subsidiary, Myanmar Wanbao Mining Copper Limited. It is located in Salingyi Township, in the northwestern part of Sagaing Region and encompasses approximately 32 square kilometers. The Letpadaung Copper mine is part of the Monywa copper mining complex, which also comprises of the Sabetaung and Kyisintaung (S&K) mines operated by Myanmar Yang Tse Copper Limited, another subsidiary of Wanbao Mining.

The operation of the mine has been controversial for over a decade due to land disputes, environmental damage and the impact it has had on significant religious and cultural sites. Over the years, approximately 16,700 people from 30 villages were engaged in standoffs where villagers refused to be relocated or refused to accept compensation to relocate. Widespread protests against forced evictions and loss of livelihoods erupted in 2012, with heavy crackdowns against protestors. Between 2011-2014, residents of villages in proximity to the mine and were forcibly evicted without due process or adequate compensation and resettlement. An investigation commission led by Aung San Suu Kyii was established in 2012, which led to the publication of a report in 2013 that called for appropriate compensation to displaced persons, the need for an environmental and social impact assessment (ESIA), and changes to the shareholding agreement. Wanbao contracted an international consultancy firm to conduct an ESIA, which was approved by the Myanmar government in 2015, but which was also criticized by human rights groups as inadequate. Mining operations paused in 2013 however resumed in 2016 despite unresolved human rights and environmental issues, with sporadic protests continuing.

Since the publication of the 2013 investigation, changes to the shareholding agreement were established: ME1 receives 51% of the shares from the mine; Wanbao Mining receives 30%; and MEHL receives 19%. According to credible financial reports, in FY 2020-2021, the payments collected by the Myanmar military controlled entities (ie. ME1 and MEHL) could have amounted to 417 million USD.

Since the coup on 1 February 2021, production at Letpadaung copper mine ceased as many of the workers joined the civil disobedience movement, with the work force reportedly shrinking from 7,000 to approximately 500. While production has paused, copper reserves have reportedly continued to be exported to China. In 2022, Myanmar exported 6,828,046 kg of copper ore and concentrates to China, amounting

¹ <https://www.opensanctions.org/entities/NK-fB3Skz7dytKLSWtyR2Tb6K/>; <https://www.bbc.com/news/world-asia-56133766>

to USD 7,777,101. From January to July 2023, Myanmar exported 6,861,868 kg of copper ore and concentrates to China, amounting to USD 7,122,297.

Tension around the mine intensified when, in April of this year, 16 anti-military people's defence forces issued a joint statement threatening attacks against the mine if operations were to resume in an effort to stop revenue flow to the Myanmar military. Following the statement, Myanmar military troops were deployed to secure the Wanbao office in May 2022. Wanbao Mining's subsidiaries, Myanmar Wanbao and Yang Tse Copper Limited, issued a joint statement on 4 May 2022, stating "The company does not want to be involved in the current conflict. It has expressed its desire not to harm innocent people and surrounding villages. It urges all armed groups and unarmed groups to the safety of project staff, to respect the right to life and the right to choose". Another joint statement was issued on 27 June 2022 stating: "We wish nothing but peace and development for the entire communities. We call on all groups, armed or otherwise, to respect the lives and livelihoods of our colleagues at the mine site".

There are indications that mining activities may resume. In recent weeks Wanbao has invited former workers to return, offering higher salaries. Skilled workers who joined the CDM are reportedly being offered double or triple their original salary, up to 2 million MMK per month.

There has reportedly been an increase in threats to and coercion of nearby villages. In December 2022, it is reported that thousands of civilians from 13 villages were temporarily displaced by raids conducted by military soldiers in a supposed operation to secure the Letpadaung copper mine.² Credible sources indicate that on 13 December 2022 Myanmar military forces stationed themselves in Gondaw and Done Taw villages, located in between the mining site and the Myauk Yamar Creek. The next day, the Myanmar military forces reportedly conducted early morning raids on villages north of Myauk Yamar Creek, including on Bein New Chaung, Kyay Sar Kya, and Mya Shwe Si villages in Yinmabin Township. Residents from approximately 13 villages in total were impacted by these raids, and it is reported that an estimated 150 Myanmar military troops participated.

In another incident that took place in early January 2023, Myanmar military forces are reported to have conducted further raids around the Letpadaung mine, burning at least 200 houses in 5 villages; an estimated 94 families from Kyauk Phyu Taing village were left homeless after their houses were burnt down. A man from Kyauk Phyu Taing village who was reportedly forced to act as a porter by Myanmar military troops was found beaten and dead on 19 January 2023.

Most recently, there has been an escalation of security threats and threats of coerced displacement to approximately 119 villagers from approximately 35 households of Wet Hmay village, in Salingyi Township, Sagaing Region, located on the northeast corner of the mining site,³ to Wet Hmay New Village, located east of the Letpadaung copper mine.

² <https://myanmar-now.org/en/news/thousands-flee-as-myanmar-military-secures-letpadaung-area-for-chinese-workers/>

³ <https://www.frontiermyanmar.net/en/left-behind-by-the-letpadaung-copper-mine/>; affected resident August 21 2023.

Wet Hmay village was already subject to coercion and forced relocation. In 2010, approximately two thirds of the original 100 households from Wet Hmay village in Salingyi Township relocated a mile away to Wet Hmay New Village, due to the mining operations.⁴ However, the remaining 35 households in Wet Hmay village refused compensation and resettlement offer Wanbao and its partners originally offered in 2010. According to reports received, on 3 August 2023, about 300 Myanmar military soldiers entered Wet Hmay village and started installing posts for a barbed-wire fence surrounding the village without any advanced communication to the residents. Residents were allegedly threatened by Myanmar military soldiers, with several shots reportedly being fired, and were subsequently confined to the village.

On 8 August 2023, a Wanbao representative allegedly visited the village and informed the residents that Myanmar soldiers had commenced fencing the village out of security concerns. On 11 August 2023, six representatives of the village allegedly were escorted out of the village to meet with a Wanbao representative to discuss conditions for relocation. They were reportedly forced to hand over their mobile devices to Myanmar military soldiers before leaving the village, along with their national identification card. However, the Wanbao representative reportedly refused to engage in a discussion with the residents until they signed a form consenting to resettlement on behalf of the remaining residents; the villagers felt that they had no choice but to sign the consent form given the security risks to themselves and their families. Since 18 August 2023, it has been reported that all residents have been forcibly evicted from their homes; many are reported to be children or elderly persons.

Allegedly, Wanbao offered the residents the same amount in compensation as originally offered in 2010 (18 lakh per acre), an additional 400,000 MMK to support costs for dismantling resident houses that were surveyed in 2010, and a house in the resettled village; land compensation and a new house in the relocated village reportedly excludes 3 additional households that were built after 2010. The compensation is considered inadequate given the rising cost of living and the significant depreciation of the Kyat since 2010. It is also reported that the compensation would not even cover the costs of transportation of household materials and reconstruction costs, including wells, toilets, and electricity meter boxes. In addition, there is reportedly insufficient space to adequately accommodate all villagers in the proposed resettlement village, which is the same village that the majority of the village's original 100 households were resettled in 2010 after accepting the compensation offered at the time; there is reportedly a risk of tensions between the villagers in the future. Residents also reported that they would lose access to farmland to carry out livelihood activities for basic sustenance and they likely would have no choice but to accept employment opportunities to support the mining project.

If the above allegations are correct, we have grave concerns about Wanbao continuing to knowingly engage in forced evictions, displacement and resettlement in villages around Letpadaung, particularly in the present conflict environment. An estimated 700,000 civilians have been displaced within Sagaing Region alone due to the Myanmar military's widespread targeted attacks on civilians. Wanbao appears to be engaging in the intentional displacement of villagers from their homes and land in a context where rule of law has broken down, humanitarian relief is limited, and there

⁴ <https://myanmar-now.org/en/news/forced-relocation-of-locals-underway-near-letpadaung-mining-project/>

is no due process or protection for villagers.

We are also troubled that Wanbao, despite credible reports of the military's daily perpetration of grave human rights abuses amounting to crimes against humanity, war crimes, and genocide, is collaborating with the Myanmar military.

We are deeply concerned that Myanmar military officers involved in security actions connected to Wanbao's operations may be actively committing human rights abuses, including mass displacement of villagers, restricting and violating the right of freedom of movement of the villagers, which may amount to arbitrary detention. It has been reported that villagers have been unable to leave the village premises to tend to their farms or purchase food or water, violating their right to food. The actions of the Myanmar military to protect the mine indicate that the military has used a strategy of detention to coerce them to accept Wanbao's resettlement and compensation terms.

We are also concerned that Wanbao apparently intends to resume operations of the copper mine, which is a joint venture with the Myanmar military regime collectively constituting majority shareholders. Once operational, it will provide revenue directly to the Myanmar military, allowing it to purchase arms to further perpetrate gross human rights violations.

All companies have a responsibility to respect human rights; the scope and meaning of this has been clarified in the UN Guiding Principles on Business and Human Rights. It requires companies to "avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur". In order to meet this responsibility, companies should conduct "a human rights due diligence process to identify, prevent, mitigate and account for how they have addressed their impacts on human rights", and establish "processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute." In connection with these 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.

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 mandate 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 as to the measures undertaken in response to the present operating environment, including heightened human rights due diligence, that your company has taken in line with the United Nations Guiding Principles on Business and Human Rights to identify, prevent, mitigate and accounts for adverse human rights impacts caused by your company's activities, or to which they may

have contributed or be directly linked.

3. Please explain what monitoring and evaluations systems your company has in place to ensure the effectiveness of human rights due diligence steps taken to mitigate and prevent human rights abuses as described in this letter and other related human rights violations, throughout your business operations. In particular, please provide information on whether your company has put in place ‘cascading’ requirements that reach down to your suppliers, such as human rights risk assessments that would cover all tiers of suppliers as recommended in the 2018 report of the Working Group to the General Assembly.
4. Please indicate the measures taken by the company to ensure the implementation of the UNGPs, including information on whether your company has established or participates in any operational-level grievance mechanisms to provide access to remedy for affected individuals and communities.
5. Please provide additional information on how you assessed fair compensation and resettlement terms for all Wet Hmay village residents as of 2023, including if and how the terms adequately account for the impact on their livelihoods, loss of their home and land, and the mine’s environmental impacts.
6. Please provide additional information on your knowledge of the SAC’s direct threats to and restrictions of freedom of movement of residents of the Wet Hmay village residents, and steps you have taken to cease or prevent the SAC’s adverse human rights impacts on the residents, such as guarantees from the soldiers to ensure they will comply with international standards on the use of force.
7. Please provide additional information on your operating plans in Wet Hmay village and the Letpadaung mine overall, including details of any future planned expansions and land acquisitions and security arrangements.
8. Please provide additional information on how your company is engaging in genuine consultation and information sharing with the villagers, and ensuring they are able to freely consent to resettlement and compensation offers.

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.

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 this subject matter has been also sent to business enterprises that are involved in the Letapadaung copper mine, including NORINCO, as well as to China, the home-States of Wanbao and NORINCO.

Please accept, Mr. Chen Defang, the assurances of our highest consideration.

Thomas Andrews
Special Rapporteur on the situation of human rights in Myanmar

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

Michael Fakhri
Special Rapporteur on the right to food

Paula Gaviria
Special Rapporteur on the human rights of internally displaced persons

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultation with governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts.

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, 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.

Principle 13 has 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”.

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”.

In order to identify, prevent, mitigate and account for how they address their human rights impacts, companies are expected to conduct regular and ongoing human rights due diligence in consultation with relevant stakeholders. In this regard, we urge your company to carry out the necessary due diligence and make public the results (guiding principle 21). To fulfill their responsibility to respect human rights, business enterprises should have in place:

- (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;

Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute” (guiding principle 15).

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).

In the 2018 report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) to the General Assembly, the Working Group noted that “The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights and that in order to do so they are required to exercise human rights due diligence. Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships”. In addition, this involves (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact; (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working; (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.

We wish to draw your attention to Art. 17 of the ICCPR, which states that no one shall be subjected to arbitrary or unlawful interference with his home, as well as to article 11(1) of the International Covenant on Economic, Social and Cultural Rights which protects the right to an adequate standard of living, including the right to adequate housing. In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights asserted that the right to housing should not be interpreted in a narrow or restrictive sense which equates it with merely having a roof over one’s head but rather it should be seen as the right to live somewhere in security, peace and dignity. It stated that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional

circumstances, and in accordance with the relevant principles of international law.

In its General Comment No. 7, the Committee stated that evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Adequate alternative housing, resettlement or access to productive land, as the case may be, must be provided. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Prior to carrying out any evictions, and particularly those involving large groups, all feasible alternatives must be explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. All the individuals concerned should have a right to adequate compensation for any property, both personal and real, which is affected. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.

We further wish to refer to the Guiding Principles on Internal Displacement, which establish the right to be protected against forcible resettlement in any place where people's life, safety, liberty and/or health would be at risk (Principle 15).

We would also like to draw your attention to the Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18), which affirms that all persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the internationally recognized human rights principles is in place. The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs. No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction. The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed.