

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

Excellency,

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 would accordingly like to bring to your attention information we have received concerning **the impacts of Wanbao Mining Limited (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. Wanbao Mining Limited is a subsidiary of an arm of China's state-owned defence company, China North Industries Group Corporation Limited (NORINCO).**

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:

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), and the 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

¹ <https://www.opensanctions.org/entities/NK-fB3Skz7dyKLSWtyR2Tb6K/>; <https://www.bbc.com/news/world-asia-56133766>

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 mines.

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 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 received 51% of the shares from the mine; Wanbao Mining received 30%; and MEHL received 19%. According to credible financial reports, in Fiscal Year 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 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 2022, 16 anti-junta 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 Junta. 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 respect the safety of project staff, 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 been an increase in threats to and coercion of nearby villages. In December 2022, 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 junta forces 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 there were an estimated 150 junta troops who participated.

In another incident that took place in early January 2023, junta forces conducted raids around the Letpadaung mine again, burning at least 200 houses in 5 villages; an estimated 94 families from one of the affected villages, 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.

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 mining operations.⁴ However, the remaining 35 households in Wet Hmay village refused compensation and resettlement offered by Wanbao and its partners 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

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.

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

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 since 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 the construction of a new 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.

While we do not wish to prejudice the accuracy of these allegations, we wish to express our serious concern regarding 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 is no due process or protection for villagers.

We are also troubled that Wanbao, despite knowing the military's daily perpetration of grave human rights violations 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 perpetrate further 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 and standards attached to this letter which cites international human rights instruments and standards relevant to these allegations.

Serious concern is expressed at reports that your Excellency's Government is failing to meet its international human rights obligations to protect the aforementioned human rights. This is underscored by the obligation under the international human rights framework for your Excellency's Government to set out clearly the expectation that all business enterprises domiciled in your territory and/or jurisdiction respect human rights throughout their operations. This requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and standards** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to protect against human rights abuse by Chinese business enterprises, ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and

Human Rights.

3. Please describe the guidance, if any, that the Government has provided to Chinese business enterprises on how to respect human rights throughout their operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human rights due diligence, consulting meaningfully potentially affected stakeholders, and remediating any negative impacts.
4. Please provide information on additional steps taken by your Excellency's government to protect against human rights abuses by this company as a state-owned enterprise, including by requiring human rights due diligence
5. Please provide information on steps taken by your Excellency's Government to strengthen "the responsibility throughout the extractive industries value chain" and "conduct risk-based supply chain due diligence in order to prevent engagement with materials that may have funded or fueled conflict" as per the CCCMC Guidelines for Social Responsibility Outbound Mining Investment launched in 2014.
6. Please provide information regarding the measures that your Excellency's Government is taking, or considering taking, to ensure that those affected, by the overseas activities of Wanbao Mining Limited and China North Industries Group Corporation Limited (NORINCO) have access to effective remedies as per the UN Guiding Principles.

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, prevent their re-occurrence, and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on the same subject has also been sent to Wanbao Mining Limited and China North Industries Group Corporation Limited (NORINCO) involved in the abovementioned allegations.

Please accept, Excellency, 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 draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include the:

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- UN Guiding Principles on Business and Human Rights

We would like to particularly bring your Excellency's attention to the human rights obligations under international human rights instruments and under customary international law binding on the People's Republic of China.

It is well established that the international human rights law obligations of States apply extraterritorially. Under international treaty law, this is a question of the scope of application of the treaty itself, a matter of treaty interpretation. In this regard, it is worth noting that under the International Covenant on Civil and Political Rights (ICCPR), signed by the People's Republic of China on 5 October 1998, the scope of application is a matter of interpretation of the notion of "territory and jurisdiction" in its article 2 (1). The Human Rights Committee has long and consistently affirmed a disjunctive interpretation of these two concepts, and that that the Covenant applies extraterritorially in situations where the State exercises jurisdiction in the form of effective control over territory or power over an individual (see General Comments no. 31 para. II and no. 36 para. 63). While the People's Republic of China is yet to ratify the ICCPR, as a signatory, China has an obligation to refrain from any acts that would defeat the object and purpose of the Covenant prior to its entry into force (article 18 of the 1969 Vienna Convention on the Law of Treaties).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by the People's Republic of China on 27 March 2001, provides an explicit basis for the extraterritorial application of the ICESCR. All rights recognized by the ICESCR should be understood in light of its Article 2, Para 1, which reads "Each State Party to the present Covenant undertakes to take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." Thus, it explicitly establishes an obligation of international cooperation.

In addition, the Committee on the Economic, Social and Cultural Rights has indicated that the "extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective" (General Recommendation 24 (2017)).

With regard to the obligations incumbent on the People's Republic of China under customary international law, it is worth noting that no restriction in terms of their scope of applicability exists, comparable to those enshrined in treaty law. Thus, as a starting point, there is a presumption against the territorial limitation of these obligations. In this regard, we note that the Universal Declaration of Human Rights (UDHR) contains no explicit jurisdictional limitations. At the very least, the scope of applicability of customary international human rights law obligations must be understood to similar scope of application as those within the two Covenants. This finds support in the following three considerations: First, the ICCPR and the ICESCR are treaty codifications of human rights contained in the UDHR. Second, the affirmation that human rights obligations apply extraterritorially enjoys not only consistent affirmation by the relevant treaty bodies, but more generally from global and regional human rights monitoring bodies. The International Court of Justice has accepted this with respect to the ICCPR. Third, that human rights obligations are not territorially limited has been accepted, implicitly and explicitly, by States.

We wish to draw the attention of your Excellency's Government to Article 3 of the UDHR and Article 6(1) of the ICCPR, which guarantee the right of every individual to life, liberty, and security. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. As highlighted by the Human Rights Committee in General Comment no. 36, duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para 26). Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para 62).

We would like to highlight 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 consultations involving Governments, civil society and the business community. The Guiding Principles have been established as global authoritative norm for all States and companies to prevent and address the negative consequences related to companies 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. "

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8). In accordance with these legal

obligations, Guiding Principle I reiterates the State duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." Moreover, Guiding Principle 3 reiterates that States must take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." In addition, this requires, inter alia, that a State should "provide effective guidance to business enterprises on how to respect human rights throughout their operations". Lastly, in accordance with the right recognized in treaty and customary international law (see for example ICCPR Article 2 (3), the Guiding Principles reiterate that States must ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

We would like to refer to the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) and recommendations contained therein elaborating on the duty of States to protect against human rights abuses involving those business enterprises that they own or control. This includes the following considerations:

88. All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations.

94. States, as primary duty bearers under international human rights law, should lead by example. To show leadership on business and human rights requires action and dedicated commitment on many fronts. It also includes using all the means at the disposal of States to ensure that the enterprises under their ownership or control fully respect human rights throughout their operations. There is untapped potential for State-owned enterprises to be champions of responsible business conduct, including respect of human rights. The Working Group calls on States and State-owned enterprises to demonstrate leadership in this field.

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.

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.

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