

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the rights of indigenous peoples.

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Excellency,

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 and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 17/4 and 24/9.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the situation of the Evenki "Dylacha" community**.

According to information received:

"Dylacha" is an indigenous Evenki obshchina (clan community) founded in 1992 and located in Bauntovski Evenkiisky District, Baikal region, Republic of Buryatia. Dylacha holds a license (UDE No. 00153), which is valid from 1997 to 2017, to carry out mining and related processing of nephrite, a type of jade. According to information obtained, the mining and processing of nephrite has been a traditional livelihood of the indigenous peoples of the Baikal region dating back hundreds of years. Economic benefits derived from obshchina activities enables Dylacha to employ an estimated 200 people, many of which were Evenk, as well as support other initiatives benefitting the Evenks of Buryatia, including educational scholarship programs, housing projects, farming initiatives, wellness programs, and cultural and artistic activities.

According to information received, Dylacha has complied with relevant Russian legislation and regulations in carrying out its activities, including its mining operations. In August 2012 an audit conducted by the state prosecutor of the Republic of Buryatia in collaboration with the Eastern Baikal environmental prosecutor's office; the Buryat administration of the Federal Service for Supervision of Natural Resource Usage (Rosprirodnadzor); the Buryat branch of the Federal Ministry of Internal Affairs; as well as other agencies, found that

Dylacha was in compliance with all licensing conditions pursuant to licence UDE No. 00153 and was carrying out its mining operations within its concession area.

It is alleged that despite this, on 4 October 2012 a raid was conducted at the Dylacha obshchina site located in the regional capital, Ulan-Ude. The individuals conducting the raid were allegedly masked and unidentified, but they wore camouflage uniforms associated with the “Special Purpose Mobil Unit”, also known as an “OMON” unit, which is associated with the Russian Ministry of Internal Affairs. It is reported that the people carrying out the raid in Ulan-Ude were armed and assisted by local police. During the raid, the perpetrators allegedly confined Dylacha employees in a hallway while the police seized electronic and hard copies of documents.

Concurrent to the raid in Ulan-Ude on 4 October 2012, two helicopters allegedly arrived at Dylacha’s production facility, known as “Medvezhi”, located in the Bauntovski Evenkiisky District. Reportedly, members of the Interior Ministry of Russia and others individuals associated with business enterprises were aboard the helicopters. It is alleged that after the helicopters landed, Dylacha employees were gathered at gunpoint and detained. In addition, the director of the facility and the chief geologist were sequestered and not permitted to communicate with others. Subsequently, on 5 October 2012 policemen took the director and chief geologist to an undisclosed location, where they were held and interrogated during approximately two months. The two men were reportedly released on 14 December 2012.

Following the events of early October 2012, an investigation was initiated regarding the obshchina on the basis that Dylacha had extracted nephrite beyond the limits of its concession area at an estimated value of 600 million roubles. At present, the Interior Ministry is handling the investigation, which is on-going. In addition, it has been alleged that in October 2012 an investigator with the Interior Ministry in the Republic of Buryatia ordered the impoundment Dylacha’s entire stock of nephrite for the purpose of examination. The nephrite is yet to be returned to the obshchina.

Information has also been received indicating that in March 2013, the Regional General Prosecutor of the Buryatia District requested that the municipal court dissolve Dylacha on the basis that its activities were in violation of current Russian legislation. Specifically, it was alleged that not all members of Dylacha are registered in their actual places of residence and that the community is not permitted to carry out “non-traditional activities”. Rather, the community only has a right to generate earnings from fishing, hunting and reindeer husbandry. According to information received, the Municipal Court ruled in favour of the dissolution of Dylacha and the Regional Appellate Court upheld the decision. In this connection, it is reported that Dylacha contested the court findings and the matter is now before Supreme Court of Russia.

These actions against Dylacha have allegedly caused it to experience significant economic hardship and, according to information received, the obshchina has suspended mining operations. Concern has been expressed that the government and competing mining interests seek to gain control over natural resources located in the obshchina's area of operations.

While we do not wish to prejudge the accuracy of this information, we would like to draw the attention of your Excellency's Government to relevant international standards that are applicable to the issues brought forth by the situation described above. As you are aware, the issue of limitation on the economic activities of within the obshchina system was a subject of concern that was reflected in my 2010 report on the situation of indigenous peoples in the Russian Federation. In particular, the Special Rapporteur on the rights of indigenous peoples raised concerns that were brought to his attention signaling that "...the activities under obshchina authority are limited to those considered traditional, and thus do not include commercial activities." In addition, he recommended that the "federal and regional Governments should also consider providing encouragement and support for indigenous entrepreneurship in economic activities not necessarily limited to smaller-scale traditional activities, as a way of strengthening communities and enabling self-governance, job creation and self-sufficiency (A/HRC/15/37/Add.5, paras. 58, 91).

The Special Rapporteur on the rights of indigenous peoples also noted in his 2010 report that, although the Russian Federation abstained from voting for the United Nations Declaration on the rights of indigenous peoples, Government officials have expressed that the Russian Federation nonetheless accepts most of its provisions (A/HRC/15/37/Add.5, para. 18). In this connection, we would like to bring your Excellency's attention to article 3 of the Declaration, which affirms the right of indigenous peoples to self-determination, including the right to "freely pursue their economic, social and cultural development." Further, in its article 23, the Declaration states that "indigenous peoples have the right to determine and develop priorities and strategies for exercising their rights to development."

As we continue to monitor and clarify the circumstances surrounding the present situation, we would be interested in knowing your Excellency's Government's views on the accuracy of the information contained in this letter, and we would be grateful to receive any addition information your Excellency's Government may deem relevant. In particular, we would like to know further information about:

1) Whether the Dylacha obshchina was ordered dissolved or closed, and if so, what was the basis for the order?

2) Whether there is a legal or other basis to limit the business activities of indigenous obshchinas in the Russian Federation to traditional activities and if so, the purpose of such a limitation. Please explain how these align with international human rights standards, including the United Nations Declaration on the rights of indigenous peoples.

3) The status of the proceedings of the Dylacha case before the Russian courts.

4) Whether legally constituted companies or other economic agents have a business interest in exploiting nephrite in the region; and whether business enterprises have contacted local government authorities to express their interest in or wish to encourage regulatory changes on access to nephrite to the detriment of the indigenous community.

5) Whether businesses that apply for mining licenses in the region have adopted and incorporated the UN Guiding Principles on Business and Human Rights in their operational policies.

6) Whether your Excellency's Government has in place appropriate legislation that would be able to identify if there is a case of corporate complicity in the human rights violations and abuses of indigenous peoples.

We would appreciate a response from your Excellency's Government within 60 days. We undertake to ensure that your Excellency's Government's response will be taken into account in our assessment of the situation and in developing any recommendations that we make for your Excellency's Government's consideration pursuant to the terms of our mandates.

Please accept, Excellency, the assurances of our highest consideration.

Alexandra Guáqueta
Working Group on the issue of human rights and transnational
corporations and other business enterprises

James Anaya
Special Rapporteur on the rights of indigenous peoples