

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on minority issues.**

REFERENCE:  
AL RUS 11/2018

14 June 2018

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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on minority issues pursuant to Human Rights Council resolutions 35/7, 34/18, 32/32, 34/9, 34/5, 33/12 and 34/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the surveillance, intimidation and harassment against Ms. Yana Tannagasheva and her husband Mr. Vladislav Tannagashev in possible reprisal for their endeavours to raise concerns about the adverse impacts of coal mining activities on the Shor indigenous peoples, who are a minority in North Siberia and the Far East of the Russian Federation, and their communication with United Nations mechanisms in this regard.

Ms. Yana Tannagasheva and Mr. Vladislav Tannagashev are human rights defenders, representatives of the Shor indigenous peoples from South West Siberia and members of the non-registered organisation "Revival of Kazas and Shor people". Ms. Tannagasheva, in conjunction with another non-governmental organisation, engaged with human rights institutions, including national bodies and UN human rights mechanisms, such as the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination to report on the human rights impacts of mining activities in the Russian Federation, especially the severe impacts on indigenous peoples of West Siberia.

According to the information received:

Yuzhnaya Company is a open pit coal mining company located in the Kemerovo area, South West Siberia, where Shor indigenous communities live. The company is owned by Sibuglemet Holding.

On 2 November 2013, the General Director of Yuzhanaya threatened members of the Shor community in Kazas village that their houses might be burned down or hit by a bulldozer if the inhabitants did not sell their land to the company. Following this, members of the community applied to the Prosecutor's office in Myski to open a case, however none was opened.

From 26 November 2013 to 5 March 2014, 5 houses from indigenous members who refused to sell their lands were burned down, including that of Ms. Tannagasheva and Mr. Tannagashev. While criminal cases were opened, they were subsequently closed, reopened and ultimately closed with no finding of responsibility. While the homeowners still have legal title to the land, access to the area is restricted by a checkpoint run by Yuzhanaya, whose guards conduct searches on vehicles and grant or restrict access arbitrarily. The issue of their forced resettlement remains a serious issue of contention.

From April 2015 to date, Ms. Tannagasheva and Mr. Tannagashev have encountered numerous acts of intimidation and harassment:

- In April 2015, officials of the Russian Federal Security Service (FSB) threatened Mr. Tannagashev with the possible fabrication of a criminal case against him and possible organised attacks against him by "hooligans".
- From 2015 until 2017, defamatory materials mentioning the two human rights defenders were circulated in local media and television. In September 2017, Ms. Tannagasheva and Mr. Tannagashev noticed that an unknown car was constantly monitoring them near their home.
- In October 2017, they experienced harassment and surveillance by employees of the coal-mining company "Vostok-Ugol", specifically members of its local branch "Razrez Kiyzasski", who followed them in cars.
- On 8 December 2017, a police-colonel gave the human rights defenders a written official warning that they may be pursued under several unspecified criminal and administrative articles, without setting forth specific reasons or motives for such action.
- Towards the end of December 2017, a relative of the human rights defenders encountered two unknown men in the street in Myski town, who told him that if Ms. Tannagasheva and Mr. Tannagashev did not stop their international activity, their children would be targeted.
- In January 2018, FSB cars carried out surveillance on the human rights defenders' house during the visit of a colleague from an international indigenous organisation.

- On 17 March 2018, from 11.15 a.m. to 7.00 p.m., the human rights defenders were followed by two cars which regularly swapped and all of their movements during this time were surveilled. On the same day, a local police officer visited their home and orally warned them of a likely prosecution against them on the basis of several unspecified criminal and administrative articles. He also stated that his superiors planned to open the cases against them after the Presidential election. Later in March, cars supposedly belonging to police or FSB were constantly surveilling the human rights defenders' home.

Given this situation of continuous harassment, Ms. Tannagasheva and Mr. Tannagashev left Russia with their children in April 2018. After their departure, a relative was visited and asked for information on their location.

Serious concern is expressed over what allegedly appears to be a consistent campaign of harassment and intimidation targeted at Ms. Tannagasheva and Mr. Tannagashev in order to dissuade them from continuing their peaceful and legitimate work to publicly raise concerns about the business-related adverse impacts of coal mining activities on the Shor indigenous people. We further regret that, reportedly, the investigation into the arson attack suffered by the human rights defenders failed to bring any perpetrators to justice.

We also express concern over the possibility that the alleged surveillance, intimidation and harassment of the human rights defenders, along with unspecified administrative and criminal allegations against them may be in reprisal for their communication and sharing of information with international bodies, including United Nations mechanisms.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on any investigation which took place regarding the alleged arson of five houses in Kazas village in late 2013 and

early 2014. Please further explain on what basis such investigations were allegedly closed.

3. Please explain what kinds of protection including alternative houses have been provided to the affected five families.
4. Please provide detailed information on any investigation which has been made into allegations of surveillance, intimidation and harassment of Ms. Tannagasheva and Mr. Tannagashev, along with their family members, by allegedly members of the police and employees of the above-mentioned companies.
5. Please provide any information available on pending investigations against Ms. Tannagasheva and Mr. Tannagashev, along with the details of any charges against them.
6. Please indicate the steps that the Government has taken, or is considering to take, to ensure to implementation of the United Nations Guiding Principles on Business and Human Rights, such as (i) setting out clearly the expectations that all businesses respect human rights throughout their operations, including human rights due diligence (ii) taking appropriate steps to ensure the effectiveness of domestic judicial mechanisms with respect to business-related human rights abuses, and (iii) providing effective guidance to the business enterprises on how to respect human rights throughout their operations.
7. Please provide information on the measures undertaken to protect indigenous peoples and ethnic minorities from the adverse effects of business activity in the areas of their residence and livelihood, as well as from harassment, intimidation and violence perpetrated against them by State agents or agents of the businesses themselves.
8. Please kindly indicate what measures have been taken to ensure that human rights defenders in the Russian Federation are able to carry out their legitimate work, and exercise their rights to freedom of expression and freedom of association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please be informed that a letter on the same matter has also been sent to the involved company.

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 accept, Excellency, the assurances of our highest consideration.

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

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule  
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Leilani Farha  
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Michel Forst  
Special Rapporteur on the situation of human rights defenders

Victoria Tauli-Corpuz  
Special Rapporteur on the rights of indigenous peoples

Fernand de Varennes  
Special Rapporteur on minority issues

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to articles 9, 17, 19 and 22 of the International Covenant on Civil and Political Rights, ratified by the Russian Federation on 16 October 1973, which guarantee the rights to liberty and security of person, to not be subjected to arbitrary or unlawful interference with one's family or home, to freedom of opinion and expression and to freedom of association.

We would like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We would also like to refer to Human Rights Committee General Comment No. 35, which states that the right to personal security obliges States to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. It further notes that States must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury (Paragraph 9).

We would like to refer also to the Human Rights Council resolution 31/32 which in paragraph 10 underlines the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

We would like to draw your attention to General Assembly resolution 68/181 as well as Human Rights Council resolution 31/32, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves. (OP5, 19 and 20)

Regarding possible incidents of reprisals, we would like to refer to Human Rights Council Resolution 24/24 which calls on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its mechanism and representatives in the field of human rights; and to take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and consequently implementing specific legislation and policies and by issuing

appropriate guidance to national authorities in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal; and to Human Rights Council resolution 22/6, which provides for the right to “unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”.

We also recall Human Rights Council Resolution 24/5 reminding States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.

In connection with the above alleged facts and concerns we would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 (b and c), which states that everyone has the right to form, join and participate in non-governmental organisations, associations or groups and that everyone has the right to communicate with non-governmental organisations, associations or intergovernmental associations.

- Article 6 (a and b), which states that everyone has the rights to know, seek, obtain and receive information on human rights and fundamental freedoms, along with the right to disseminate such information or ideas or opinions formed on this basis.

- Article 9 (4), which states that everyone has the right to unhindered access to, and communication with, international bodies.

- Article 12 (2), which states that the State shall take all necessary measures to protect individuals from any violence, threats, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007. While we are aware that the Russian Federation abstained from voting on the United Nations Declaration on the rights of indigenous peoples, we would like to emphasise that this instrument provides an authoritative statement of international human rights standards related to indigenous peoples. The UNDRIP elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include equality and non-discrimination, life and personal integrity, culture, health and property, all of which are recognised in the principal human rights treaties ratified by the Russian Federation and mentioned above.

Article 7 of the UNDRIP provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. Article 26 states for the right of indigenous peoples to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and for legal recognition of those rights “with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” Article 10 affirms that indigenous peoples “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

Furthermore, the UNDRIP provides for the rights of indigenous peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. In that regard, Article 28 states that “indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

Additionally, we would like to refer to article 17 of the ICCPR, which protects the right to privacy and provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy. The General Assembly also emphasised that unlawful or arbitrary surveillance as a highly intrusive act, which violate the right to privacy and may contradict the tenets of a democratic society (A/RES/68/167). The Human Rights Committee stated in its General Comment 32 (par. 8) that the positive obligations on States Parties under ICCPR are only fully discharged if individuals are protected by the State, not just against violations of their rights by its agents, but also against acts committed by private persons or entities.

We would like to bring to the attention of your Excellency’s Government the international standards regarding the protection of the rights of persons belonging to



minorities, in particular to article 27 of the International Covenant on Civil and Political Rights, ratified by Russia on 16 October 1973, and the United Nations 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that “States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

Finally, 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) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related 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 specialised organs or society performing specialised 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.”

It is a recognised principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have

breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.