

**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 and the Special Rapporteur on minority issues.**

REFERENCE:  
AL OTH 34/2018

14 June 2018

Dear Mr. Skurov,

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; 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.

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.<sup>1</sup> Special Procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the surveillance, intimidation and harassment against Ms. Yana Tannagasheva and her husband Mr. Vladislav Tannagashev, including from Yuzhanaya mining company, for speaking out about adverse impact of open pit coal mining company

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<sup>1</sup> Further information about the communication procedure is available at:  
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

on 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 people from South West Siberia and members of the non-registered organisation “Revival of Kazas and Shor peoples”. Ms. Tannagasheva, in conjunction with another non-governmental organization, 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 an 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, five 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 targeting 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 in the Shor indigenous communities. We further regret that the employees from your company would appear to be involved in these acts suffered by the human rights defenders.

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 company 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 information on any human rights due diligence that may have been undertaken by your company to identify, prevent, mitigate and remedy the adverse human rights impacts of the activities of businesses in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please provide information on any steps taken by your company to identify, prevent, mitigate and remedy any adverse impact on the human rights of people living in the proximity of your company's areas of activity, and in particular on the rights of the Shor indigenous peoples of West Siberia.
4. Please provide information on any steps taken to identify, prevent and mitigate any adverse human rights impacts caused by your company and to provide for or cooperate in their remediation.
5. Please provide information on the measures undertaken to protect indigenous peoples and 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 agents of the business itself.
6. Please provide detailed information on any measures your company has taken to identify, prevent and mitigate any allegations of surveillance, intimidation and harassment of Ms. Tannagasheva and Mr. Tannagashev, along with their family members, by employees of your company.

We would appreciate receiving a response within 60 days. Your company'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 seen to the Government of the Russian Federation.

Sincerely,

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  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Leilani Farha  
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

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 the above alleged facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed 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 the global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights. "The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."(Guiding principle 13).

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

The Guiding Principles recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, the Guiding 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 of the Guiding 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.

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.

In connection with the above alleged facts and concerns we would like to refer you 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 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.

Furthermore, we would like to bring to your attention 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.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which 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.

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.”