

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
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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; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/7, 37/8, 34/18, 32/32, 36/15 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **potentially grave detrimental effects of the Tominsk Ore Mining and Processing Integrated Plant (Tominsk GOK) on the environment and health of communities in the Chelyabinsk region; constraints on the rights to freedom of expression, of peaceful assembly and of association, access to information and public participation in the context of the approval of the project; and threats and intimidation against an environmental human rights defender, Mr. Sergey Belogorokhov, of "STOP GOK"**.

**Mr. Sergey Belogorokhov** is a chemist and environmental human rights defender based in the city of Chelyabinsk, Russian Federation. Mr. Belogorokhov is a member of the community-based movement "STOP GOK", which opposes Tominsk Ore Mining and Processing Integrated Plant for its potentially detrimental impact on the environment and health of the communities in Chelyabinsk. These business-related adverse impacts are allegedly aggravated by the lack of public participation and access to information in the process of authorization of the project. STOP GOK aims at raising awareness among decision-makers of negative consequences of a reportedly grade-1 hazardous mining in the vicinity of a densely populated area, near underground water sources used by numerous villages, and within 10 km from the sole source of drinking water for the Chelyabinsk region - the Shershnevsky reservoir.

**Tominsk Ore Mining and Processing Integrated Plant (Tominsk GOK)** is a project of the Russian Copper Company (RMK) to be constructed 30 km from the city

centre of Chelyabinsk. RMK is reportedly owned by Mr. Igor Altushkin and all of the shareholders are located offshore through the Russian Copper Company Limited (British Virgin Islands). The Tominsk GOK complex will include two open-pit mines with the depth of up to 540 meters and an area of almost 4,000 hectares, a mill with a tailing pond (open waste storage) of 800 hectares and a dam nearly 100 meters high. The construction of Tominsk GOK commenced in October 2017.

According to the information received:

*Concerning detrimental effects on environment and health*

Numerous protests and 21 rallies have been held in the Chelyabinsk region, in opposition to Tominsk GOK. A petition against the project with more than 163,000 signatures was reportedly sent to the Office of the President of the Russian Federation. Opponents of the project have pointed to the potential risks of grave environmental harm and contamination of water, soil and air.

Shershnevsky reservoir is the sole available lake that reportedly holds water of the grade 3 quality (“heavily polluted”). As Tominsk GOK will be located 10 km from the reservoir, the toxic dust of hazardous substances of class 1 and 2 (arsenic, molybdenum, mercury, cadmium, etc.) will be carried by wind from the open-pit mining to the catchment area of the reservoir. Owing to such toxic contamination of the reservoir, the residents of Chelyabinsk will face challenges to access safe and drinking water in future. Despite the shortage of safe and drinking water in the Southern Urals, RMK appeared to have requested permission from the Federal Water Resources Agency to irrevocably use 40 million cubic meters of drinking water per year for the technological needs of Tominsk GOK. This is contrast to the initial 8 million cubic meters per year, which had been declared to the state authorities as the expected needs of the plant.

Air pollution in Chelyabinsk already poses challenges to public health. Smog is reported to be causing the increase in allergy case, as well as pulmonary, respiratory and oncological diseases in the city. Once operational, the project will release pollutants into the atmosphere affecting large areas surrounding Tominsk GOK. Given the nature of open-pit mining, the project will involve explosions of rock in the quarry, resulting in large dust clouds. The dust formed from explosions will also contain heavy metals (zinc, cadmium, lead, etc.) that may pollute the air, soil and Shershnevsky reservoir.

Furthermore, copper deposits contain, among other materials, pyrite that releases sulphur oxide, when exploded. In reaction with water, it will form sulphuric acid that can later fall from atmosphere in the form of acid rain. At the same time, sulphuric acid is used to extract copper from the rock, after which the acid is dumped in the tailing pond, polluting the soil and contributing to the formation of aerosol particles, which play an important role in the formation of clouds. Acid rain could lead to the degradation of forests, crops and vegetation in the region.

It is reported that 27.5 million tonnes per year of toxic waste from Tominsk GOK, will be discarded 14 km from the plant in one of the deepest coal mines in Europe,

Korkinsky coal mine, as part of its declared reclamation. Some independent experts have reportedly objected such plans because of the potentially irreversible harm due to the reaction of the toxic waste from Tominsk GOK and remaining substances of the Korkinsky coal mine in conditions of high temperature and humidity.

*Concerning constraints on freedom of expression, access to information and public participation*

Throughout 2016 and 2017, public hearings on the construction of the plant were conducted in what was alleged to be a hostile atmosphere on the part of RMK. Local residents were prevented from entering the hearings by employees of the private security company, which was reportedly corroborated by supporting photo and video documentation. In June 2017, there was a clash between residents, who protested at the plant's future site, and the RCC private security company. The guards allegedly attacked the protesters and inflicted bodily injuries on them. Despite the existence of photos and video documenting the incident, no investigation was reportedly opened into the case.

In addition to the environmental impact assessment, the Russian law requires that a public environmental assessment be conducted, and RMK is required to make public such documentation related to Tominsk GOK. However, local residents have raised concerns about their lack of information about the social and environmental impact of the project.

Furthermore, scientific experts who hold critical views fear expressing their professional opinions against the plant under the threat of dismissal. Employees of media outlets face censorship in reporting about RMK and Tominsk GOK in a negative light, under the threat of dismissal.

*Concerning stigma and intimidation of Mr. Sergey Belogorokhov of "STOP GOK"*

On 8 and 9 March 2018, leaflets were posted on the streets of Chelyabinsk, which portrayed the environmental human rights defender, Mr. Sergey Belogorokhov, as a pedophile. The leaflets, found also near government and law-enforcement buildings, called for his assassination on the spot, "without reporting to police" for the alleged rape of a schoolgirl "during the last two years".

Mr. Belogorokhov filed a complaint with the local police office immediately after the discovery of the leaflets. Together with a police officer, they tore down and discarded the leaflets on 9 March. However, at the time of this communication, he has not received further response from the police regarding the investigation of who was responsible for creation and distribution of the leaflets, which have caused reputational damage to his personality, exposed him to the risk of violence from local vigilantes and served as a deterrent factor for other environmental human rights defenders.

We express concern about the alleged grave harm that Tominsk GOK, once operational, will have on the environment of the Chelyabinsk region, including air, water and soil pollution. Concern is also expressed at the allegations of insufficient access to environment-related information, constrained public participation and obstacles on free expression and peaceful assembly in opposition to the process of approval or detrimental impact of the GOK.

We are also concerned about the threats and acts of stigmatization and intimidation against the environmental human rights defender, Mr. Sergey Belogorokhoy, which may be in connection to his legitimate human rights activities in the protection of the environment, as well as the chilling effect that such incident may have on other individuals and human rights defenders who oppose the project.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government's attention to 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, which provide for the rights to security of person and freedoms of opinion and expression and of peaceful assembly and association.

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 investigation or prosecution being carried out by authorities in connection with the above-mentioned allegations.
3. Please indicate whether social and environmental impact assessment was carried out in connection to the Tominsk GOK, and if so kindly provide details of the results.
4. Please provide the details of the measures taken by the Government with regard to its human rights obligations relating to the environment, including public participation in environmental decision-making, access to environmental information and remedies for environmental harm, including in connection to the Tominsk GOK.

5. Please indicate specific initiatives taken to ensure prevention and protection of local communities living near mining areas from exposure to toxic chemicals and other hazardous substances.
6. Please kindly indicate what measures have been taken to ensure that environmental human rights defenders in the Russian Federation are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
7. Please indicate the measures taken by the Government to ensure the implementation of the United Guiding Principles on Business and Human Rights, including policies, legislation, regulations and adjudication that your Excellency's Government has put in place to prevent, investigate, punish and redress human rights abuses by businesses in the extractive sectors within the territory and/or jurisdiction of your Excellency's Government.
8. Please indicate the concrete measures taken by the Government to ensure that Tominsk GOK respects human rights, including through requiring human rights due diligence and/or providing guidance to Tominsk GOK on how to respect human rights throughout its operations, including providing stakeholders with meaningful opportunities to engage in consultation with the company.

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 Russian Copper 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

John H. Knox  
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion  
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Clement Nyaletsossi Voule

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

Baskut Tuncak

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Michel Forst

Special Rapporteur on the situation of human rights defenders

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We would like to refer your Excellency's Government's attention to articles 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, which provide for the rights to security of person and freedoms of opinion and expression and of peaceful assembly and association.

With regards to security of person, we recall that, as established by the Human Rights Committee, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Committee, "the right to personal security also obliges States parties to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury". Furthermore, we would like to recall that "States have a duty to prevent and redress unjustifiable use of force in law enforcement" (CCPR/C/GC/35, para. 9).

We wish to refer to the Framework Principles on human rights and the environment of the Special Rapporteur on human rights and the environment (A/HRC/37/59, annex), which summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Namely, the Framework Principle 1 provides that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights. In the same vein, Principle 2 reiterates that States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment. Principle 4 reaffirms that States should provide a safe and enabling environment in which human rights defenders that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence, while Principle 5 recalls that States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters. And Principle 7 confirms that States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.

We deem it appropriate to make reference to resolution 12/16 of the Human Rights Council, which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, and to bring to justice those responsible to combat impunity. In addition, we would like refer your Excellency's Government to the HRC's General Comment No. 34 concerning Freedoms of Opinion and Expression. Paragraph 18 and 19 of General Comment No. 34 indicates that the right to access to information includes "access to

information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.”

We would also 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 further wish to refer to the Human Rights Council resolution 32/31, which in paragraph 4 urges States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity. It further urges States to ensure access to justice, and accountability, and to end impunity for human rights violations and abuses against civil society actors.

We recall Human Rights Council resolution 31/32, which in its paragraph 1 reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development.

We would also like to refer to Human Rights Council resolution 24/5, in which the Council “reminds 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 of 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” (OP2).

We also 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), which states that everyone has the right, individually and in association with others, to form, join and participate in non-governmental organisations, associations or groups;
- Article 6(a and b), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, along with the right to freely publish, impart and disseminate such information;
- Article 9(2), which states that everyone whose rights or freedoms are allegedly violated has the right to complain to, and have such complaint reviewed by, an independent and impartial tribunal, and to obtain from such authority a decision providing redress along with any compensation due, all without undue delay.
- Article 12 (2 and 3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, 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 would like to draw your Excellency's Government's attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency's Government on 16 October 1973, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In paragraph 11 of General Comment No. 14, the CESCR interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information".

We would like to highlight that the human rights to water and sanitation are essential human rights set forth in the ICESCR. The CESCR, in its General Comments 14 and 15, establishes water as an underlying determinant of health and as a human right, derived from the right to an adequate standard of living. Additionally, the United Nations Human Rights Council in its resolution 15/9 of 2010 and United Nations General Assembly in its resolution 64/292 of 2010 explicitly recognized the human right to safe drinking water and sanitation.

Also, the CESCR in General Comment No. 14 indicates that States are required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose, they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil (para. 36). In addition, the CESCR notes that "violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities

of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health, e.g. by employers and manufacturers of medicines or food...” (para 51).

We wish to appeal to your Excellency’s government to take all necessary steps to secure the right to information. We would like to refer your Excellency’s Government to Article 19(2) of the ICCPR which guarantee the right to “seek, receive and impart information” as part of the right to freedom of expression. We would like to call the attention of your Excellency’s Government to the importance of the right to information about hazardous substances to the general public, as emphasized in the report of the Special Rapporteur (A/HRC/30/40) in paragraphs 7, 8 and 48, as well as in the General Comment No. 34 concerning Freedoms of Opinion and Expression (para.19).

In order to fully realize the right to information for transparent public institutions, and in this context to ensure preventive measures are put in place to address potential exposure to toxic chemicals and limit impacts on health of nearby communities, implementation through frameworks for measuring, monitoring, reporting and verification of information are necessary for Governments to ensure accountability on their obligations. States should ensure collection and proper management of information on exposure levels, contamination, and long-term health implications of exposure to chemicals especially with regard to communities living near areas of use.

We wish to draw the attention of your Excellency’s Government to the Strategic Approach to International Chemicals Management comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action, to which your Excellency’s Government nominated a focal point, under which parties state that they are “determined to implement the applicable chemicals management agreements to which we are Party, strengthen the coherence and synergies that exist between them and work to address, as appropriate, existing gaps in the framework of international chemicals policy” (clause 8, Dubai Declaration) and “commit ... to respecting human rights and fundamental freedoms, understanding and respecting ecosystem integrity and addressing the gap between the current reality and our ambition to elevate global efforts to achieve the sound management of chemicals” (clause 10, Dubai Declaration).

We would like to refer your Excellency’s Government to Articles 9-11 of the Stockholm Convention on Persistent Organic Pollutants, ratified by your Excellency’s Government on 17 August 2011, which provides for collection and dissemination of information on persistent organic pollutants and their effect on human health and the environment, as well as implementation of public awareness programs for various categories of society.

Furthermore, we would like to highlight the United Nations 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 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.”

It is a recognized 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.

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.

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.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19).