

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:
AL OTH 40/2018

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Dear Mr. Ulanovskiy,

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.

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.¹ 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 **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 freedom of expression, access to information and public participation in the context of the approval of the project,**

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

as well as violations to the right of peaceful assembly and threats and intimidation against environmental human rights defender, Sergey Belogorokhov, of “STOP GOK”.

According to the information received:

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.

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 water 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 is already posing 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 during the operation of the project, pollutants will be released 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, since 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 to 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, Russian legislation 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, critical scientific experts 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.

While we do not wish to prejudge the accuracy of these allegations, we express concern about the alleged grave harm that Tominsk GOK will have on the environment of the Chelyabinsk region, including air, water and soil pollution. Concern is also expressed about 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 Tominsk GOK. We are also concerned about the act of stigmatization and intimidation of the environmental human rights defender, Mr. Sergey Belogorokhoy, in connection to his legitimate human rights activities in the protection of their environment, as well as the chilling effect of the incident on other individuals who oppose the project.

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 indicate whether social and environmental impact assessments were carried out in connection to the Tominsk GOK, and if so kindly provide

details of the results. Please also provide information on any human rights due diligence that may have been undertaken by your company to prevent, identify and remedy the adverse human rights impacts of your current and projected activities, in accordance with the UN Guiding Principles on Business and Human Rights.

3. Please provide information on any steps taken to prevent, mitigate and remedy adverse human rights impacts caused by your company and to provide for, or cooperate, in their remediation through legitimate processes, including adverse impacts relating to environmental and human rights defenders.
4. Please provide information on steps taken by your company to establish any company-level grievance mechanisms to address adverse human rights impacts caused by your company and to deal with the concerns of affected communities and to deal with the concerns of affected communities.
5. Please provide information on the nature and extent of consultations or dialogues conducted with potentially affected communities members and other relevant stakeholders. If no consultations or dialogues were initiated, please explain why.

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 sent to the Government of the Russian Federation.

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 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
and expression

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

Baskut Tuncak
Special Rapporteur on the implications for human rights of the environmentally sound
management and disposal of hazardous substances and wastes

Michel Forst
Special Rapporteur on the situation of human rights defenders

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)

We would like to refer your attention to articles 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 freedoms of opinion and expression, of peaceful assembly and of 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 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.

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 would like 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 would also like to refer 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 company 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 wish to draw attention to the right of every individual to life, liberty and security and not to be arbitrarily deprived of life, recalling Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the ICCPR.

We would like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Russian Federation on 16 October 1973, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also guaranteed as a part of the UDHR Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting health of the individual, and in terms of health services. 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.

Reference is made to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) which describes the normative content of Article 12 and the legal obligations undertaken by the States parties to the ICESCR to respect, protect and fulfil the right to 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 refer to the fundamental principles laid down in Article 19 of the UDHR, and 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 your attention to the importance of the right to information about hazardous substances to the general public, as emphasized in the Human Rights Committee’s (HRC) Report of the Special Rapporteur (A/HRC/30/40) in paragraphs 7, 8 and 48, as well as in the HRC’s General Comment No. 34 concerning Freedoms of Opinion and Expression (para.19). In addition, we would like refer 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 wish to draw your attention 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 the Russian Federation 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 to Articles 9 to 11 of the Stockholm Convention on Persistent Organic Pollutants 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.

Finally, we 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.