

Mandates of 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 situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples

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Excellency,

We have the honour to address you in our capacity as 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 situation of human rights defenders and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 37/8, 34/5 and 33/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the attack on the indigenous peoples' defenders Ms. **Agnes Kharshiing**, Ms. **Amita Sangma** and Mr. **E. Kurbah** on 8 November 2018 in East Jaintia Hills, approximately 120 kilometres from state capital Shillong, Meghalaya State.

According to information received:

Ms. Agnes Kharshiing and Mr. E. Kurbah belong to the Khasi indigenous peoples while Ms. Amita Sangma belongs to the Garo peoples. Ms. Kharshiing is the President of the Civil Society Women's Organization (CSWO). She has been very active in indigenous peoples' rights advocacy and vocal in her opposition to illegal mining and transportation of coal in her district in Meghalaya State, North East India. Ms. Sangma and Mr. Kurbah are staff of CSWO.

In 2014, the National Green Tribunal ordered an interim ban on so-called "rat-hole" coal mining in Meghalaya State after civil society organisations filed an application before it alleging that the water of the Kopili river was turning acidic due to coal mining in the Jaintia Hills.

Ms. Kharshiing has publicly denounced corruption in relation to mining operations and filed a complaint to the police regarding the illegal mining and transportation of coal in her district. The complaint alleged that the continuing mining operations were a violation of the National Green Tribunal's order which banned rat-hole coal mining.

On 8 November 2018, Ms. Kharshiing, together with Ms. Sangma and Mr. Kurbah were brutally assaulted by a group of around 40 people. Ms. Kharshiing

had reportedly just captured photographs of illegal rat-hole mining in the district when the vehicle she was in was stopped by a mob. The perpetrators blocked and surrounded the vehicle where the victims were, snatched the car keys and beat the driver. Ms. Kharshiing was dragged out of the vehicle where they beat her with logs, iron rods, and other hard objects such as stones while some of them were shouting “kill her” in the local language. Ms. Sangma, who tried to plead for the perpetrators to stop, was also beaten severely.

When the perpetrators thought that both Ms. Kharshiing and Ms. Sangma were dead, they left them lying along the road. The driver, after receiving initial beatings, was released after he convinced the attackers that he was only a driver.

Ms. Sangma and Mr. Kurbah were declared stable by doctors while Ms. Kharshiing allegedly remains in a critical condition, her head was severely injured and her right hand and backbone were fractured.

It is reported that investigations have led to the initial arrests in December 2018 of six persons in relation to the attack on Ms. Kharshiing and her colleagues. Allegedly there have not been any protection measures for the witnesses and concerns have been raised that the failure to provide measures to ensure their safety may place them at risk of retaliation from the local coal mining mafia and political actors who have colluded in the continued operation of illegal coal mining.

Information indicates that other persons have previously been attacked because of their positions or actions that were adverse to coal mining operations. On 24 January 4 2015, Mr. Joshua Marbaniang, sub-inspector who was in charge of the Patharkmah police outpost in Ri Bhoi district, Meghalaya, was allegedly shot in his head while inside his office. This reportedly occurred less than 24 hours after he detained 32 trucks illegally filled with coal. His case is currently pending before the Supreme Court. At the time of the attack, Ms. Kharshiing publicly denounced the killing of Mr. Marbaniang and the alleged role of coal mining “mafia” in his murder. Ms. Kharshiing had allegedly raised the possibility of police officers’ complicity in the crime as the murder of Mr. Marbaniang took place inside the police station.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern over the attacks against indigenous human rights defenders who call for accountability for environmental degradation and the illegal extraction of natural resources. This attack appears to be related to their peaceful and legitimate work in defense of human rights. While we recognise there have been some arrests made of alleged perpetrators, we are concerned over the lack of witness protection measures in the context of the investigation into the above case.

We would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. Attacks against individuals who are peacefully exercising human rights activities are in contravention to articles 6, 9 and 19, of the International Covenant on Civil and Political Rights, acceded to by India on 10 April 1979, which states that every human being has the inherent right to life and that everyone has the right to liberty and security of person and shall have the right to freedom of expression.

We would also like to draw the attention of your Excellency's Government to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the General Assembly on 13 September 2007, in particular that indigenous peoples have the rights to the full enjoyment of human rights under international human rights law. (Article 1) and that indigenous peoples have the right to life and security and shall not be subjected to any form of violence (Article 7).

UNDRIP furthermore sets out that indigenous peoples have the right to the conservation and protection of the environment (Article 29) and that 'indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources' and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources' and that 'States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact' (Article 32).

Finally, we would also like to refer your Excellency's Government to the United Nations Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realisation of human rights and indicates State's prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (Articles 1 and 2) and details the States's obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of their legitimate exercise of their rights as human rights defenders (Article 12).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify the allegations of human rights violations brought to our attention, with a view towards engaging in a possible future constructive dialogue with your Excellency's Government. To this end, we would be grateful for your cooperation and observation on the following:

1. Please provide any additional information or any comments you may have on the above-mentioned allegations.
2. Please provide information on the measures that the Government has carried out in order to investigate the attack on Ms. Kharshiing, Ms. Sangma and Mr. Kurbah and bring to justice the alleged perpetrators.
3. Please provide detail of the witness protection measures available in the context of investigations into the case.
4. Kindly provide information on efforts by the Government to look into these incidents and address the reported rise of violence in Meghalaya, especially around the area of the coal mining operations banned in Meghalaya State by the National Green Tribunal. What measures have been taken to ensure the effective enforcement of the National Green Tribunal's order banning rat-hole coal mining?
5. Kindly indicate any measures taken by the Government regarding allegations of corruption of public officials and police officers in the area in relation to the coal mining operation that allegedly continues despite the ban ordered by National Green Tribunal.
6. Please indicate what measures have been taken to ensure that human rights defenders, including those defending the rights of indigenous peoples and the environment, are able to carry out their legitimate work in a safe and enabling environment in India, without fear of threats or acts of persecution and harassment of any sort.

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 responsible for the alleged violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

David R. Boyd

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Victoria Lucia Tauli-Corpuz

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