

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 extrajudicial, summary or arbitrary executions; 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 and the Special Rapporteur on the situation of human rights defenders

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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 extrajudicial, summary or arbitrary executions; 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 and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/7, 37/8, 35/15, 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arson attack against, and attempted murder of environmental rights defender **Mr. Murdani** and members of his family by unknown assailants. He has opposed illegal sand mining activities in the Menemeng, Bilebante and Pringgarata subdistricts, the Central Lombok regency, and West Nusa Tenggara province.

Mr. Murdani is an environmental rights defender and the Executive Director of Wahana Lingkungan Hidup Indonesia (WALHI). WALHI is the oldest and largest environmental advocacy non-governmental organisation in Indonesia.

According to the information received:

Since 2016, Mr. Murdani and other local residents have spoken out in opposition to illegal sand mining activities by a group of individuals in the Bilebante subdistrict. The mining activities take place across an area of 200 hectares and the area is owned by multiple owners as a method of evading requirements for necessary permits. According to article 5 of Government Regulation No. 40/1996 on the Right to Cultivate, Right to Build, and Right of Use Over Land, the maximum area of land that can be given for cultivation is 25 hectares. In order to legally mine sand in a space of 200 hectares in Bilebante, the individuals must register as a corporation.

The illegal sand miners lack a necessary permit to conduct their activities due to their failure to receive the necessary prior approval from the village head. Most recently, on 8 January 2019, the mining group applied for the village head's approval for mining in Bilebante, however it was rejected by the energy and natural resources service on 15 January as their activities conflicted with Bilebante's green village tourism regulation.

As a result of his work opposing this illegal sand mining, Mr. Murdani has received repeated threats including death threats, both verbally and through text messages. In December 2016, Mr. Murdani reported the threats to West Nusa Tenggara Police, but no investigation was ever conducted. In early 2017, police attempted a mediation process between the miners and Mr. Murdani and local residents. However, they failed to reach an agreement. Following the failed mediation, and up until January 2019, Mr. Murdani received continuous threats and had stones frequently thrown at his house.

In late January 2019, a group of miners, one of whom is suspected to have family ties with the Secretary of Central Lombok regency, arrived at the house of the Bilebante village head requesting that the green village tourism regulation be revised, as this regulation was the only obstacle in the way of receiving a mining permit.

On 28 January 2019, at approximately 3 a.m., a fire began on the first floor of Mr. Murdani's house while he and his family were sleeping. Though Mr. Murdani and his family were able to escape through the roof of the house with the help of a neighbour, the first floor was completely destroyed, along with his two cars. It took one hour to put out the fire. At 6 a.m. that morning, local police arrived to the scene of the attack in order to collect any initial evidence. Police found a plastic bottle containing gasoline at the kitchen door, a hat, which was used to cover the CCTV camera at the house, burned pillows underneath one of the vehicles which were used to ignite it, and burned shoes at the front door which were also used as a source of ignition. There was also a wooden chair, used to jam the one door shut, and a bamboo table to block another.

On the same day, at approximately 2 p.m., Mr. Murdani filed a report of the attack at the Pringgarata subdistrict police station, with report number LP/06/I/2019/NTB/Res Loteng/Sektor Pringgarata.

On 29 January 2019, the Head of Criminal Investigation of Central Lombok regency police made a statement regarding the possibility that the arson attack may have been carried out by Mr. Murdani himself in order to avoid paying credit instalments on one of his cars. Police are investigating the crime of endangerment of persons or property under articles 187(1) and 187(2) of the Criminal Code and the investigation has been upgraded from a preliminary to a full investigation. On 30 January 2019, Mr. Murdani's legal counsel requested that West Nusa Tenggara regional Police take over the investigation from Pringgarata subdistrict police as

they believe that the attack should be investigated under article 340 of the Criminal Code for attempted murder.

On 9 February 2019, the Head of Criminal Investigation of Central Lombok regency police stated that 21 witnesses had been examined in relation to the attack.

We wish to express our serious concerns with regards to the arson attack carried out against Mr. Murdani and his family, which followed multiple threats against him over a number of years. We believe this attack and the past threats to be a direct result of his work opposing illegal sand mining activities and defending environmental rights in Bilebante. We further express our concerns that the attack is being investigated under articles 187(1) and 187(2) of the Criminal Code, rather than article 340 pertaining to attempted murder. We remind your Excellency's Government of its obligation to 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.

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 **Reference to International Law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 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 the status or results of any criminal investigation which has taken place regarding the arson attack on Mr. Murdani and his family.
3. Please provide detailed information as to why the arson attack is being investigated under legislation pertaining to endangerment of persons or property, rather than legislation pertaining to attempted murder.
4. Please indicate what measures have been taken to ensure the safety and security of Mr. Murdani and his family, and to prevent further attacks, threats, or any other harassment of any sort.

5. Please indicate what measures have been put in place to ensure that Mr. Murdani is able to continue to carry out his work in defence of environmental rights without fear of violence, threats or any other harassment of any sort.
6. Please provide information on what steps have been taken to halt illegal mining activities in Bilebante, along with any investigations which have taken place in this regard. If no investigations have taken place, please explain why.
7. Please provide information as to what steps have been taken to ensure that human rights defenders in Indonesia are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.
8. Please indicate the steps that the Government has taken, or is considering to take, to ensure the implementation of the United Nations Guiding Principles on Human Rights, such as taking appropriate steps to prevent, investigate, punish and redress business-related human rights abuse through effective policies, legislation, regulations and adjudication.
9. Please indicate what steps have been taken to ensure that victims of business-related human rights abuse, including by business operating illegally, have access to effective remedy (including compensation) for violation of their rights.

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

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.

Surya Deva

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

David R. Boyd

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

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

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 articles 6, 9, 17, 19 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by your Excellency's Government on 23 February 2006, which guarantee the rights to life, to security of person, to not be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence, to freedom of opinion and expression, to freedom of peaceful assembly and to freedom of association.

We also wish to refer to article 2(1) of the ICCPR that establishes a general duty to ensure the rights recognised by the ICCPR. This article has been interpreted to have established a State duty to take positive measures to protect the right to life. The Human Rights Committee clarified that "States parties have a positive obligation to ensure the protection of individuals against violations of Covenant rights, which may be committed not only by its agents, but also by private persons or entities" in the case of *Peiris v. Sri Lanka* (CCPR /C/103/D/1862/2009).

We would further 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 in response to death threats against persons in the public sphere, and more generally 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.

We would like to refer also to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realisation of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 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 further refer to Report of the Special Rapporteur on the situation of human rights defenders presented at the 71st session of the United Nations General Assembly, which states that all States should reaffirm and recognise the role of environmental human rights defenders and respect, protect and fulfil their rights. (A/71/281 para. 102(a)).

As detailed in the Framework Principles on Human Rights and the Environment (A/HRC/37/59), annex), which summarise the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Framework Principle 1). Furthermore, States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2). States should also ensure the effective enforcement of their environmental standards against public and private actors (Principle 12), and they should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities (Principle 14).

We would also like to highlight the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. 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 of society performing specialised functions, required to comply with all applicable laws and to respect human rights; and
- 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 abuses 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.

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 wish to draw your Excellency's Government's specific attention to the following articles of the UN Declaration on Human Rights Defenders:

- Article 5(a and b) which states that everyone has the right to meet or assemble peacefully and to form, join and participate in non-governmental organisations, associations or groups.

- Article 6(a) which recalls the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms.

- Article 9(2) which provides for redress and due process for all violations of human rights.

- Article 9(5) which recalls the obligation of the state to conduct a prompt and impartial investigation into any violation of human rights which has occurred in its territory or under its jurisdiction.

- 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.