

Mandates of the Working Group on Enforced or Involuntary Disappearances; 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 and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
UA IND 9/2019

2 April 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; 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 and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 36/6, 37/8, 35/15, 34/18 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 alleged enforced disappearance of the environmental human rights defender Mr. **Shanmugam Thangasamy also known as RS Mugilan**, following his participation in a press conference during which he denounced the involvement of senior police officials in the killing of 13 persons on 22 May 2018 during a protest opposing the environmental pollution caused by the Sterlite Copper Smelting Plant in Thoothukudi.

The killing of the demonstrators related to the above event was previously addressed in a joint letter of allegation by UN Special Rapporteurs dated 29 May 2018 (ref. no UA IND 12/2018). We regret that no answer has been received from your Excellency's Government. Given the seriousness of the allegations, we urge your Excellency's Government to respond to our questions in relation to the incident.

Mr. Thangasamy, known as RS Mugilan is from Chennai, and has been an active and outspoken environmental human rights defender for many years. He has voiced concerns about the environmental impacts of illegal sand mining and is involved in the Anti-Sterlite movement in Thoothukudi, Tamil Nadu, and anti-nuclear protests in Koodankulam. He is also the Coordinator of the Tamil Nadu Environment Protection Committee.

According to the information received:

In March 2012, Mr. Thangasamy was detained by police for three days after he exposed illegal sand mining activities in Koodankulam to the public. He was charged and the case was never closed. Subsequently in September 2017, he was rearrested for the same case in connection to the same charges and was eventually released on bail in September 2018.

In the past, Mr. Thangasamy had been abducted by the police on several occasions and held in illegal police custody before reappearing in detention. Allegedly he was also subjected to torture while in custody.

On 15 February 2019, Mr. Thangasamy participated in a press conference in Chennai, in which he referred to the killing of 13 persons, allegedly by police firing, during the protest of 22 May 2018 against a copper smelting plant in Toodhukudi. The plant is set up by Sterlite Industries (India) Limited, a subsidiary of the UK-based company Vedanta Resources. During the press conference Mr. Thangasamy released a report and video documentary titled “Sterlite: Hidden Truth” which claim that the police, in collaboration with officials from Sterlite Industries, conspired to disrupt the peaceful demonstration. It is alleged that Sterlite Industries hired individuals to participate in the demonstration, who then intentionally damaged CCTV cameras around the area where subsequently the police shooting happened. At the press conference, Mr. Thangasamy named high-level police officials who he believed were complicit in orchestrating the incident in question, which included the then-Inspector General of Police.

Shortly after the press conference, on 15 February 2019, Mr. Mugilan contacted persons associated with him and indicated that he had received threats and was worried that the police would take retaliatory action against him.

That evening he had planned to travel from Chennai Egmore Railway Station to Madurai via the Nagercoil Express train. Mr. Thangasamy had arranged to meet a friend in the morning of 16 February 2019 in Madurai. However, when Mr. Thangasamy’s friend attempted to contact him at 6 am that morning, he could not be reached and his mobile phone was turned off. Mr. Thangasamy has been missing since. CCTV footage from Egmore Railway Station shows His phone was last active at 1:45 am on 16 February 2019, prior to which it connected to Guduvancherry mobile phone tower, at a time which corresponded with the time the Chennai - Madurai train passed the Guduvancherry Railway Station. He did not arrive in Madurai the next morning.

Initially, a complaint was filed with the Chief Minister’s office and the Tamil Nadu Director General of Police. It is reported that no action was taken by either party. On 18 February 2019, a writ of habeas corpus was filed to the Madras High Court. The initial findings of the police investigation on his disappearance shared

during the hearings at the Madras High Court indicate that several actions have been taken but that the investigation has yet to produce conclusive results.

In response to a social media post requesting information about the investigation into Mr. Thangasamy's disappearance, a police inspector of the Rajapalayam Police station replied "Samadhi" (in the grave).

We express our serious concern about the alleged enforced disappearance of Mr. Thangasamy and his physical and psychological security and integrity. His disappearance appears to be directly linked his legitimate and peaceful work denouncing environmental human rights violations in India. The timing of his disappearance suggests a direct retaliation for his attempts to hold those responsible for the killing of environmental protesters in May 2018 accountable. We stress the responsibility of the State to protect the right to freedom of expression, including when exercised by human rights defenders. We reiterate our concerns at the excessive use of force by the police against demonstrators in May 2018 and at the lack of an investigation into this incident.

We would further like to refer your Excellency's Government to Articles 6(1), 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by India in 1976, which recognise that every human being has the right not to be arbitrarily deprived of his or her life and the rights of freedom of opinion and expression and of peaceful assembly, respectively. As held by the Human Rights Committee in its General Comment 6, para. 3, article 6 (1) of the ICCPR includes an obligation on States parties to take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces.

In connection with the above alleged facts, we would like to bring to the attention of your Excellency's Government, the recent resolution adopted by the Human Rights Council A/HRC/40/L.22/Rev.1 that recognises the important role and legitimate work of environmental human rights defenders and expresses grave concern for their situation around the world. The resolution strongly condemns the killing of and all other human rights violations and abuses against environmental human rights defenders, including women and indigenous human rights defenders. It urges all States to take all necessary measures to ensure the rights, protection and safety of environmental human rights defenders.

We would also like to highlight the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which states that no State shall practice, permit or tolerate enforced disappearances (article 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3). The declaration underscores that investigations should be conducted for as long as the fate of the victims of enforced disappearance remains unclarified (article 13), and that states

should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14).

In addition, 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 Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. Articles 1, 2, 5 (a) and 12 of the Declaration are particularly relevant in this case.

We wish to remind to your Excellency's Government that in accordance with United Nations "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, and redress such abuse through effective policies, legislation, regulations and adjudication. The Guiding Principles also recognize the important and valuable role played by civil society organizations 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.

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 person in compliance with international instruments.

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 comment(s) and/or any additional information you may have on the above-mentioned allegations.
2. Please provide information on any investigation conducted into the alleged enforced disappearance of Mr. Thangasamy. Please include information on whether the social media post made by a police inspector of the Rajapalayam Police station indicating Mr. Thangasamy was 'in the grave' have been investigated. If investigations have taken place, please provide information on

their findings and conclusions. If they have not taken place, please explain why.

3. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
4. Please provide information as to what steps have been taken to ensure that human rights defenders in India, including environmental rights defenders, are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.
5. 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 Business and 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.

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 of 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.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegation of enforced disappearance mentioned in this communication as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

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

Bernard Duhaime

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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
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Michel Forst
Special Rapporteur on the situation of human rights defenders