

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
AL TUR 11/2021

13 September 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 43/16, 46/7 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning irregularities in the investigation into the deaths of Mr. Ali Ulvi Büyüknohutçu and Ms. Aysin Büyüknohutçu.

Mr. **Ali Ulvi Büyüknohutçu** was the spokesperson for Taurus Mountains and Mediterranean Coasts Environment Association Platform (TORACDER). He and his wife, woman human rights defender Ms. **Aysin Büyüknohutçu**, were environmental defenders, protecting forests, rivers, agriculture and local heritage sites from the effects of open-pit mining in the Finike district in southern Turkey. The couple denounced in particular the deforestation of the Calabrian pine and cedar tree groves to make way for mining activities, which polluted the surrounding areas.

According to the information received:

In October 2015, the Antalya Second Administrative Court ruled to revoke the mining license of Bartu Mermer open-pit mine. The decision came after a case was brought by Ali Ulvi Büyüknohutçu and around 50 other villagers, who requested the annulment of the decision to grant a mining license to Bartu Mermer, after the Local Forestry Directorate decided that an environmental impact assessment (EIA) would not be necessary. The court ruled that an environmental impact assessment survey would be required due to the scale of the project and potential for environmental damage. The decision was appealed by the Ministry of Forestry and Water, the Antalya Governorship and Bartu Mermer, who also requested a stay of execution while the trial took place.

On 4 July 2014, Bartu Mermer opened a defamation case against Mr. Büyüknohutçu at the Antalya 9th Civil Court of First Instance, seeking 100,000TL in compensation. On 23 February 2017, it lost the defamation case. On 14 April 2017, Bartu Mermer also lost its appeal against the EIA requirement following a ruling by the 14th Chamber of the Council of State. The decision was believed to have set a precedent which could lead to the closure of 13 quarries in the region.

On 1 February 2017, the Antalya Forestry Directorate sent a notice to another mining company, Bahçeci Mermer quarry, informing them that their license had expired since they had not sought renewal. The notice came after TORACDER, of which Mr. Büyüknohutçu was spokesperson, sent a complaint to the Forestry Directorate that the quarry had been operating for a year since its mining license had expired.

When the company reportedly continued to mine in the months after February 2017, TORACDER filed a complaint to the Prime Minister's office.

On 9 May 2017, Mr. Ali Ulvi Büyüknohutçu and Ms. Aysin Büyüknohutçu were shot dead in their home.

On 12 May 2017 Mr. [REDACTED], a man reportedly with a history of working at mines and who had moved to the area 15 days previous, was detained. He confessed to the murder, initially saying that he was unemployed and killed the couple as part of a robbery. On 18 May 2017, he changed his statement, claiming that he had been offered 50,000TL by a man named "Çirkin" (Ugly), to carry out the killing and make it look like a robbery. Çirkin, allegedly the owner of Bahçeci Mermer, had offered him 3,000 lire up front but had failed to pay the rest on completion.

Authorities intercepted a letter that Mr. [REDACTED] gave to his wife, which was addressed to the owner of Bahçeci Mermer. The letter read "Pay the money as you promised me. If you don't, I will tell the truth on judgment day. You said, 'kill them and we will pay'. Why are you waiting? In 10 days if you don't pay, your life will be in my pocket."

On 19 May 2017, Mr. [REDACTED]'s wife was arrested for "aiding and abetting a crime".

On 20 September 2017, following multiple reported delays in the investigation, Mr. [REDACTED] was found dead in his cell in a high security L-type prison. His death was ruled to have been suicide by the Alanya Prosecutor's Office. According to information received, inmates are usually under close supervision and the prison was designed to be "suicide proof". A request to open an investigation file into his death was refused.

Mr. [REDACTED]'s wife was released on bail on 15 March 2018 and acquitted by the Elmalı High Criminal Court on 17 April 2018, reportedly without a clear reason being stated. The verdict was upheld on appeal and her case is reportedly now in the Court of Cassation.

No further suspects were charged in relation to the murder of Mr. Ali Ulvi Büyüknohutçu and Ms. Aysin Büyüknohutçu. The decision not to investigate the owners of the local marble quarries was appealed and is currently at the Elmalı Penal Court of Peace.

Without prejudging the accuracy of the allegations, we express our deep concern over the alleged irregularities in the investigation into the killing of environmental

human rights defenders Mr. Ali Ulvi Büyüknohutçu and Ms. Aysin Büyüknohutçu. We find the failed defamation lawsuit against Mr. Büyüknohutçu concerning as it may have unduly stigmatised the work of environmental defenders in the region. In this regard, we express our particular concern that the investigation may not have fully considered the motives of the murders, which appear to link the killing of the human rights defenders with the local mines against which they had been advocating. We are furthermore alarmed that Mr. [REDACTED] died under suspicious circumstances shortly after claiming that the killing was ordered by the owner of a local mine.

We remind your Excellency's Government of the report presented by the Special Rapporteur on the situation of human rights defenders to the 46th Session of the Human Rights Council, on the killings of human rights defenders. In the report she highlighted that environmental defenders, and those working in the context of the human rights impacts of business activities, were among those most at risk. We implore your Excellency's Government to ensure that the killings of environmental defenders are condemned and investigated fully, to prevent their re-occurrence.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any investigation, and the results where possible, carried out into the death of Mr. [REDACTED]. If no investigation has been carried out, please explain why.
3. Please provide information on any investigation carried out into the owners or employees of Bartu Mermer or Bahçeci Mermer quarries in relation to the death of the two human rights defenders. If no investigation has taken place, please explain how this is consistent with your obligations under international law.
4. Please provide information on any measures undertaken by your Excellency's Government to ensure specific protection for environmental human rights defenders and the particular and often grave risks that they face.

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.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that a similar letter on the same subject has also been sent to the companies Bahçeci Mermer and Bartu Mermer.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to applicable international human rights norms and standards.

We would like to draw the attention of your Excellency's Government to article 6.1 of the International Covenant on Civil and Political Rights, providing for the right to life (ratified by Turkey in 2003); and articles 12 of the International Covenant on Economic, Social and Cultural Rights, providing for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (ratified by Turkey in 2003).

In General Comment No. 36, the Human Rights Committee observed that investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future. It further highlighted that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.

General Comment 36 additionally states that loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State's compliance with its obligations under article 6. The duty to protect the life of all detained individuals includes preventing suicides.

The Minnesota Protocol further notes, inter alia, in relation to the promptness of investigations, that the authorities must conduct an investigation as soon as possible and proceed without unreasonable delays (para 23) and that a crime scene should be secured at the earliest possible opportunity and unauthorized personnel should not be permitted entry (para 59). In relation to the effective and thoroughness of investigations, it notes that investigators should, to the extent possible, collect and confirm (for example by triangulation) all testimonial, documentary and physical evidence and be capable of ensuring accountability for the unlawful death (para 24), and should, at a minimum, take all reasonable steps to recover and preserve all probative materials, identify possible witnesses and obtain their evidence in relation to the death and the circumstances surrounding the death (para 25). Additionally, in relation to the independence and impartiality of investigations, it notes that investigators and investigative mechanisms must be, and must be seen to be, independent of undue

influence and investigations must be independent of any suspected perpetrators and the units, institutions or agencies to which they belong (para 28).

We also 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 holds 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. Principle 8 reaffirms that, to avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.

We would also like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Turkey on 23 September 2003. The article enshrines the right to the highest attainable standard of physical and mental health, which is also guaranteed as a part of the UDHR: Article 25 read in terms of the individual's potential, the social and environmental conditions affecting the health of the individual, and in terms of health care services. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (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”. The Committee on Economic, Social and Cultural Rights also affirms that “vital medicinal plants, animals and minerals necessary to the full enjoyment: of health of indigenous peoples should also be protected”

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution 17/31. The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights. Business enterprises should conduct human rights impact assessments in accordance with the Guiding Principles on Business and Human Rights, which provide that businesses “should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships”, include “meaningful consultation with potentially affected groups and other relevant stakeholders”, “integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action” (see Guiding Principles 18– 19).

Finally, we would 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 realization 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). The Declaration details the State's obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of carrying out their legitimate work as human rights defenders (article 12). 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.