

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

Ref.: AL MNG 1/2022
(Please use this reference in your reply)

6 September 2022

Excellency,

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

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the threat of arrest of the human rights defender Ms. [REDACTED].

Ms. [REDACTED] is a woman human rights defender and environmentalist.

[REDACTED] which is accredited to the United Nations Convention to Combat Desertification. She is also [REDACTED]

[REDACTED] which gathers together over 30 environmental NGOs and experts from Russia, Mongolia, the US and China, dedicated to preserving the health of transboundary river basins in north-east Eurasia through joint advocacy and promoting best practices in river management. Ms. [REDACTED] has for years been engaged in monitoring the human rights and environmental impact of corporate activity in Mongolia, with a focus on the extractive sector, promoting greater transparency and consultation, and ensuring adherence to environmental protection standards.

According to the information received:

Background

Power Construction Corporation of China (Power China), with funding from China Exim-Bank, has been contracted to build the Erdeneburen Hydropower Reservoir on the Khovd River in western Mongolia. Around 270 nomadic pastoralists (112 families) have objected to development of the project on the grounds that it would flood their land and pastures, and in late 2021 and early 2022, these herders carried out a number of protests to express their concerns, including in the capital Ulaanbaatar. Ms. [REDACTED] the Rivers Without Boundaries International Coalition, and other human rights defenders engaged with the local herders assisted them in transmitting their concerns to Power China and the China Exim-Bank. The herders also transmitted their concerns to the Chinese embassy in Mongolia.

In April 2022, the commencement of the Erdeneburen project was reportedly postponed, with Power China asking the Mongolian authorities to resolve the

concerns of the affected communities. The project had previously been delayed due to concerns of its negative impacts being raised with the Chinese authorities.

On 3 June 2022, Ms. [REDACTED] published an opinion piece online arguing against progressing with the Erdeneburen Hydropower Reservoir due to the threats its development would pose to local communities and wetlands.

On 24 July 2022, an article appeared in an online German media outlet alleging that the Rivers Without Boundaries coalition, its international coordinator Mr. Evgeny Simonov and Ms. [REDACTED] were being used by the Russian state to sabotage Mongolia's efforts to break free of energy dependence on Russia. Notwithstanding the allegations of complicity with the Russian government, the article also noted that Mr. Simonov, a Russian national, was himself declared a foreign agent by the Russian authorities in October 2021. This article was translated into Mongolian and republished on a number of Mongolian websites. Mr Simonov was the subject of a previous communication addressed to your Excellency's government in November 2015, following his alleged deportation from Mongolia (MNG 1/2015).

Concerning Ms. [REDACTED]

On 2 August 2022, Ms. [REDACTED] was formally notified by the Government Investigation Agency that she was being placed under investigation on suspicion of violating Article 19.4 of the Criminal Code, namely, "Illegal cooperation with [a] foreign intelligence agency [or] agent".

In the following days, Ms. [REDACTED] was subjected to a vilification campaign online which labelled her a 'traitor' and a 'Russian spy'. Such smears came in response to a post made on social media by the UN Special Rapporteur on the situation of human rights defenders wherein she expressed her concern about the risk of arrest to Ms. [REDACTED].

On 3 August 2022, the Minister of Justice and Internal Affairs of Mongolia, H. Nyambaatar stated at a press conference that the Government had taken the decision to establish a task force to investigate anyone "intentionally disrupting Mongolia's strategic development projects" and that "actions that are interrupted by a civil society organization or a person in the name of the community" should be investigated for sabotage (article 19.6 of the Criminal Code).

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern regarding the alleged investigation into, and harassment of, Ms. [REDACTED]. We are further concerned by the decision of the Mongolian Government to potentially criminalise peaceful protest and expression by stating it will investigate people 'interfering' with development projects on 'sabotage' charges.

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 clarify the specific acts for which Ms. [REDACTED] is being investigated under article 19.4 of the Mongolian Criminal Code;
3. Please clarify how the criminalisation of those peacefully objecting to development projects is compatible with Mongolia's responsibilities under international human rights law, including the rights to freedom of opinion and expression and freedom of association and peaceful assembly.

We would appreciate receiving a response within 60 days. Past 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.

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer in detail to articles 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Mongolia on 18 November 1974, which guarantee the rights to liberty and security of person and freedom of expression.

We would like to underline that article 9 of the ICCPR guarantees the right to freedom from arbitrary arrest or detention. The Human Rights Committee, in its General Comment No. 35, has emphasised that any arrest or detention carried out in retaliation for the legitimate exercise of rights guaranteed by the ICCPR should be considered arbitrary, including the right to freedom of expression.¹

Article 19 of the ICCPR, which guarantees the right of all persons to freedom of expression, encompasses the freedom to seek, receive information and ideas of all kinds. Any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19 (3) of the Covenant, following which any limitations must be determined by law and conform to the strict tests of necessity and proportionality.

As underlined by the Human Rights Committee in its General Comment no. 34, attacks on persons because of the exercise of their freedom of expression, including in the form of arbitrary arrest, cannot under any circumstance be compatible with article 19.2 In the same General Comment, the Committee stressed that persons engaged in gathering, analysing and reporting on human rights are frequently subjected to such acts of intimidation because of their activities.³

In addition, we would like to draw the attention of your Excellency's Government to 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, otherwise known as the UN Declaration on Human Rights Defenders, which was adopted by consensus at the UN General Assembly in 1998. In particular we would like to highlight articles 1 and 2 of the Declaration, which state that everyone, individually and in association with others, has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms and that each State has a prime responsibility and duty to promote, protect and implement all human rights and fundamental freedoms.

Further to these articles, we would also like to reference article 6 (a) of the Declaration, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; 6 (b), which affirms the right to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and 12, paragraphs 2 and 3, which provide 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,

¹ Human Rights Committee, *General Comment No. 35*, CCPR/C/GC/35, para 17

² Human Rights Committee, *General Comment No. 34*, CCPR/C/GC/34, para 23

³ *Idid.*

pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. As detailed in the Framework Principles 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, 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). Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.” In addition, 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).