

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

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(Please use this reference in your reply)

28 November 2022

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 the investigation into the death of environmental human rights defender **Mr. R. Jaganathan**.

Mr. R. Jaganathan was a land and environmental human rights defender and farmer in Pugalur Taluk, Karur District, Tamil Nadu in India. He advocated against the adverse environmental impacts of local quarrying activities on farmland, plants and trees in the surrounding areas.

According to the information received:

From 2015, Annai Blue Metals Quarry began to use modern machinery in its extraction activities, which reportedly damaged surrounding agricultural land with dust and soil particles. In the same year, the quarry lost its official license to operate, however it reportedly did not cease its mining operations.

After it lost its operating license, Mr. Jaganathan was active in his opposition to the continued operation of the quarry. In mid-May 2019, Mr. Jaganathan was attacked with chilli powder to the face by a group of individuals, including the husband of the owner of the Annai Blue Metals Quarry.

On 31 May 2019, Mr. Jaganathan was again attacked by a group of persons, with knives and farming equipment. Mr. Jaganathan was admitted to the hospital after suffering serious injuries and a case was opened against the attackers. Once again, the husband of the owner of Annai Blue Metals Quarry was among the accused. They were reportedly charged with attempted murder. The charges were later dropped on 3 June 2022.

In August and September 2022, Mr. Jaganathan sent petitions to a number of local authorities regarding the illegal mining activities of Annai Blue Metals Quarry, including District Environmental Engineer and members of the local Government. On 8 September 2022, the District Geology and Mines Department sealed the Annai Blue Metals Quarry because of its continued operations.

On 10 September 2022, as he travelled on his motorcycle from his home in Vettukadu Thottam in the direction of the village of Karudayampalayam, Tamil Nadu State, a vehicle driven by the husband of the quarry owner collided with Mr. Jaganathan from the opposite direction. Mr. Jaganathan died at the scene. A First Information Report (FIR No. 115/2022) was registered at Paramathi police station against the husband of the quarry owner for murder under section 302 of the Indian Penal Code. On 11 September 2022, the suspect was arrested on the charge.

The family of Mr. Jaganathan called for a re-post-mortem examination and an investigation into his death carried out by a diverse group of forensic experts. On the morning of 12 September, two individuals who supported the family's calls for re-examination were detained and reportedly transferred in separate police cars to various police stations in the region. The basis of the detention is reportedly unclear, as no formal arrest procedures were followed nor was a case registered against them. They were released at 8:30 p.m. on the evening of 12 September.

On 8 November 2022, the suspect in Mr. Jaganathan's murder was granted bail. A previous petition filed on behalf of Mr. Jaganathan's family against the granting of bail had been dismissed.

Without wishing to prejudge the accuracy of the allegations, we are deeply concerned regarding the death of Mr. Jaganathan, which we fear may have been carried out intentionally in order to halt his work in defence of human rights and the environment. We are particularly concerned that previous violent attacks against Mr. Jaganathan did not lead to convictions nor increased protection for the environmental defender. Furthermore, we are concerned that other individuals supporting the family of Mr. Jaganathan in their search for accountability for his death, were detained without charge and allegedly without following formal procedures. If true, this would be in violation of due process and would raise serious questions over the impartiality of the investigation into the death of the human rights defender. We are additionally deeply concerned that the murder suspect has been released on bail, particularly given the severity of the charge and his previous involvement in attacks against the deceased human rights defender.

In light of the alleged failure to conduct thorough, prompt, independent and impartial investigations into the death of Mr. Jaganathan, we stress that such investigations must be in compliance with international standards, in particular the UN Principles for the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions, and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)).¹ We underscore that, according to the Minnesota Protocol, "investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence" at all stages (para.28).

¹ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

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 the legal and factual basis for the arrest of two individuals peacefully protesting after the death of Mr. Jaganathan.
3. Please provide information on the specific investigative steps taken following each of the numerous attacks, including the killing, of Mr. Jaganathan. Please indicate if these investigations have been carried out in accordance with the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)). If no investigations took place and the perpetrators have not been brought to justice, please explain why. Please include information on the reasons for the granting of bail to the accused.
4. Please provide information on steps taken and guarantees put in place by your Excellency's government to provide a safe and enabling environment for human rights defenders, including environmental defenders, as well as to protect the family and supporters of them, including those of Mr. Jaganathan, from retaliation or attack.
5. Please provide factual and legal grounds for the arrest of individuals supporting the family of Mr. Jaganathan in their search for accountability.

We would appreciate receiving a response within 60 days. Past this deadline, 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.

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 refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), acceded by India on 10 April 1979. In particular, we would like to refer to article 3 (a) which affirms that States must undertake measures to provide effective remedies to any person, whose rights or freedoms are violated by others, including by perpetrators acting in an official capacity, and article 3 (b) and (c) which state that the person seeking such remedy has the right for it to be determined by competent authorities and that the State must enforce such remedies when granted. We would also like to refer to article 6 (1) of the ICCPR, which recognises that every individual has the inherent right to life, and this right shall be protected by law.

We would like to refer to Human Rights Committee, General Comment 36 which states that the right to life constitutes a jus cogens norm from which no derogation is permitted under any circumstances (CCPR/C/GC/36, paragraph 2). It further indicates that States parties to the ICCPR are under a due diligence obligation to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State (paragraph 7). The duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence (paragraph 23). In particular, States parties must take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights.

The General Comment additionally states that “an important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents. 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” (paragraph 27).

We would like to remind you that the legitimate role of human rights defenders is recognised by international law and referred 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1 and 2 which state that everyone has the right to promote and to strive for the protection and realization 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 would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6, point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 12, paragraphs 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.

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.

On 8 October 2021, the Human Rights Council adopted resolution 48/13, recognizing the right to a clean, healthy and sustainable environment, confirmed by the General Assembly in July 2022 with resolution A/RES/76/300. In addition, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. 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."