

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL RUS 11/2023

(Please use this reference in your reply)

12 June 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/16, 44/15, 46/7 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the criminal charges against **Tehmina Yenoqyan, a journalist and environmental human rights defender from Armenia**.

Ms. Yenoqyan, is a human rights defender and journalist from Gndevaz village in the Vayots Dzor Province of Armenia. She is president of Green Armenia and a member of the Save Amulsar Group, aimed at protecting the rights of local communities in the context of the Amulsar gold mine project. Since 2018, she has been representing Gndevaz community members in a working group created by decree of the Prime Minister Nikol Pshinya to study the impact of mining in Amulsar.

Lydian Armenia CJSC is a mining company registered in the Republic of Armenia, which operates the Amulsar Gold Project. Lydian Armenia (formerly Geoteam), is a 100% subsidiary of Lydian Canada Ventures, which is co-owned by Orion Mine Finance and Osisko Gold Royalties, two companies based in the United States of America and Canada respectively, and which are investors in mining and mineral sectors.

Moreover, "Zangezur Copper Molybdenum Combine" Closed Joint Stock Company (ZCMC) is an Armenian mining company with headquarters in Kajaran. ZCMC exploits Kajaran copper and molybdenum deposit as an open pit mine, which is located in the Zangezur mountain range, in the Syunik Province of southern Armenia. As of December 2021, the shareholder structure of the Company is as follows: AMP Holding LLC (12.5%), Zangezur Mining LLC (12.5%), Promishlennaya Kompaniya JSC (Geopromining) (45%), Republic of Armenia (15%), Urbanevent Plus LLC (15%).

According to the information received:

In 2007, Lydian Armenia CJSC began exploration work to assess the feasibility of gold mining in Armenia. In 2014, the company was granted a

mining licence over land in Amulsar and in 2016 it started the construction works for the extraction project in the region.

Since exploration work started, human rights defenders, experts and activists have been denouncing the negative impact of mining operations on the human rights of local communities and the environment in Amulsar. In 2017, local communities blocked the access to the mine and demanded the suspension of the project. Residents mobilization intensified during the summer of 2018, when residents of Gndevaz and Jermuk, a neighbouring village also affected by the mine, closed the roads leading to Amulsar Mountain mining site, suspending the project in August 2018. In November 2018, a petition was signed by 3,000 local community members from Jermuk Municipality calling for the mine to be closed. On 18 December 2018, the Jermuk Council adopted an economic development policy based on environmental principles and prohibited metal mining on its territory.

On 16 June 2022, amendments to the draft law “On Making Amendments and Addenda to RA Soil Code” came into force. The amendments included a new article 55.1, extending the exploitation rights on the subsoil also in case of force majeure, which include fires, floods, earthquakes, hurricanes, explosion, war, but also in situations of civil disobedience that may impede the continuation of soil exploitation. The new provision allows for an extension of soil management without any new examination based on such circumstances.

Consequently, under new article 55.1 the permission granted to Lydian Armenia’s to exploit natural resources for the Amulsar project has been extended without a new examination in the aftermath of the protests and blockage organized by affected communities, human rights defenders and civil society organizations since 2018.

On 22 February 2023, the Government of Armenia, the Eurasian Development Bank (EDB) and Lydian Armenia announced the Amulsar gold mine project would resume, engaging in a new protocol. The new protocol provides for a partnership between the Government of Armenia and Lydian Armenia for the implementation of the project, that allows the Government to levy 12.5% of the company’s authorised capital free of charge and in turn, guarantees that Lydian Armenia pays US\$ 7 million a year in financial assistance to communities in the Amulsar region over the construction period. In addition, this protocol provides for a US\$ 100 million loan from Eurasia Development Bank for the completion of the construction phase of the project, adding up to US\$ 150 million already mobilised by Lydian for this purpose.

In relation to Ms. Yenoqyan

Over the last eight years, Ms. Yenoqyan has been actively participating in civil society and community mobilisations against the Amulsar gold mine project and its negative impact on the environment and human rights of local communities.

In 2015, Ms. Yenoqyan represented Gndevaz village in appealing the government’s decision to grant an operating license to Lydian Armenia, and opened a case with the administrative Court of Armenia against the Ministry

of Territorial Administration and Infrastructure, the Ministry of Environment and Lydian Armenia, challenging the legality of the permission granted in 2014. This case is currently being reviewed in the Administrative Court of RA.

Throughout 2018, various representatives of civil, political and cultural society in Armenia came to Jermuk to show their solidarity with members of local communities and activists who had blocked the roads leading to Amulsar Mountain. Ms. Yenoqyan hosted many of these visitors and provided support during their stay, alongside playing a key coordination role in the different actions and debates taking place in the community. She represented the community's position in the working group that had been created under the decree of the Prime Minister Nikol Pshinya in order to study mining projects and any negative impacts on human rights and the environment they may cause. She was also in charge of recording and publishing the meetings minutes.

On 6 September 2018, Ms. Yenoqyan filed a complaint with the police following the collection and publication of videos and photos of her house, which were published alongside abusive comments defaming her in connection to her work on the Amulsar project. The police opened a criminal investigation into the case, which led to the identification of two individuals involved in allegedly illegal camera surveillance and the use of fake Facebook accounts, who are Lydian Armenia's former employees. The case was initially closed by the Vayots Dzor Regional Prosecutor's office, but Ms. Yenoqyan then requested the Ararat and Vayots Dzor District Court of General Jurisdiction to consider the case. Ms. Yenoqyan received 308,000 AMD (approximately 800 USD) as a compensation against reputational damages.

On 12 September 2018, residents of Jermuk, Gndevaz and Kechut villages organized a solidarity action in defense of Amulsar, which concluded with a rally during which various statements were delivered, including by Ms. Yenoqyan. On 5 September 2019, Lydian Armenia filed a 1,000,000 AMD (approximately 2,600 USD) legal claim against Ms. Yenoqyan, alleging that the speech she has delivered in 2018 on the occasion of the rally was damaging Lydian Armenia's business reputation. On 15 December 2021, in first instance, Armenia's Court ruled in favour of Lydian Armenia as partially satisfying the claim. Both Ms. Yenoqyan and Lydian Armenia filed an appeal against this decision to the Court of Appeals. On 22 July 2022, the court rejected the complaint of Ms. Yenoqyan's, ruling in favour of the company and ordered that Ms. Yenoqyan publicly refutes "the slanderous information" and that she pays 500,000 AMD (approximately 1,300 USD) for defamation and 500,000 AMD as material compensation "for the insult" to the company. The Court of Appeals also ordered Ms. Yenoqyan to pay legal costs, including 24,000 AMD as an advance payment to the State as legal fees and 200,000 AMD for the company's legal expenses and attorney fees.

On 9 November 2022, Ms. Yenoqyan filed an appeal against the decision of the Court of Appeals to the Court of Cassation, which, however, was rejected.

On 1 December 2022, Ms. Yenoqyan relayed on her Facebook page a publication from the environmental civil society organization "Right-holder

residents of Kapan”, which was posted one day earlier. She included the following text in her post: "Yesterday, the pipeline going from Zangezur Copper-Molybdenum Combine (ZCMC) to its tailing dam broke down again, the Voghji river was again polluted, a criminal case was again initiated and it will be again forgotten, there will be a cover-up and they will move on.", and a link to a 2019 documentary that she had made on the negative impact of mines in Armenia. Following this publication, Zangezur Copper-Molybdenum Combine CJSC filed a claim for 6,000,000 AMD (approximately 15,600 USD) for damages.

In addition to the above-mentioned criminalization of Ms. Yenoqyan she, as well as other journalists and environmental human rights defenders have been targeted by smear campaigns on social media by Lydian Armenia. Offensive sexist posts have been published on Facebook targeting Ms. Yenoqyan and another woman environmental human rights defender. In April 2019, three of these human rights defenders, including Ms. Yenoqyan, applied to the Yerevan Court of General Jurisdiction seeking remedy. The court decision required Lydian Armenia to compensate each of the three defamed environmental human rights defender.

While we do not wish to prejudge the accuracy of the above allegations, the information described above raises serious concerns that gold mining companies in Armenia have increased acts of intimidation and criminalization of environmental human rights defenders and journalists. We are particularly concerned about the abuse of defamation lawsuits filed against Ms. Yenoqyan. These lawsuits appear to qualify as strategic lawsuits against public participation (SLAPPs), aimed at silencing Ms. Yenoqyan through intimidation and exhausting resources.

Concern is also expressed that your Excellency's Government may have failed to protect against human rights abuses within its territory and/or jurisdiction by third parties, including business enterprises. This duty to protect human rights requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication

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 as to any steps taken by your Excellency's Government for meaningful and good-faith consultations with the impacted communities throughout all phases of the project cycle, to assess and address any negative impacts of the mining activities on their human rights and the environment.

3. Please provide information on any investigation or inquiry undertaken by your Excellency's Government into the allegation of threats, intimidations, defamation and criminalization of the environmental woman human rights defender Ms. Yenoqyan for her work around mining activities in Armenia.
4. Please provide detailed information on the steps taken, or being considered, to push review, amendment, and abolition of laws, including any measures to prevent Strategic Litigation Against Public Participation (SLAPPs) aimed at silencing critical voices, including of activists and journalists.
5. Please provide information as to any steps taken by your Government to allow affected communities by ZCMC mining activities to engage in peaceful assemblies and to freely disseminate materials which may include dissenting views or beliefs on those mining activities.
6. Please indicate what actions have been taken by your Government to ensure accountability and access to an effective remedy for the human rights abuses of affected groups and individuals, including guarantees of non-repetition regarding the operations of businesses operating in the extractive sector in the country. Please provide information on any steps taken by your Excellency's Government to ensure that the affected communities can obtain adequate, fair and timely compensation for all assets lost and any affected property, regardless of whether or not they enjoy formalized land rights.
7. Please provide information on any steps taken by your Excellency's Government to appoint an independent and impartial mediator to reconcile conflicting claims and find a mutually agreeable solution.
8. Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to fulfil its obligations to protect against human rights abuse by business enterprises under its jurisdiction, and ensuring that business enterprises within its territory conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights. This includes any effective measures to enforce existing legal obligations to protect human rights and the environment in the context of the extractive sector.
9. Please indicate the steps taken by your Excellency's Government to develop and implement a national action plan for the implementation of the UN Guiding Principles on Business and Human Rights and clarify the timeline for the adoption of said action plan.

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.

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 be informed that a letter on this subject matter has also been sent to those business enterprises that are involved in the Amulsar gold mine project as well as the Kajaran copper and molybdenum deposit, including Lydian Armenia Company, the US firm Orion Mine Finance, the Canadian firm Osisko Gold Royalties, the Eurasian Development Bank, Zangezur Copper Molybdenum Combine Company (ZCMC), and Promishlennaya Kompaniya JSC (Geopromining), as well as to the home-States of all involved companies, the United States of America, Canada, the Republic of Kazakhstan and the Republic of Armenia.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Pichamon Yeophantong

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

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. 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 specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts. Moreover, the commentary of principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. (...) Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to guiding principle 25).

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the general comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19 (general comment 34).

We wish to draw the attention of Your Excellency's Government to the right to a clean, healthy and sustainable environment as recognized by resolutions A/HRC/RES/48/13 and A/RES/76/300. We also wish to highlight the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The principles provide that States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (principle 1); States must respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2). In particular, principle 4 provides 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”.

We would like to recall articles 5 and 6 of 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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. These articles guarantee the right to meet or assemble peacefully; as well as the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, we would also like to refer to article 12(1) and (2), which provide that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms, and that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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 present Declaration.

The Human Rights Council resolution 31/32 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 realization 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.

Finally, we would also like to recall the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), which was adopted on 25 June 1998. As per its articles 6 to 10, State must ensure public participation in decisions of specific activities, concerning plans, programmes and policies relating to the environment, access to justice as well as meeting of the parties.