

Mandates of the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of human rights in the context of climate change and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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(Please use this reference in your reply)

25 September 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human right to a clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of human rights in the context of climate change and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 55/2, 48/14 and 54/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **recent decisions of the authorities of Kyrgyzstan to allow mining in biosphere territories and lifting the moratorium on mining of uranium and thorium in the biosphere zone of the Issyk-kul region.**

According to the information received:

On 14 December 2019, the Parliament of Kyrgyzstan adopted a law on "Prohibition of activities related to geological study of subsurface resources for the purpose of prospecting, exploration and development of uranium and thorium deposits in the Kyrgyz Republic". The law was aimed at protecting public health, lands, water reservoirs, flora and fauna, ensuring the rights of inhabitants to a clean and healthy environment, as well as ensuring radiation and environmental safety standards.

The law was adopted as a result of petition and public protests of the population of Issyk Kul region who stood against mining of uranium back in 2019. The law was adopted by a majority of members of parliament and signed by the former President.

On 27 February 2024, the Ministry of Natural Resources, Ecology and Technical Supervision of the Kyrgyz Republic submitted for public discussion a draft law lifting a ban on exploration and development of deposits containing uranium and thorium. The Ministry justified its initiative by the economic and development needs of the country in particular following COVID-19, the impact of sanctions against the Russian Federation, high inflation and unemployment. The Chair of the Cabinet of Ministers stressed that the purpose of that draft law was to allow the development of titanomagnetite reserves, and not to actually mine uranium or thorium. However, in the explanatory note accompanying the draft law, there is no mention of the development of titanomagnetite reserves, in contrast to the specific mention of uranium and thorium mining.

The draft law did not exclude the territory of the Issyk Kul region (a biosphere zone) from its application. Article 5 of the law on Biosphere Territories prohibited geological exploration and development of mineral resources in biosphere zones. On 6 May 2024, the President signed into law amendments to the Law on Biosphere Territories. The amendments revoked the prohibition of geological exploration and development of mineral resources in biosphere zones and allowed the Cabinet of Ministers to decide the geological prospecting and exploration, the development of minerals and geological study of subsurface resources in the biosphere territories. Following the entry into force of these amendments, the Issyk Kul region's status is exposed to decisions of the Cabinet of Ministers to allow mining projects despite its status as a biosphere zone.

Between 27 February and 26 March 2024 comments and feedback on the draft law lifting a ban on exploration and development of deposits containing uranium and thorium were open to public at the official state online portal of Unified Portal for public discussion of draft normative legal acts. According to some users, the platform was not easily accessible to everyone, and there were technical issues in registering in the system which limited wider participation. Few activists and environmental experts provided concrete comments on the bill, concerns on the right to health and environment, and pointed out on the inconsistencies of the bill with the Constitution as well as national laws. Comments and suggestions provided by a few environmental experts and human rights activists on the draft law were not considered and were not reflected in the final version submitted to parliament. Allegedly, no other form of consultation was conducted, resulting in excluding people, groups and communities that have no access to the Internet or the necessary material.

The draft law was registered at the Jogorku Kenesh (Parliament) on 11 May 2024. On 29 May 2024, the Jogorku Kenesh (Parliament) approved the bill in the first reading, with. On 13 June 2024, the Parliament adopted the draft law in the second and third readings. On 27 June 2024, the President signed the law.

On the same day that the bill was approved in the first reading, 29 May 2024, civil society organizations and environmental experts released an appeal raising concerns on the adoption of the bill, addressed to the Ministry of Natural Resources, Ecology and Technical Supervision, the Parliament and the Cabinet of Ministers. According to the appeal, the draft law was approved without sufficient transparency, public participation and the necessary public consultations and hearings.

In the appeal, activists and independent environmental experts referred to the Law on Ecological Expertise and its Decree of Assessment Procedure, according to which a state environmental impact assessment and a feasibility study on uranium and thorium mining should have been produced and made publicly available. Only a general Regulatory Impact Assessment is available online, in addition to the approval of the draft law by several profile parliamentary committees. In the explanatory note to the draft law submitted to Parliament along with the bill, the initiators mention on page 3 having conducted such an assessment and received positive feedback, and that its copy was attached (however, the file does not seem to be available within the

list of official documents accompanying the law). According to the Law on Ecological expertise (article 4), an environmental assessment should be based on the principles of publicity and consideration of public opinion. Article 15(1) of the law ensures that public associations and citizens have the right to receive from the initiator of the project the documentation subject to environmental expertise in full. Activists and independent environmental experts indicated that they did not receive this.

In the appeal, activists and environmental experts also raised concerns that the development of uranium deposits will leave tailing dumps containing toxic chemicals which may have serious impacts on the local environment, in particular in the mountainous areas and near Issyk Kul Lake, risking the contamination of water resources, soils and glaciers. Environmental experts and civil society activists also requested the government to organize public consultations involving independent environmental experts on the matter of uranium and thorium mining; produce and make public the results of the environmental impact assessment and the feasibility study. They also propose to conduct an independent environmental impact assessment with the participation of international experts and specialists, to be taken into account by the government.

In addition, according to article 20(1) and (2) of the Law on Normative Legal Acts of the Kyrgyz Republic, draft normative legal acts on environmental safety and the introduction of new types of state regulation of entrepreneurial activity must be subject to legal, human rights, gender, environmental, anti-corruption and other scientific expertise (depending on the legal relations the draft normative legal act is aimed at regulating). The tasks of scientific expertise are, among others, the identification and assessment of social, economic, scientific, technical, environmental, human rights and other negative consequences of the adoption of the project as a normative legal act. Article 22(1) and (3) of the Law stipulate that initiators of such draft laws must hold a public discussion by publishing the text of the document and other information, including the conclusions of expert examinations.

Also, according to article 115(3) of the Law “On the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic”, it is mandatory to hold parliamentary hearings on draft laws on ensuring environmental safety and on the introduction of new types of state regulation of entrepreneurial activity. However, there is no public information about the fulfillment of this mandatory requirement by Parliament.

The amendments to the Law on Biosphere Territories were also adopted without prior legal, human rights, gender, environmental, anti-corruption and other scientific expertise.

In addition to the above, on 25 July 2024, the Chairman of the Cabinet of Ministers initiated proposed amendments to the Law “On Normative Legal Acts of the Kyrgyz Republic,” that provides for several exceptions to the mandatory public discussion of draft normative laws.

Without wishing to prejudge the accuracy of the above allegations, we are concerned about the lack of public discussions and full and meaningful participation

and consultations of the population including with the concerned communities, environmental experts, and scientists and activists. The decision on the expansion of mining into a biosphere territory should be consulted rigorously with all parties concerned.

We are concerned that the State environmental impact assessment and the feasibility study are not available, as required by law, for the public and the population to understand possible environmental and health risks related to mining developments.

We are equally concerned of the Government's decision to allow mining in biosphere territories, including in the Issyk Kul region. Healthy biodiversity and ecosystems, a safe climate, safe and clean water, clean air, and non-toxic environments are substantive elements of the right to a clean, healthy, and sustainable environment. Mining in mountainous areas may speed up the biodiversity loss, the degradation of land and soil, increase climate emissions, as well as contamination of water. This will contribute to the triple planetary crises, undermining the Sustainable Development Goals, the Global Framework on Chemicals – For a Planet Free of Harm from Chemicals and Waste, the Paris Agreement and the Kunming-Montreal Global Biodiversity Framework. In addition, this decision will also compromise the implementation of the General Assembly's Resolution on Sustainable Mountain Development, which was initiated by Kyrgyzstan.

We are also concerned about the proposed amendments to the Law “On Normative Legal Acts of the Kyrgyz Republic,” initiated by the Chairman of the Cabinet of Ministers on 25 July 2024. As underlined by the Venice Commission of the Council of Europe, the draft amendments provide for several exceptions to the mandatory public discussion of draft normative legal acts; propose a considerable reduction of the term for public discussion of draft normative legal acts; introduce an exception from Regulatory Impact Assessments for temporary regulatory legal acts for a period of less than one year. If passed, this law would substantially reduce opportunities for public participation in environmental decision-making.

Finally, we are concerned about the lack of information available to the public and local population on the management of uranium waste dumps and tailings that would result from the envisaged uranium and thorium mining.

In this context, we wish to recall the country visit report and the recommendations made by the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights to Kyrgyzstan in 2009, in which he expressed concerns about large amounts of radioactive and toxic waste, which had been stored in waste dumps and tailings. The Special Rapporteur during his visit found that potentially dangerous natural processes were not taken into account during the planning and construction stages of radioactive or toxic waste storage facilities (A/HRC/15/22/Add.2). Most sites were located near towns and villages, in mountainous areas characterized by high seismic activity and soil erosion processes typical of mountainous regions (floods, mudslides and landslides). Natural phenomena such as earthquakes or floods—that can be increased due to climate change—can damage tailings dam or destroy it altogether, while seepage may cause contamination of surface water and groundwater resources. The Special Rapporteur noted with concern that unless properly managed to ensure their long-term stability and security, uranium tailings and waste dumps

pose significant threats to the enjoyment of human rights, including the right to life and the right to health.

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 indicate measures taken to ensure that Your Excellency's Government complies with international environmental laws and human rights standards, especially in relation to access to information, public participation and access to justice of/with environmental experts, activists, journalists, human rights defenders and local population in decision making.
3. Please explain the measures taken to ensure informed consent of the local population on mining developments near their living areas.
4. Please provide information on the environmental impact assessments and feasibility study carried out prior to lifting a ban on exploration of uranium and thorium development and explain how they were made accessible for the public in compliance with the law.
5. Please indicate what measures were taken to ensure that an independent environmental assessment is conducted.
6. Please provide information on how reclamation and rehabilitation of the lands in biosphere territory of Issyk Kul region will be carried out following mining developments, in case these will be implemented, including expenditure expenses associated with a proper management of tailing dumps.
7. Please explain how the health of the population living near envisaged mining will be assessed/evaluated/recorded prior to, during, and after mining developments, and what measures will be taken to prevent people from exposure to toxic substances, including what measures will be taken to assess and address higher potential risks to some groups, such as children, women and elder people.
8. Please explain how any impact on the ecosystem and the climate will be assessed/evaluated/recorded prior to, during, and after mining developments, and what measures will be taken to minimize any damaging of the ecosystem.

9. Please provide information about the proposed amendments to the Law “On Normative Legal Acts of the Kyrgyz Republic” initiated by the Chairman of the Cabinet of Ministers on 25 July 2024, and what measures are being taken to ensure that legislation affecting public participation in decision making, including on environmental matters, is in line with international human rights standards.
10. Please provide information on efforts made to implement the recommendations of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, following on his visit to Kyrgyzstan in 2009.

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 accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the human right to a clean, healthy and sustainable environment

Elisa Morgera
Special Rapporteur on the promotion and protection of human rights in the context of climate change

Marcos A. Orellana
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Annex

Reference to international human rights law

In relation to the alleged facts and concerns mentioned above, we wish to refer Your Excellency's government to its obligations under various international human rights instruments, as well as official guidelines on their interpretation.

We would like to draw Your Excellency's attention to the obligations of governments under international human rights instruments to guarantee the right of everyone to life, liberty, and security, and not to be arbitrarily deprived of life, recalling article 3 of the Universal Declaration of Human Rights (UDHR) and article 1 of the International Covenant on Civil and Political Rights (ICCPR), to which Kyrgyzstan has been a party since 7 October 1994.

We would also like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines the right of everyone to enjoy the highest attainable standard of physical and mental health. The right to health is also guaranteed in article 25 of the UDHR, which is read in terms of individual potential, social and environmental conditions affecting the individual's health and in terms of health services.

Furthermore, article 6 of the Convention on the Rights of the Child (CRC) recognizes that every child has an inherent right to life and requires States parties to ensure to the maximum extent possible the survival and development of the child. It further requires States parties to take all effective and appropriate measures to reduce infant mortality.

Regarding the right to enjoy the highest attainable standard of health, we would like to draw your attention to article 12 of the ICESCR, which recognizes the right of everyone to enjoy the highest attainable standard of physical and mental health.

Article 24 of the CRC recognizes the right of the child to enjoy the highest attainable standard of health and to benefit from medical and rehabilitation services. Article 24 (c) expressly requires the full realization of this right through, among other things, the use of readily available techniques and the provision of nutritious food. Furthermore, food must be safe (free from toxic elements and contaminants) and of good quality (in terms of taste and texture, for example).

We would also like to draw the attention of the Government of Your Excellency to general comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR), paragraph 11 of which establishes 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". States have an obligation to ensure equal access to all determinants of health (para. 36), including measures to prevent and reduce the population's exposure to certain hazards and harmful factors that directly impact individuals' health (para. 15).

We also wish to refer to Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 29 July 2022, which recognize the right to a clean, healthy and sustainable environment as a human right.

We would also like to bring to the attention of your Excellency's Government the Framework Principles on Human Rights and the Environment as detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The principles state that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2). States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request (principle 7) Further, States, 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 (principle 8).

We call on the Government of Your Excellency to take all necessary measures to ensure the right to information. We would like to refer the Government of Your Excellency to the fundamental principles set out in article 19 of the UDHR and article 19(2) of the ICCPR, which guarantee the right to "seek, receive and impart information" within the framework of the right to freedom of expression. Article 13 of the CRC states that "the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print (...)". Article 24(e) of the same Convention stipulates that States must ensure that parents and children receive information on (...) hygiene and environmental sanitation and accident prevention, and benefit from assistance in utilizing this information.

The right to information stems from freedom of expression. However, the right to information has been recognized as a right in itself and as one of the rights on which free and democratic societies depend (E/CN.4/2000/63, para. 42). Access to information is a prerequisite for the protection of human rights, including workers' rights, particularly concerning their exposure to hazardous substances, public participation in decision-making, and monitoring the activities of governments and the private sector. Public participation in decision-making is based on the right of those likely to be affected to speak and influence decisions that would impact their fundamental rights.

We would like to draw the attention of the Government of Your Excellency to the importance of the public's right to information on hazardous substances, as highlighted in the report of the Special Rapporteur of the Human Rights Committee (A/HRC/30/40) in paragraphs 7, 8, and 48, as well as in general comment No. 34 of the Human Rights Committee on freedom of opinion and expression (para. 19). Furthermore, I would like to refer the Government of Your Excellency to general comment No. 34 of the HRC on freedom of opinion and expression. Paragraphs 18 and 19 of general comment No. 34 state that the right of access to information includes "access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source, and the date of production."

We would also like to draw the attention of your Government to article 2(3)(a) of the ICCPR, which recognizes the right of victims to an effective remedy.

Article 2(3)(a) requires States to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”. States Parties are obliged, under article 2(3)(b) and (c) of the ICCPR, to “ensure that any person claiming such a remedy shall have their right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; [and] ensure that the competent authorities shall enforce such remedies when granted.

The full text of the human rights standards and instruments mentioned above is available at www.ohchr.org or can be provided upon request.