

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

REFERENCE: RUS 6/2016:

26 May 2016

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 26/22, 19/10, 28/11, 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of unwarranted charges and disputed sentencing of Mr. **Sergey Nikiforov**. Mr. Sergey Nikiforov is an Evenki indigenous people's leader, environmental human rights defender and head of the village council of Ivanovskoye. He has led a series of peaceful demonstrations in Ivanovskoye, in protest of the negative impacts on human rights and the environment from the operations of UK-based gold mining company Petropavlovsk. The company reportedly intends to extract ore from Evenki ancestral territories.

According to the information received:

In 2012, Mr. Nikiforov commissioned a building project from the engineering company DalTeploEnergo. It aimed at repairing the water tower and heating system for a kindergarten in Ivanovskoye village, where he served as head of the village council. Despite receiving payment in advance, the company allegedly never carried out the works.

In September 2013, Mr. Nikiforov lodged two complaints against the company for fraud and bribery. His complaints were successful and the company was reportedly requested to refund him. However, in October 2013, Mr. Nikiforov was

accused of fraud and bribery by DalTeploEnergo. He was consequently placed under house arrest, pending trial that lasted till September 2015.

In July 2015, Petropavlovsk mining company was reportedly granted a license to extract gold, using explosives within two kilometres of Ivanovskoye village. It is claimed that there were no consultations with the affected Evenki community, as required under Russian law. On 10 September 2015, the Ivanovskoye villagers asked for all works to stop pending an ethnological and ecological survey and declared their intention to oppose the mining by all legal means. During house arrest associated with the charges brought by DalTeploEnergo in 2013, Mr. Nikiforov led the opposition, including peaceful protests against the license granted to Petropavlovsk.

According to the information received, the 2013 case of Mr. Nikiforov was unexpectedly reactivated in September 2015 just at the time when the villagers announced their opposition to the mining project. During the trial, the court allegedly refused to consider vital evidences, such as banking documents proving that Mr. Nikiforov could have not accepted bribes in the city of Blagoveshchensk because he was in the regional administrative centre of Ekimchan, 650 kilometers away, on the dates when the bribery is alleged to have taken place. The court allegedly refused to call crucial witnesses. The only witness presented in court was unable to identify Mr. Nikiforov and testified she did not know the man. The complainant company DalTeploEnergo was not called as a witness, despite the request of Mr. Nikiforov.

On 29 September 2015 and after what appeared to be an unusually expedited trial, Mr. Sergey Nikiforov was sentenced to five years in prison and a fine of 16 million roubles (\$246,600) for “bribery and fraud” by a court in Blagoveshchensk, Amur oblast of the Russian Federation. Following an appeal, on 8 December 2015, the sentence was reduced to four years of imprisonment and the fine of 3 million roubles (\$46,200). Mr. Nikiforov is serving his sentence in a strict-regimen correctional colony No.3 in Srednebelaya village, Amur oblast, where he was recently placed in solitary confinement.

Concern is expressed at the alleged unwarranted charges and sentencing of Mr. Nikiforov, which appear to be directly related to his activities in defence of human rights, including land and environmental rights. We express further concern at the allegations that the sentencing of Mr. Nikiforov is related to his and the Ivanovskoye village’s public opposition and legitimate voicing of concern about the environmental and human rights impacts of the mining project of Petropavlovsk mining company, which is a matter of public interest. We also express our concern about the alleged irregularities of Mr. Nikiforov’s trial.

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.

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 therefore 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 grounds for the charges and the sentencing of Mr. Sergey Nikiforov. In particular, and in light of the allegations of irregularities regarding the trial, please explain how the judicial proceeding and outcome of the case against Mr. Nikiforov satisfies the guarantee of due process and fair trial under international human rights law. .
3. Please provide information on the justification for placing Mr. Nikiforov in solitary confinement and in a strict-regimen prison, and explain how this is compatible with international human rights law.
4. Please provide details about the environmental impact assessment associated with the mining project granted to Petropavlovsk.
5. Has the affected population living in Evenki ancestral territories been provided with adequate information about the project, including its impact on their environment and human rights? If so, please indicate what information was provided to whom, and when and where it was provided.
6. Has the Government held consultation(s) with affected populations in the decision-making process? If so, please indicate when the consultations were held, who participated in them, and the conclusions of the consultation. Please detail any efforts made specifically to gain the free, prior and informed consent of the affected populations. In addition, please elaborate what efforts the Government has taken to integrate the results of the consultation into the decision-making.
7. Please provide information on the measures put in place to ensure that the human rights defenders, including environmental activists, in the Russian Federation are able to carry out their legitimate work in a safe and enabling environment, without fear of threats or acts of intimidation and persecution of any sort.
8. Please indicate which measures, including legislation and policies, the Government has put in place to prevent, investigate and redress human rights violations related to the activities of business enterprises operating in the country.

9. Please indicate if the Government has provided any guidance to business enterprises in the Russian Federation on their expected human rights due diligence process. Such a process allows companies to identify, prevent, mitigate and account for they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights, Principles, 17-21).

We would appreciate receiving a response within 60 days.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

David Kaye

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

John Knox

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

Dante Pesce

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to recall articles 19 and 21 of the of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, which provide for the right to freedom of expression and freedom of association.

We would also like to refer 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 that provide that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, articles 5 and 6 reiterate the right to form, join and participate in non-governmental organizations, associations or groups, as well as for the right to discuss and hold opinion of all human rights and fundamental freedoms and to draw public attention to those matters.

We further wish 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.

We would also like to refer to the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution 17/4 in 2011. The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. They recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

The Human Rights Council has also recognized in its resolution 25/21 that States have obligations to guarantee the enjoyment of human rights pertaining to environmental issues by “making environmental information public and enabling effective participation in environmental decision-making processes”.

Several Special Procedures mandates holders have addressed the fundamentality of the right to information. The Special Rapporteur on freedom of opinion and expression has stated that access to information is often essential for individuals seeking to give effect to other rights (A/68/362, para. 19). Furthermore, the Independent Expert on human rights and the environment has stated that in order to safeguard a variety of human rights from environmental harm, it is necessary to engage in prior assessment of the

potential environmental impacts on the enjoyment of human rights (A/HRC/25/53, para. 79). The Special Rapporteur on the situation of human rights defenders has underlined that information relating to large-scale development projects should be publicly available and accessible (A/68/262, para. 62).

Finally, the fundamental right of everyone to participate in the conduct of public affairs is recognized in the article 21 of the Universal Declaration of Human Rights and article 21 of the ICCPR, respectively. The Independent Expert on human rights and the environment has stated that human rights law requires States to facilitate participation in environmental decision-making, in particular (A/HRC/25/53, para. 79).