

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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Excellency,

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Human Rights Council resolutions 26/22, 27/23, and 24/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged violations of the rights of at least 530 individuals that have suffered from adverse health impacts due to exposure to hazardous chemicals found in humidifier sterilizers as well as the alleged victims yet to be identified.**

According to the information received:

Background

Each year from 2006 to 2011, especially from February to June, several individuals were admitted to hospitals for respiratory failure, acute pneumonia, and other unknown lung disease, for causes which were not identified at the time. In April 2011, Seoul Asan Hospital alerted the Korea Center for Disease Control and Prevention (KCDCP) emphasizing the irregular phenomena observed - seven individuals were consecutively admitted as patients with an unknown respiratory disease. Subsequently, KCDCP, under the auspices of the Ministry of Health and Welfare, carried out an epidemiological study and conducted animal tests from April 2011 to February 2012 and found humidifier sterilizers to be the presumed cause of the respiratory disease and other health impacts.

According to the two investigations carried out by KCDCP (from July 2013 to April 2014) and the Ministry of Environment (from July 2014 to April 2015), as of December 2015, of 530 cases evaluated 142 individuals had deceased and a total of 221 individuals were identified as victims suffering from health impacts as a result of exposure to humidifier sterilizers. Many of the deceased and other victims identified thus far were women in the post-natal period and young children, including new born babies. It is reported that the Government is currently carrying out a third investigation to identify additional victims.

The Government has identified those victims based on the causal relationship between the exposure to humidifier sterilizers and the respiratory health impacts caused by humidifier sterilizers. It is reported that evidence such as left over sterilizer and documents or pictures that would prove usage of sterilizers had been used as the basis for the classification.

The Government grouped alleged victims into five categories: “very likely”, “probably”, “possibly”, “unlikely” and “not able to judge.” Those individuals who fell into “very likely” and “probably” categories were recognized by the Government as victims and received compensation for medical and funeral expenses. It is reported that 155 victims were categorized as “very likely” and 62 as “probably” out of the 530 cases evaluated. Individuals belonging to the “possible” and “unlikely” categories are currently under Government health monitoring. Individuals, and those that died without leaving behind any medical record, were categorized into the “not able to judge” category and have not received any compensation or other remedy.

It is reported that a large number of residents living in the Republic of Korea consider humidifiers to be a daily necessity and use them in order to create a healthier environment in their homes and workplace. Humidifiers were first introduced on the market in 1994 in the Republic of Korea and according to the National Statistic Office report of 2014, in 2011, approximately 6,530,000 humidifiers were used, which represented usage in 33 per cent of households. From the late 1990’s until the mandatory recall in 2011, around 20 different types of sterilizers were manufactured and sold in supermarkets, pharmacies and on the Internet for an average price of KRW 4,000 (USD 4.00).

To prevent germs or mould in the water of humidifier tanks, residents used “humidifier sterilizers,” a liquid or tablet-type chemical mixture. The humidifier sterilizers were composed of several substances and the four substances that have been identified as hazardous are (1) PHMG (Polyhexamethyleneguanidine (phosphate)), (2) PGH (Poly(2-(2-ethoxy)ethoxyethyl guanidium hydrochloride)), (3) CMIT (5-Chloro-2-methyl-3(2H)-isothiazolone) and (4) MIT (2-Methyl-3(2H)-isothiazolone).

It is reported that the four hazardous chemicals were initially reviewed for their usage in carpets and rubbers but no additional review was necessary when those

chemicals were used as components of humidifiers sterilizers, which eventually were inhaled by individuals. The legislation at the time did not require the individual substances or chemical mixture to be re-assessed for relevant hazards and the inhalation risks before being used as a humidifier sterilizer. No information has been received regarding the specific time of this change or other changes that may have been made to the composition of humidifier sterilizers between their introduction and removal from the market in 2011.

In 2001, Reckitt Benckiser, a UK-based corporation, acquired Oxy Co Ltd, a company based in the Republic of Korea, which manufactured and sold its signature steriliser product called “OxySakSak” since 1998. “OxySakSak” held up to 80 per cent of the market share of humidifier sterilizers in the Republic of Korea. Oxy Reckitt Benckiser voluntarily recalled its sterilizer product from the market three months prior to the official recall announcement by the Government.

In March 2014, Oxy Reckitt Benckiser donated around USD 4.4 million to be dispersed to the victims through the Ministry of Environment. It is alleged that the alleged victims refused to accept the funds unless an official apology was made. In May 2015, several victims and family members visited the Reckitt Benckiser headquarters in London. Allegedly, the representatives of Oxy Reckitt Benckiser responded to the alleged victims and their families that it is not in the position to provide any comment due to the ongoing litigation. The Special Rapporteur on hazardous substances and waste, Mr. Baskut Tuncak, also met with the representatives in October 2015 and heard a similar response.

Several large retailers such as E-mart Co. Ltd. (“E-Plus” humidifier sterilizer), GS Retail Co. Ltd. (“Hambakusseom” humidifier sterilizer), Lotte Shopping Co. Ltd. (“Wiselect” humidifier sterilier), Home Plus Co. Ltd., (“Homeplus” humidifier sterilizer), Butterfly Effect Co., Ltd. (“Cepu” humidifier sterilizer) and Costco Wholesale Korea (“Humidifier” clean-up) also produced and sold their own brand of sterilizers. Home Plus Co. Ltd. is a Korean discount store retail chain wholly owned by Tesco PLC, a multinational retailer headquartered in Hertfordshire, England. Costco Wholesale Korea is a subsidiary of Costco Wholesale Corporation headquartered in Washington, United States.

Chemical manufacturers who sold ingredients used as sterilizers include Hanvit Chemical Co. Ltd, SK Chemicals, Aekyung Co. Ltd, and Pyuandco Co. Ltd. According to the copy of Material Safety Data Sheet of SK Chemicals dated January 2011, the chemical mixture named “SKYBIO 1125,” which contains a minimum 25 per cent of PHMG, is identified as hazardous. The Material Safety Data Sheet includes a warning that SKYBIO 1125 should not be consumed or inhaled when using.

No information has been received regarding the risk assessment of the chemical components of humidifier sterilizers carried out by the relevant companies before humidifier sterilizers were put on the market.

The alleged victims and the family members filed both civil and criminal charges against manufacturers and retailers of humidifier sterilizers. It is reported that several civil cases have been settled. In response to the first criminal charges filed in August 2012 against ten companies (2012 hyung No. 78863), the prosecution was suspended as the court case could not commence until the Government's own investigation was finalized. Subsequently, a second criminal charge was filed in August 2014 against fourteen manufacturers (2014 hyung No. 77598). It is alleged that the police notified the applicants, without specific details, that certain companies are not subject to indictment. Most recently, on 26 November 2015, a third criminal charge was filed.

Government action

On 11 November 2011, the Ministry of Health and Welfare announced the mandatory recall of six humidifier sterilizers whose components included PGH and PHMG and subsequently in December 2011, Korea Food and Drug Administration (KFDA) re-classified the humidifier sterilizer as a sanitary aid requiring a pre-authorization before they can be placed on the market. On 23 July 2012, the Korean Fair Trade Commission found four companies – Oxy Reckitt Benckiser, Home Plus Co. Ltd., Butterfly Effect Co., Ltd. and Atoorganic - guilty of falsely advertising their sterilizer products as “safe to humans” and fined the companies.

In 2014, the Ministry of Environment provided medical and funeral expenses to the victims in accordance with article 12(2) of the enforcement ordinance of the Environmental Health Act. The financial support was only provided to those victims that fell into the “very likely” and “probably” categories among the five categories mentioned above. In order to indemnify the budget that has been dispersed, the Government filed an indemnity claim lawsuit against the companies involved in the humidifier sterilizer case (Seoul Central District Court (2014gahap588147)).

In addition, alleged victims and their family members have filed a civil lawsuit against the Government for compensation arguing that the Government is liable for the injuries caused by the omissions of the civil servants. The Seoul Central District Court found that the Government did not violate its duty of care referring to the constantly changing standards and studies related to hazardous substances and held that the standard of the technology and the social awareness at the time should be the standard applied to assess whether the Government's response and measures were sufficient (2012gahap4515).

We express grave concern that the alleged victims who have either died or continue to suffer from health impacts and emotional distress as a result of using humidifier sterilizers have not yet received an adequate remedy, which includes, among other elements, adequate compensation for the physical harm and moral damage suffered,

a meaningful public apology, commemoration or tribute to the victims, costs required for legal or expert assistance, and guarantees of non-repetition including preventive measures.

We further express grave concern regarding your Excellency's Government's criteria to identify victims classifying them into five categories based on limited types of evidence. We raise concern that the classification defined by your Excellency's Government inevitably results in identifying a limited number of victims, which risks excluding a large number of other victims from being eligible for financial support and health monitoring. In addition, we note with concern that the scope of impact of the sterilizer product is not yet confirmed and also that there may be a large number of unaccounted victims that have died, suffered or continue to suffer without the knowledge that their usage of a humidifier sterilizer may be the cause for their sufferings.

Moreover, we express concern regarding the domestic application of international human rights treaties in relation to the Seoul Central District Court's decision, in particular, ascertaining the obligation of your Excellency's Government to protect all persons from acts of private parties that impair the enjoyment of human rights in domestic court decisions. In this regard, we emphasize that the judicial enforcement of human rights is fundamental. Additionally, we note with concern the delays in commencing investigation and relevant action by your Excellency's Government in relation to the three criminal charges filed against several companies implicated.

Finally, we express concern that business entities involved in the production and distribution of humidifier sterilisers may not have exercised adequate due diligence to prevent human rights harms arising from the usage of humidifier sterilisers.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** 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, in detail, additional information and any comment you may have on the above-mentioned allegations.
2. Please explain why the cases began to surface in 2011, despite the product being on the market for many years, and whether any changes were made to the formulation of the humidifier sterilizer since their introduction to the market until 2011.
3. Please provide information on measures taken by the Government to identify victims of the humidifier sterilizers, including measures taken by the Government to identify victims beyond subjects of the three

investigations carried out by the Government. Please also provide information on the rationale of the classification of subjects of the investigation and how the classification is appropriate to provide adequate remedy to all alleged victims.

4. Please provide, in detail, information on additional measures being taken by the Government to provide necessary access to medical services to its potential victims in order to address the health impacts resulting from the sterilizer products that may surface in the future.
5. Please provide information on any legal assistance and aid that the Government has provided to the identified victims and the alleged victims vis-à-vis current legal proceedings and future legal proceedings in the Republic of Korea and abroad.
6. Please provide information on the process of the first two criminal charges, including the reasons for the suspension of proceedings and the detailed outcome. Please also provide information on the most recent criminal charges filed and the response by the Government.
7. Please provide information on measures taken by the Government to prevent human rights violations from the exposure to hazardous substances.
 - a. Please provide information on the Government's assessment of recent legislative and administrative and other appropriate measures taken in response to the humidifier sterilizer case including whether such measures are sufficient to prevent similar incidents, other incidents involving hazardous substances and health impacts suffered by individuals.
 - b. Please explain what systems the Government has now in place to provide early warnings of adverse health impacts that may be due to hazardous substances in consumer products.
8. Please provide information on what steps have been taken to provide effective guidance to the business enterprises concerned on how to respect human rights in their operations.
9. Please provide information on the Government's plan to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

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.

We wish to bring to your Excellency's Government's attention that a letter concerning this case is being addressed to the following business entities : Aekyung Co. Ltd., Costco Wholesale Korea, E-mart Co. Ltd., GS Retail Co. Ltd., Hanvit Chemical Co. Ltd., Home Plus Co. Ltd., Lotte Shopping Co. Ltd., Oxy Reckitt Benckiser, Pyuandco Co. Ltd., and SK Chemicals.

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.

Dante Pesce

Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to applicable international human rights laws and standards, as well as authoritative guidance on their interpretation.

We wish to draw attention to your Excellency's Government's obligations under international human rights instruments, recalling article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) on the right to life in conjunction with article 2 on the right of victims of human rights violations to an effective remedy. ICCPR was ratified by the Republic of Korea on 10 April 1990.

We wish to draw your Excellency's Government's attention to article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by the Republic of Korea on 10 April 1990 – which stipulates that States should “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, and requires them to “take appropriate steps to ensure the realization of this right.” Furthermore, article 12 of ICESCR provides that the steps, to be taken by States to achieve the full realization of this right, shall include those necessary for the improvement of all aspects of environmental and industrial hygiene (article 12(2)(b)) and the prevention, treatment and control of epidemic, endemic, occupational and other disease (article 12(2)(c)). Interpreting this language, the Committee on Economic, Social and Cultural Rights stated that “the right to health embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as [...] a healthy environment” (General Comment No. 14, para. 4).

The central obligation in relation to ICESCR is for States Parties to give effect to the rights recognized therein (General Comment No. 9, para. 1). The Committee on Economic, Social and Cultural Rights stipulates that “within the limits of the appropriate exercise of their functions of judicial review, courts should take account of Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant”. The Committee further notes that “neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations” (General Comment No. 9, para. 14).

Further, article 2 of ICESCR describes the nature of the general legal obligations undertaken by States Parties to the ICESCR. In General Comment No. 3, the Committee on Economic, Social and Cultural Rights asserts that “among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to the rights which may, in accordance with the national legal system, be justiciable” (para. 5).

In addition, the right of children to the highest attainable standard of health is provided for in the Convention on the Rights of the Child ratified by the Republic of Korea on 20 November 1991, which requires States to take appropriate measures to combat disease taking into consideration the dangers and risks of environmental pollution (article 24 (2)(c)). Interpreting this provision, the Committee on the Rights of the Child, in its General Comment No. 15, urged States to take measures to address the dangers and risks that local environmental pollution poses to children's health in all settings. It is the view of the Committee that core requirements to a healthy upbringing and development include adequate housing with non-dangerous cooking facilities, a smoke-free environment, appropriate ventilation, effective management of waste and the disposal of litter from living quarters and the immediate surroundings, the absence of mould and other toxic substances, and family hygiene. States should regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation.

Furthermore, with respect to the responsibility of business enterprises, the Universal Declaration of Human Rights proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. Following years of consultations that involved Governments, civil society and the business community, the Human Rights Council unanimously adopted in June 2011 the Guiding Principles on Business and Human Rights (contained in A/HRC/17/31).

The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. 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 of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- (c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

Finally, the Committee on Economic, Social and Cultural Rights stated that "corporate activities can adversely affect the enjoyment of Covenant rights", including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the "obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities" (E/C.12/2011/1, para. 1).