

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 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

REFERENCE: AL
IDN 8/2016:

9 November 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 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, 28/11, 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 the **negative health impacts of persistent hazardous levels of smoke pollution across much of Equatorial Asia due to forest fires in Indonesia and especially increased effects after the extreme haze event of 2015**.

According to the information received:

Reports allege that there is a systematic and widespread use of fire for land clearing in Indonesia. Many companies are allegedly cutting down rainforests for timber and then setting fires to clear the land to plant palm for oil production. Such practices are illegal according to the Indonesian law and are contributing to the hazardous air pollution (toxic pollutants and particulate matter, hereinafter "haze") that is increasingly affecting Equatorial Asia and its population.

Across Indonesia, fires are regularly used to burn agricultural residue, clear forest, or prepare land for palm oil plantations. Fire emissions are evolving rapidly, driven largely by expanding global markets for oil palm, pulpwood and timber, and by increases in small-scale agriculture. The worst fire emission levels come from degraded peat lands, containing combustible organic material and releasing large amounts of fine particulate matter when burned, which is the leading cause of health problems due to air pollution in the region.

In 2015, Indonesia registered the worst haze episode since 1997, when land use fires caused billions of dollars in damage and thousands of premature deaths. A thick smoke blanketed Equatorial Asia during the months of September and

October 2015 leading to persistently hazardous levels of smoke pollution. The prevailing winds in 2015 transported the smoke to densely populated areas across Indonesia and the Malay Peninsula.

Based on information received, much of the haze - and much of the increase in haze- is due to fires in South Sumatra Province. During the 2015 haze event, smoke exposures in downwind population centers stemmed mainly from fires in South Sumatra, an area that contributed more than 30% of the regional emissions and more than 50% of the regional smoke exposure during the event. Fire activity on Sumatra was dominated by burning on timber concessions and peatlands.

Central Kalimantan Province is alleged to be the second worst emitter contributing 32% of total Indonesian smoke emissions in 2006 and 18% of the emissions growth between 2006 and 2015.

Jambi Province contributed the third highest emissions of any individual province in 2015 and 12% to the emission growth between 2006 and 2015. Exposure contributions from Jambi doubled in 2015 compared to 2006.

Six Indonesian provinces declared a state of emergency in 2015. Sumatra and Kalimantan observed Pollutant Standard Index readings near 2,000, where anything over 300 is considered hazardous to human health.

It is alleged that the 2015 haze event cost Indonesia at least USD 16.1 billion (IDR 221 trillion), equivalent to 1.9% of 2015 GDP and roughly twice the economic cost borne by Indonesia in the 2004 Indian Ocean earthquake and tsunami.

The toxic impacts of haze in Indonesia

According to the information received, thousands of premature deaths and illnesses are reportedly due to the cocktail of numerous different hazardous substances in haze. One of the key classes of toxic substances is PM2.5, a particulate matter (PM) composed of organic and black carbon measuring 2.5 micrometres or less. PM2.5 particles are so small that they invade the smallest airways of the human body deep within the lung and the smallest can even find their way into the bloodstream.

Children, the elderly and people with disabilities are most likely to be affected by particle pollution exposure. PM2.5 can lead to premature death (particularly in young children and the elderly), reduced lung function and lung cancer, irregular heartbeats and heart attacks, asthma, pneumonia, heart attacks and other adverse health effects.

Children are particularly vulnerable to repeated and prolonged exposure to PM2.5 Haze may harm the growth and functioning of children's lungs, leading to children's decreased pulmonary function, increased respiratory symptoms and

respiratory infection, and increased likelihood of chronic lung diseases. Prenatal exposure to PM2.5 is linked to low birth weight, pre-term delivery, and fetal death.

Indonesia's haze contains extraordinarily high levels of toxic substances separate from, and in addition to, PM2.5. Smoke and gasses from forest and peat fires can contain toxic substances linked to cancer and numerous other adverse health effects discussed below. Such substances include ammonia, cyanide, benzene, hazardous volatile organic compounds and dozens of other hazardous substances. It is suspected that these elements are likely to have been present at elevated levels in Indonesia's haze for many years. The Center for International Forestry Research measured carbon monoxide levels in Central Kalimantan in mid-October 2015 and found levels 30 times higher than normal, including indoors and over 30 kilometers from the nearest fire.

Domestic and trans-boundary impacts on the rights to life, health and physical integrity

The dense haze of 2015 persisted across much of Equatorial Asia for weeks, imposing adverse public health impacts on populations in Indonesia, Singapore, and Malaysia. Indonesia is considered the major contributor to transboundary haze in the region.

For several months in 2015, approximately 43 million people in Sumatra and Kalimantan alone were reasonably presumed to have inhaled high levels of toxic air pollution. Millions of children across Indonesia, Singapore, and Malaysia were exposed, including unborn babies.

According to Indonesian authorities, an estimated 500,000 people in Indonesia sought medical care because of the haze.

According to information received, haze from Indonesia's forest fires are estimated to have caused an estimated 100,300 premature deaths in 2015 spanning three countries: Indonesia, Malaysia, and Singapore. In 2015, 91,600 people were killed prematurely as a result in Indonesia, 6,500 in Malaysia and 2,200 in Singapore. Exposure to Indonesia's smoke haze may have contributed 11% of deaths in Singapore in 2015.

While we do not wish to prejudge the accuracy of these allegations, grave concern is expressed over the severe domestic and transboundary impacts of Indonesian haze on human rights, in particular the right to life, health and physical integrity. Particular concern is expressed about children's prolonged exposure to haze and smoke pollution during critical periods of development, directly or through their mother, which can have severe and irreversible impacts on their right to the highest attainable standard of health. Concern is also expressed regarding the severe and irreversible health impacts on the elderly.

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. As a party to the ASEAN Agreement on Transboundary Haze Pollution since 2014, is Indonesia in compliance with the obligations under this agreement? If not, how does it plan to remedy non-compliance?
3. Please explain appropriate measures taken by your Excellency's Government to monitor fire prone areas, all land and/or forest fires, the environmental conditions conducive to such land and/or forest fires and haze pollution arising from such land and/or forest fires to initiate immediate action to control or to put out the fires, in accordance with article 7 of the ASEAN Agreement?
4. Please provide any information about land use policies and management strategies which are in place that could most effectively mitigate the downwind smoke exposure and consequent costs to human health if another extreme haze event would happen.
5. What policy, legal or regulatory measures has the Government of Indonesia taken to encourage or require that companies whose concessions are linked to the burning of peat lands, timber or oil plants meet their responsibility to respect human rights throughout their operations? This may include measures and/or guidance on, inter alia, conducting human rights due diligence, meaningful consultations with potentially affected stakeholders, and addressing and mitigating any negative impacts.
6. Please provide the details of early-response efforts to forest fires in view to reduce the emission of toxic elements in haze and smoke as well as the measures undertaken to ensure the decrease or the end of such practice.
7. Please provide information about initiatives taken by the competent authorities to study the health impact of exposure to multiple hazardous elements in the air as well as the measures taken in view of the increased emissions of toxic elements from fires.
8. Please provide detailed information on the data and plans of your Government to ensure the surveillance of the health situation of people affected in the medium and long term as well as access to health services.

9. What judicial, administrative, legislative or other steps has the Government of Indonesia taken to ensure that victims of smoke exposure and haze have access to effective remedies?

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 intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

Pavel Sulyandziga

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

John H. Knox

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

Baskut Tuncak

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

Dainius Pūras

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 recall the relevant international human rights obligations that your Excellency's Government has undertaken, and other relevant international agreements to which Indonesia is Party.

First, we would like to draw your attention to the ASEAN Agreement on Transboundary Haze Pollution, ratified by your Excellency's Government on 16 September 2014. The ASEAN Haze Agreement is a legally binding environmental agreement that provides that all Parties have "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment and harm to human health of other States or of areas beyond the limits of national jurisdiction." The Agreement recognises that transboundary haze pollution which results from land and/or forest fires should be mitigated through concerted national efforts and international co-operation. The States have to "take precautionary measures to anticipate, prevent and monitor transboundary haze pollution as a result of land and/or forest fires which should be mitigated, to minimise its adverse effects."

We would also like to remind your Excellency's Government of the obligation to respect the rights of every individual to life and physical integrity as set out in articles 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified on 23 February 2006.

Furthermore, we wish to draw your Excellency's Government's attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Indonesia on 23 February 2006, which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this connection, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights on article 12 of the Covenant, which acknowledges that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. Moreover, General Comment 14 indicates that States are required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil. (para.36)

We would also like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. 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.”

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. The Guiding Principles highlight the State’s duty to “take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means” that when business-related human rights abuses “occur within their territory or jurisdiction those affected have access to effective remedy” (Guiding Principle 25). Guiding Principle 22 states that “where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. 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). Guiding Principle 29 states that “business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted” and the commentary to Guiding Principle 29 outlines that such mechanisms “provide a channel for those directly impacted by the enterprise’s operations to raise concerns when they believe they are being or will be adversely impacted”.