

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises 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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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 implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 35/7 and 36/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **implications for the human rights of rural workers and communities living in areas affected by the persistent use of highly hazardous pesticides (HHPs) in the provinces of Davao del Sur, South Cotabato, Agusan del Sur and Bukidnon, on the island of Mindanao.**

According to the information received:

Mindanao hosts plantations that produce export crops, such as banana, oil palm and sugar cane, which are controlled by various local, transnational and multinational corporations. Twelve percent of the agricultural land in the five regions of the island, equaling more than 500,000 hectares, have reportedly been converted to cash crops for export.

Reportedly, aerial spraying of pesticides is being carried out by the banana plantation – Lapanday Agricultural Development Corporation (LADC) – in Davao del Sur and South Cotabato; and ground spraying of pesticides is being carried out by palm oil plantations – Filipinas Palm Oil Plantation, Inc. (FPPI), and Agusan Plantations, Inc. (API) – in Agusan del Sur and Bukidnon.

According to the information collected from 57 workers and residents from surrounding villages between 2015 and 2016, grave health risks and concerns are reported.¹ The five most commonly used pesticides in the plantations are *Paraquat*, *Deltamethrin*, *Glyphosate*, *Chlorothalonil* and *Malathion*. All these pesticides have been classified as highly hazardous or hazardous by specialized organizations, two of which are banned from use in the European Union. . Additionally, if such pesticides are ever employed, use must be in line with the precautionary principle and workers must receive specialized training and undergo regular oversight to protect their right to healthy occupational conditions.

¹ COMMUNITY PESTICIDE ACTION MONITORING IN MINDANAO, PHILIPPINES (2017).

The 2017 study indicated the absence or inadequacy of training given to most of the pesticide handlers working in the four mentioned areas in Mindanao. Part-time workers, in particular, are not given any specialized training and rely on other workers for information. Very few pesticide handlers, for instance, are aware that they should not spray against the wind direction. Furthermore, handlers, not knowing the dangers, do not restrict direct physical contact with the pesticides. For example, workers have even been found de-clogging the pesticide applicator nozzle using their mouths.

Based on the information received, the protective equipment provided to workers in the areas studied is neither sufficient nor durable. Some workers are expected to buy their own equipment. Due to the lack of safety procedures for washing pesticide equipment and their bodies, pesticide residues get into the workers' skin as well as their private parts. Some handle pesticides with their bare hands and have had to resort to the use of bra cups as masks or "respirators" since employers do not provide them with replacements once their masks wear out. The absence of adequate protection often results in multiple health consequences including dermal and respiratory illnesses.

Risks are elevated by the limited access to washing facilities by plantation workers and the lack of accessible comfort (bath) rooms. Some workers use nearby water systems, e.g. rivers, brooks, and creeks, to bathe and wash their clothes and rinse their equipment. Such practices contaminate the environment and increase the health risk amongst many others who come in contact with the water (women and children often bath in some of these rivers, for example) as well as increase the likelihood of introducing pesticide-residues into water-supplies and into the food chain. Reportedly, people in the surrounding areas that do not directly handle pesticides also have illnesses that can be linked to pesticide exposure.

Furthermore, according to information received, since the expansion of plantations in the early 1980's, local communities, including indigenous peoples, have been adversely affected by aerial spraying of unspecified pesticides by airplanes, which takes place as often as two to three times a month. Every time spraying occurs, the villagers smell strong and odorous fumes, from which there is no escape, even in the shelter of their own homes. It is reported that villagers are not adequately warned of the spraying beforehand.

Reportedly, residents of these communities have developed various illnesses connected to the exposure to hazardous pesticides. There are reports of children and adults, including women of childbearing age, being accidentally sprayed while eating or while on their way to the river to do laundry.

Women and children are particularly affected by the recurrent use of pesticides. In a particular case in a banana plantation community in Davao del Sur, it is reported

that a three-year old child momentarily lost conscience and developed a mental disability after being exposed to the pesticide drift while playing. Reportedly, children as young as 12 years old work in oil palm plantations in Agusan Del Sur.

Among the most commonly experienced symptoms by those exposed to pesticides are headache; blurring of vision; suffocation; nausea; fever; diarrhea; coughing; eye pain; and itchy and painful skin lesions. Infants are reportedly born sick with developmental abnormalities, with both physical and mental impediments noted, including learning disabilities. Adults have also been diagnosed with chronic and terminal diseases allegedly linked to the use of pesticides. Persons presenting these symptoms have limited access to health care: medical facilities are usually located far away and not easily accessible for these four communities. There is also a lack of trained medical professionals capable to recognize the typical symptoms of pesticides poisoning.

While we do not wish to prejudge the accuracy of these allegations, grave concern is expressed over the allegedly documented health and environmental impacts stemming from the exposure of residents and workers to pesticides, pesticide drifts and contaminated land and water in Mindanao. Particular concern is expressed over the impact of the persistent use of highly hazardous pesticides (HHPs) on human rights, in particular the right to life, health and physical integrity. Serious concern is also expressed about children's prolonged exposure to HHPs, directly or through contaminated land and water, which can have severe and irreversible impacts on their right to the highest attainable standard of health. Additional concern is expressed about the lack of information amongst workers and residents about hazardous pesticides in order to protect and respect the rights to life and 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 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 existing legal and institutional frameworks for ensuring occupational health and safety and the protection of communities from pesticides and other agrochemicals. Please indicate the specific initiatives taken to ensure the protection of workers in plantations and of the communities living around these areas. Please also indicate the specific regulations relating to the use of pesticides and other hazardous agrochemicals.

3. Please provide information on the existing initiatives to ensure workers and communities living in plantations areas are fully informed on the chemicals being employed in these areas and on the required precautions to avoid and respond to exposure.
4. Please provide the details of any site-specific enquiries or assessment conducted in relation to the health and working conditions in Davao del Sur, South Cotabato, Agusan del Sur and Bukidnon in Mindanao or in other similar agriculture regions in the Philippines.
5. Please provide information on any measures taken to ensure adequate medical assistance to rural workers in Davao del Sur, South Cotabato, Agusan del Sur and Bukidnon in Mindanao, including specific health support initiatives targeting children and women in these communities.
6. Please indicate if any measure was taken by the Government to ensure companies working in Mindanao or other similar areas respond to the adverse consequences pesticide use. What measures, including policies, legislation, regulations and adjudication, has the Government put in place to prevent, investigate, punish and redress human rights abuses by business enterprises within its territory and/or jurisdiction?
7. Please indicate the measures taken by the Government to ensure the implementation of the UN guiding Principles on Business and Human Rights, including any guidance provided to business enterprise on how to respect human rights throughout their operations.
8. Please provide information about the measures that the Government has taken, or is considering, to ensure that the affected local communities and affected workers have access to effective remedies, including adequate reparation, in line with the UN Guiding Principles on Business and Human Rights.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Anita Ramasastry

Chair-Rapporteur 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

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 norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Rights of the Child;
- The UN Guiding Principles on Business and Human Rights, and;
- The UN Declaration on the Rights of Indigenous Peoples.

We would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. In particular, the Universal Declaration of Human Rights, article 25, which recognizes the right of everyone "to a standard of living adequate for the **health and well-being** of himself and of his family, including food, clothing, housing and medical care" and article 19, which guarantees the right to "seek, receive and impart information".

Furthermore, we wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by your Excellency's Government on 7 June 1974, which enshrines the **right of everyone to the enjoyment of the highest attainable standard of physical and mental health**. General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights describes the normative content of article 12 and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfill the right to health. In paragraph 11 of General Comment No. 14, the Committee interprets 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, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information".

We would also like to draw your Excellency's Government's attention to article 7 of the ICESCR, enshrining the right of everyone to the enjoyment of just and favourable conditions of work, including **safe and healthy working conditions**. The above-mentioned General Comment No.14 holds that the improvement of all aspects of environmental and industrial hygiene comprises, inter alia, "preventive measures in

respect of occupational accidents and diseases [and] the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health". We would also like to stress that the right to work is a fundamental right, recognized in the ICESCR. As specified in General Comment No. 18 (2005) on article 6 of the Covenant, work must be "decent work", that is, "work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration."

We wish to draw your attention to article 6.1 of the International Covenant on Civil and Political Rights (ICCPR), acceded by your Excellency's Government on 23 October 1986, which states that "every human being has the inherent **right to life**. This right shall be protected by law. No one shall be arbitrarily deprived of his life." We would also like to call your attention on General Comment No. 6 (1982) of the Human Rights Committee on the right to life. According to the Human Rights Committee, the expression "inherent right to life" should not be interpreted in a restrictive manner. The protection of the right to life therefore requires States to adopt positive measures to implement this right, including measures to reduce infant mortality and increase life expectancy.

Additionally, we would also like to refer to your Excellency's Government to article 19 of ICCPR, which stipulates the right to "seek, receive and impart **information**". In this context, we call your attention to the importance of the right to information about hazardous substances to the general public, as outlined in my report to the Council (A/HRC/30/40).

In addition, article 6 of the Convention on the Rights of the Child (CRC), which your Excellency's Government ratified on 21 August 1990, recognizes that every child has the inherent right to life and that requires that States Parties ensure to the maximum extent possible the survival and development of the child. It further requires State Parties to take all effective and appropriate measures to diminish infant and child mortality. Moreover, the Article 24 of the CRC recognizes **the right of the child to the enjoyment of the highest attainable standard of health** and to facilities for the treatment of illness and rehabilitation. The article 24, paragraph 2 (c) of the Convention specifically requires States to pursue the full realization of the right of the child to the enjoyment of the highest attainable standard of health taking into consideration the dangers and risks of environmental pollution.

, We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its 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 clarify that under international human rights law, “States must protect against human rights violations committed in their territory and / or their jurisdiction by third parties, including business enterprises” (Principle 1). This requires States to “state clearly that all companies domiciled within their territory and / or jurisdiction are expected to respect human rights in all their activities” (Principle 2).

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” This obligation requires that a State takes appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In addition, this requires, inter alia, that a State should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3).

The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur..

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.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (Guiding Principle 19).

In addition, we would like to draw the attention of your Excellency’s government to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007. UNDRIP elaborates upon existing binding rights in the

specific cultural, historical, social and economic circumstances of indigenous peoples. Accordingly, the Declaration provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person (article 7), and also states that indigenous individuals have the equal right to the enjoyment of the highest attainable standard of physical and mental health (article 24).

We would also like to highlight that, pursuant to the Declaration, indigenous peoples have the right to the lands, territories and resources which they have traditionally owned (article 26), including the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources (article 29). In this connection, the Declaration establishes that States are obliged to take effective measures to ensure that no storage or disposal of hazardous materials takes place in the lands or territories of indigenous peoples without their free, prior and informed consent (article 29). Furthermore, the Declaration provides that States shall take effective measures to ensure that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such hazardous materials, are duly implemented (article 29).

Finally, we would like to recall that, pursuant to article 28 of the Declaration, indigenous peoples have the right to redress for actions that have affected the use and enjoyment of their traditional lands and resources. Moreover, under article 32 of the Declaration, States are obliged to consult with indigenous peoples and to obtain their free and informed consent prior to the approval of any project affecting their ancestral lands and resources. The said article 32 provides that States have the obligation to provide effective mechanisms for just and fair redress for any such activities, and must take appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impact.