

**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**

REFERENCE:  
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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 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 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 **alleged transboundary movement of an end-of-life ship owned by a partnership based in the United Kingdom between a Danish and a Brazilian company and containing hazardous substances and wastes, which arrived in August 2016 in Chittagong, Bangladesh for dismantling**. A letter concerning this case was also sent to the Governments of Brazil, Denmark and United Kingdom and to the companies concerned.

According to information received:

The vessel named North Sea Producer (originally built as a tanker named Dagmar Maersk on 22 September 1983) operated as a Floating Production Storage and Offloading (FPSO) unit transporting and extracting oil from the UK continental shelf. In his last 17 years of operation, the North Sea Producer was owned by the UK registered North Sea Production Company, a single-ship joint venture between the Danish A.P. Moeller Maersk and the Brazilian Odebrecht.

The joint venture between A.P. Moeller Maersk and Odebrecht sold the North Sea Producer in April 2016. The companies reportedly informed authorities in the United Kingdom that the vessel was being purchased by a Saint Kitts and Nevis-based company, "Conquistador Shipping Corporation", to be further utilized in the Tin Can port in Nigeria. Despite this information, the ship left the United Kingdom on 17 May 2016 and was towed straight to Bangladesh, with only a few fuel stops on its way to be beached in Chittagong Bangladesh for dismantling on 16 August 2016. Allegedly, a fake attestation that the ship did not contain hazardous materials was provided to Bangladeshi authorities by Conquistador Shipping Corporation.

The Janata Steel yard in Bangladesh reportedly purchased the vessel from Global Marketing Systems (GMS) the world largest scrap dealer, also known as cash buyer, of ships for recycling. It is reported that GMS was involved in the setting

up of the post box company Conquistador Shipping Corporation for ship registration purposes. The North Sea Production Company thus sold the North Sea Producer to a well-known scrap dealer and must therefore have been aware that the tanker would not be further operationally used.

Non-governmental organizations raised serious concerns with regard to the contamination of the vessel structure by dangerous chemicals, oil and gases, as well as radioactive material. Once the ship arrived in Chittagong, and upon alerts issued by civil society, the Attorney General of the Department of Environment in Bangladesh set up a special committee to determine the presence of contaminated residues, and to investigate the ship's illegal import due to the alleged lack of necessary clearances and false claims that the ship was free of hazardous substances. A report on the ship's condition was released in June 2017 indicating the presence of radioactive residues and noting the need for further surveys on the whole ship. Due to concerns on the risks posed by toxic component on the ship, an injunction on the breaking of the North Sea Producer was obtained until October 2017 and has been extended until further notice as the case is currently being dealt with in the Bangladesh Supreme Court High Court Division.

At the yard where the North Sea Producer was supposed to be dismantled, shipbreaking is accomplished without workers having access to necessary safety equipment as well as use of proper safety and procedures. Work reportedly is carried out manually by workers with torch cutters. Oxygen and gas are pumped through a device that creates a 1500°C flame that can cut through steel coated with paints that contain hazardous substances such as heavy metals. Reports also indicate that workers do not use necessary protective clothing, some moving with bare feet and sandals in the tidal mudflat used as the dismantling area. Most workers live in unhealthy conditions in wood and sheet metal shacks right next to the walls of the shipyard. Coughs, headache and breathing problems are reported among workers in dismantling yards in the same area in Bangladesh.

The tidal beach area where dismantling takes place is also not adequately protected from pollution as hazardous materials are in direct contact with the soil and sea. Reports noted the presence of children from neighbouring communities playing on the beach where the toxic components of North Sear Producer are being kept today.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the potential human rights violations caused by the dismantling of this ship in Chittagong, Bangladesh. As stated by the then Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, shipbreaking may have an adverse impact on “the enjoyment of several human rights, including the right to life, the right to the highest attainable standard of physical and mental health, and the right to safe and healthy working conditions” (A/HRC/12/26, para. 20). Thus, we are especially concerned about the potential life-long health impacts that the hazardous substances and wastes may have on the communities residing in the affected area, particularly children.

Under the circumstances described, we would like to draw your attention to your Excellency's Government's obligations under international laws detailed in the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and other additional 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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the situation of the ongoing investigations on the import of the North Sea Producer to Bangladesh. Please provide details on the arrival of the end-of-life ship to Chittagong, Bangladesh, including the time and date of arrival, the documentation provided by those in charge of the vessel, as well as any inspections that may have been carried out on the vessel.
3. Please explain, in detail, if the Government of Bangladesh has taken any measures to ensure decontamination of the ship before entering Bangladeshi waters.
4. Please explain, in detail, how the hazardous substances and wastes derived from shipbreaking initiated and halted will be managed, including plans to minimize the current adverse effects on human rights and the environment.
5. Please explain why the import of this ship containing hazardous wastes is not in violation of the Basel Convention, to which the Government of Bangladesh is Party.
6. Please provide, in detail, the measures taken by the Government of Bangladesh in training workers to minimize the risks and health implications of hazardous materials used in and released by shipbreaking. Please also provide, in detail information given to potentially affected communities in this regard.
7. Please provide information on the benefits and/or compensation the workers receive in the likely event of injury, sickness, temporary or permanent disability caused by occupational accidents or diseases.
8. Please provide comprehensive statistical data on persons who died or became disabled as a result of occupational accidents in the shipbreaking industry in Bangladesh.

9. Please provide information on the plans of the Government of Bangladesh to ban importation of end-of-life vessels containing hazardous substances and wastes to be beached for dismantling in the country.
10. Please indicate other additional measures taken by the Government to ensure the implementation of the UN Guiding Principles on Business and Human Rights, including to ensure that the affected workers have access to effective remedies, including adequate reparation. Please also indicate what steps the Government is taking to ensure that businesses involved with ship breaking, demonstrate respect for human rights, including for the rights of workers and other people impacted by the contaminated vessels.

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 may also 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.

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:

We would like to draw your attention to your Excellency's of article 6.1 of the International Covenant on Civil and Political Rights, stipulating the right to life (ratified by Bangladesh in 2000); and articles 12 and 7 of the International Covenant on Economic, Social and Cultural Rights, stating the right to health and the right to safe and healthy working conditions, respectively (ratified by Bangladesh in 1998). In addition, I would like to draw your attention to Article 24 of the Convention on the Rights of the Child, ratified by Bangladesh in 1990, regarding your Excellency's Government's obligations to "recognize the right of the child to the enjoyment of the highest attainable standard of health ... taking into account the dangers and risks of environmental pollution."

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

Furthermore, we would like to draw your Excellency's Government's attention that the movement of North Sea Producer is under scrutiny of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and its Ban Amendment, even if the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships has not entered into force yet.

The seventh Conference of the Parties to the Basel Convention noted that "a ship may become a waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules". This means that a ship containing radioactive materials or other hazardous substances may be considered as hazardous waste when destined for recycling or disposal. It should be noted that the Government of Bangladesh has been party to the Basel Convention since 1993. Under the Basel Convention, your Excellency's Government has a legal obligation to "[p]revent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner."

Finally, 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.”

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.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights.

Business enterprises 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 (commentary to Guiding Principle 19). Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. 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).