

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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, 34/18 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 **exposure of female workers to hazardous substances and inadequate working conditions in two Samsung Electronics factories based in Vietnam and the alleged intimidation of advocates by Samsung Electronics and public authorities.**

According to the information received:

In November 2017, the Hanoi-based Research Center for Gender, Family and Environment in Development (CGFED) and the International POPs Elimination Network (IPEN), a global network of environment and health non-governmental organizations (NGOs) working to reduce the use of harmful chemicals throughout the world, published a report revealing inadequate working conditions in two Samsung Electronics factories based in Vietnam. Female workers 20-30 years of age constitute approximately 80 percent of the Samsung Electronics workforce in Vietnam. The report was based on industrial sector research and qualitative narratives of 45 female workers at two Samsung Electronic factories. Samsung Vietnam reportedly constitutes 20 percent of Viet Nam's exports, and employs 100,000 people.

i) Occupational health conditions at Samsung Electronics factories in Vietnam

Hazardous occupational conditions allegedly exist for workers at Samsung Electronics factories at Yen Phong Industrial Zone in Bac Ninh province and Pho Yen Industrial Zone in Thai Nguyen province. In both places women are the vast majority of the workforce and manufacture various electronics products and components.

Tasks within factories involve heating, painting, laser carving and cutting, gassing with metallic coating and using solvents and detergents. It is reported that mobile phones themselves can contain over sixty different metals, which may include highly toxic substances such as mercury, chlorine, lead and bromine. This allegedly contributes to toxic chemical releases and lasting air pollution in the working environment. However, according to findings of the above-mentioned report, factory workers were not informed of potential health risks related to occupational exposures to toxic substances in their work place. The lack of training on occupational safety and health risks reportedly corroborates similar findings by Government investigators at the Bac Ninh Province facility.

The 45 workers interviewed, all female, complained of extreme fatigue and dizziness or fainting at work. They reported that miscarriages are extremely common, even expected, among female factory workers. For example, in 2013, six miscarriages were observed in one production area. Birth defects among children of workers are also reported. Workers also reported problems with bone, joint, and leg pain.

In addition, workers are reportedly exposed to extremely high noise levels (greater than 82 dB, exceeding Vietnamese regulatory limits), having to stand throughout their 8-to-12-hour shifts and often working in alternating day and night shift schedules, regardless of weekends. All workers, including pregnant workers, were reportedly given no option of working while seated. Concerned the company would deduct money from their wages for sitting, which may be viewed as taking a break, it is reported that all workers stand for the entirety of their shift. The researchers also found that none of the workers received a copy of their work contract.

Reportedly, the Vietnamese Ministry of Labor, War Invalids and Social Affairs (MOLISA) conducted investigations into two Samsung Electronics factories following the report; however, details of findings were not disclosed.

ii) Alleged intimidation of organizations reporting on the situation of workers

According to the information received, Samsung Electronics allegedly obtained the report from media organisations and on 4 and 22 November 2017 addressed letters to the CGFED threatening them with a lawsuit. Factory workers in Vietnam were also allegedly intimidated by Samsung Electronics and threatened with lawsuits in case they talked again to external people about their working conditions.

The release of the report on the situation in Thai Nguyen and Bac Ninh was prohibited in Vietnam by the Ministry of Public Security; however, the report was released elsewhere and reported upon by the media. On 9 November 2017, the CGFED was invited by a public authority in charge of Foreign Direct Investment in Bac Ninh Province (Management Board of Industrial Zones) to provide

clarifications on their work following a complaint by Samsung Electronics on alleged “inaccuracies” in their report. Additional invitations have allegedly arrived.

We are seriously concerned about the allegedly hazardous working conditions, intimidation of employees at Samsung Electronic factories in Viet Nam and the intimidation of civil society organizations, which appear to be in direct response to their legitimate human rights work and the exercise of their rights to safe and healthy working conditions, freedom of expression and information. We reiterate concerns expressed in previous communications (for example UA VNM 1/2017 and UA VNM 2/2017) on the use of legal instruments to intimidate persons and organizations reporting on alleged human rights violations and severely limiting access to information, on issues of great public interest concerning accountability and public 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 the legal grounds and measures taken in response to the dissemination of the study developed by the International POPs Elimination Network and the Centre for Research on Gender, Family and Environment in Development on Samsung factories in Vietnam. Please indicate how these measures are compatible with international human rights standards, in particular those established by article 19 of the ICCPR and articles 7 and 12 of the ICESCR.
3. Please provide information on the existing legal and institutional framework ensuring occupational health and safety in Vietnam. Please indicate the specific initiatives taken by the Government to monitor and ensure the protection of workers from health hazards, in particular research about occupational illnesses in electronics manufacturing facilities, including those illnesses related to the exposure to toxic chemicals.
4. Please provide information on the existing initiatives to ensure workers in Samsung Electronics’ factories and other similar electronics industry facilities are provided with information on the potential health hazards related to their functions.

5. Please provide information on any investigations by the Ministry of Labor, War Invalids and Social Affairs (MOLISA) other other government authorities after the November 2017 report was published.
6. Please provide information of any international cooperation with the International Labour Organization (ILO), World Health Organization (WHO), or the South Korean Government regarding the information contained in the November 2017 report.
7. Please provide information on the preventive and responsive measures in place to address potential health consequences of activities in the workplace, in particular, those available for workers in the Samsung Electronics' factories and the electronic industry sector.
8. Please indicate if any additional measure was taken by the Government to ensure foreign companies adhere to international human rights and labour rights standards while operating and investing in Vietnam.
9. Please indicate any measures taken by the Government to implement the UN Guiding Principles on Business and Human Rights, including guidance provided to business enterprise on how to respect human rights throughout their operations.

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 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

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

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 refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Vietnam in 1982, which provide that everyone should have the right to freedom of expression and opinion and the right to freedom of peaceful assembly, including the right to information. In this connection, we reiterate the principle enunciated in Human Rights Council Resolution 12/16 that calls on States to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR.

With regard to the right to the highest attainable standard of health of the affected communities, we wish to draw your attention to articles 7 (b), 7 (d) and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by your country in 1982 – which recognizes respectively the right of everyone to the enjoyment of just and favourable conditions of work which ensure safe and healthy working conditions and the right to the highest attainable standard of physical and mental health.

Additionally, we wish to bring to the attention of your Excellency’s Government the fundamental principles set forth in 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, 2, 5, 6, and 12.

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. However, 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 (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).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.