

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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Mr. Nitrini Guidolin,

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.

We are sending this letter under the communications procedure of the special procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals and other communications. The intervention can relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company 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.P. Moeller Maersk (headquartered in Denmark) and Odebrecht (headquartered in Brazil) 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 Bangladesh, Brazil, Denmark and United Kingdom, as well as to A.P. Moeller Maersk.

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

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

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 recurrently supplying vessels to the scrapyards in Chittagong Bangladesh. 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 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 Sea Producer are being kept today.

In 2016, A. P. Moeller Maersk refused to provide the name of the real buyer of the ship when requested by the media and Danish environmental authorities. A. P. Moeller Maersk reportedly indicated that the sales agreement included a clause saying that the buyer was not allowed to scrap the vessel, unless the scrapping was done "responsibly" which would certainly exclude selling the vessel to the yard in Chittagong. Yet the clause, if existed, was clearly ignored.

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 company's responsibilities 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 details provided to authorities in the United Kingdom and in Brazil on the sale of the North Sea Producer to Global Marketing Systems, on the situation of the ship, including an overview of the hazardous materials within its structure, and on its claimed future use at the Tin Can Port in Nigeria.
3. Please explain, the specific measures taken by Odebrecht to ensure that the North Sea Producer's dismantling would be conducted in accordance with relevant international standards.

4. Please provide information on the collaboration extended by Odebrecht with authorities in the United Kingdom and in Bangladesh who are investigating the beaching and dismantling of the North Sea Producer.
5. Please indicate if the sale process of the North Sea Producer was submitted to internal or independent audit and if these assessments indicated that relevant standards utilized by Odebrecht were observed?
6. Please indicate if Odebrecht adopted or plans to adopt new measures to prevent the recurrence of similar incidents.
7. Please provide monitoring data for water pollution, food contamination, air pollution and occupational exposures arising from the dismantling of Odebrecht ships on beaches since 2000.
8. Please indicate measures taken by Odebrecht to identify and close protection gaps created by the Hong Kong Convention, especially with regards to (i) the minimization of export of hazardous wastes to developing countries, (ii) the containment of pollutants, including paints, during the cutting of the ship, and (iii) the environmentally sound management and disposal of hazardous wastes.
9. Please provide information as to what human rights due diligence has been undertaken by Odebrecht to identify, prevent, mitigate and address adverse human rights impacts related to this case, in accordance with the United Nations Guiding Principles on Business and Human Rights.
10. Please indicate any measures taken by the company to ensure that workers and communities impacted by the contaminated vessels have access to effective remedies, in accordance with the United Nations Guiding Principles on Business and Human 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 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.

Your company's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Nitrini Guidolin, 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 the attention of your company to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. As set forth in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights. 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 clearly outline that private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Guiding Principles clarify that The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13). This dual-requirement is further elaborated by the requirement that the business enterprise put in place:

1. A policy commitment to meet their responsibility to respect human rights (Guiding Principle 16);
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed (guiding principles 18-21); and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

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.