

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:
AL OTH 10/2018

16 March 2018

Dr. Oh Hyun Kwon,

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.

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 **exposure of women workers to hazardous substances and inadequate working conditions in two Samsung Electronics factories based in Vietnam and the alleged intimidation of health and environmental advocates by Samsung Electronics.**

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. Women

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

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 women 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.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned about the allegedly hazardous working conditions of employees at Samsung Electronic factories in Viet Nam, which violates their right to safe and healthy working conditions. We express further concern at the intimidation and threats of lawsuit against employees at Samsun Electronic factories and against civil society organizations which appear to be in direct response to their legitimate human rights work and the exercise of their right to freedom of expression on an issue of public interest.

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 measures and initiatives ensuring occupational health and safety and informing workers on the potential health hazards related to their functions in Samsung Electronics’s factories.

4. Please provide information as to what human rights due diligence has been undertaken by Samsung Electronics in Vietnam 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.
5. Please indicate any measures have been adopted by the company to respond to any adverse impacts on health for their workers in line with the UN Guiding Principles on Business and Human Rights, including to provide for or cooperate in affected women workers' effective remediation.

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 company to clarify the issue/s in question.

For your information, a letter on the same subject was sent to the Permanent Mission of Vietnam on 11 January 2018.

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

Please accept, Dr. Oh Hyun Kwon, 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 draw the attention of Samsung 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.

The Principles 11 to 24 and Principles 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 cause or contributed to adverse impacts. Moreover, the commentary of the Principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes

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;
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; and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

The Guiding Principles also recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy,

should make sure that the legitimate activities of human rights defenders are not obstructed.

We would also 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.”

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