

**Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 36/15, 35/7, 37/8, and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged violation of the rights to life, to health, and to a clean and safe environment, of coastal residents resulting from burning, exposure to toxic fumes and smoke, and contamination resulting from an oil spill on the Balikpapan Bay in East Kalimantan, Indonesia.**

According to the information received:

PT Pertamina is the biggest Indonesian State-owned oil and gas enterprise, which has funneled, since 1998, crude oil from its Lawe-lawe terminal in North Penajem Paser to an oil refinery in Balikpapan, through its Tempino-Plaju oil pipelines. These pipelines are reportedly 20-years old and located approximately 25 metres under the sea.

On 31 March 2018, one of PT Pertamina's pipelines burst, allegedly releasing oil into the Balikpapan Bay and contaminating the fishing waters along the coast. A fire that broke out on the water surface at about 12 noon and reportedly released toxic smoke into the air, which caused the death of five fishermen who were caught in the fire and also left workers from a coal cargo vessel nearby injured

On 3 April 2018, the Government declared a state of emergency to help stop the spread of the oil slick. The spill covered a 400-meter area of the bay at first, but then spread further inland to a radius of around 2 kilometers in the waters around Semayang Port to Margasari. It is reported that the oil spill has covered more than

12,987 hectares of Balikpapan Bay, and continues to spread due to waves and currents further out into the Indian Ocean.

On 4 April 2018, PT Pertamina confirmed, after checking the 10th oil spill sample, that the contamination was a result of crude oil leaked from its pipeline. The authorities claimed the pipe had moved 120 meters from its original location. Pertamina shut down the pipeline at some point in time after the burst.

Analyses of oil spill burn residues in international studies have shown enrichment in metals and chemicals, including highly toxic polycyclic aromatic hydrocarbons (PAHs) which when introduced, dispersed and degraded in the environment may be absorbed into the human body through inhalation, ingestion, or direct dermal contact. Both the oil spill and the fire have already caused casualties as well as environmental damage. Some PAHs are carcinogens, mutagens, and teratogens and chronic exposure poses a serious threat to the health and the well-being of humans, including decreased immune function, cataracts, kidney and liver damage (e.g. jaundice), breathing problems, asthma-like symptoms, and lung function abnormalities, and increased risk of cancer.

Hundreds of members of the local community living around the affected coastal area are already suffering health-related effects of the spill, including breathing problems, nausea, headaches and vomiting. Daily exposures to PAHs is associated with increased incidences of premature death, chronic asthma and increased hospital admissions as well as respiratory problems in children. The contamination is also affecting the livelihoods of the local fisherman who rely on the safe and healthy marine environment .

Exposure to the toxic fumes from burning oil poses significant risks to children's health and safety. Children are particularly vulnerable to the adverse health effects of exposures to toxic chemicals. Not only is a child's developing body more sensitive and vulnerable to toxic exposures, but children also ingest higher concentrations of toxic chemicals into their bodies than adults.

Marine animals and plants have been impacted, as dead crabs and a dead endangered Irrawaddy dolphin were discovered on the coast. The spill also covered around 34 hectares of mangrove forests in Kariagau village, as well as affecting 6,000 mangrove trees and 2,000 mangrove seeds in Atas Air Margasari village.

The Government and Pertamina have commenced clean-up efforts, including deployment of oil spill containment booms to collect the oil for recovery, use of vacuum trucks, through spraying chemical dispersants to break down the oil, and also through collecting oil by hand. The Government has also warned members of the local community not to light fires that may ignite the toxic slick, and has distributed gas masks to protect against the toxic fumes and smoke. Pertamina has embarked on hazardous and toxic waste treatment for the collected oil. However, information on the process of treatment and final disposal of the oil by the

company has not been made publicly available. Despite the Government's efforts to address waste management, it is alleged that there is inadequate protection of the human rights of residents of the coastal area, including children, older persons, and persons with disabilities. For example, the local community may, however, not be adequately informed about the risks of exposure to toxic fumes and the slick to their health, and the gas masks not sufficient to adequately protect the local community from exposure.

Yet, it is reported that a wide area of the slick is still present in the bay, aggravated by the possible presence of heavy oil under the surface of the water that may cause further impacts. The Government announced that it has launched an investigation into the cause of the oil spill and its spread and that legal or administrative actions would be taken against those found guilty of causing the oil spill. Administration and legal actions have commenced but have not yet concluded.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned that and the contamination resulting from the oil spill including reports of burning, exposure to toxic fumes and smoke appear to constitute an infringement on and violation of fundamental human rights to life, to the highest attainable standard of physical and mental health, and to a clean and safe environment. Serious concern is addressed to reports that your Excellency's Government is failing to meet its international human rights obligations to protect the rights of the local community including children, older persons, and persons with disabilities living near the contaminated sites.

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 mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would 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 regarding the preliminary and/or ongoing investigation into the liability for the oil spill resulting in contamination of the coastal waters and land. Please indicate any plans for a comprehensive assessment of the extent of contamination of the water, soil, and air as a result of the oil spill.
3. Please indicate any steps your Excellency's Government plans to take to fulfil its obligation to respect human rights in a way that complies with international human rights obligations related to the right to the highest attainable standard of physical and mental health and to the environmental protection. Please also provide information on the health situation of

residents of the coastal area near the oil spill site and the measures taken by your Excellency's Government to limit the risk of exposure, including any plans for evacuation. Please especially highlight steps taken to ensure residents of the areas near the oil spill site have adequate access to diagnostic health services and treatment.

4. Please provide information concerning how your Excellency's Government is ensuring the rights of children, older persons, and persons with disabilities are being protected. Please provide information regarding how many people in these group are affected and where they are now located. Please indicate any existing initiatives to ensure members of the local community are fully informed on the health risks of the oil spill and on the required precautions to avoid and respond to exposure, including through adequate access to healthcare.
5. Please provide the details on measures that your Excellency's Government is taking to protect the rights to life and to health of the people living in Indonesia as a result of the environmentally unsound release of hazardous substances from the oil spill including your Excellency's Government's plans to ensure accountability of those responsible for human rights abuse occasioned.
6. Please indicate what measures your Excellency's Government has put in place to ensure that State-owned enterprises, such as PT Pertamina, respect human rights, including (i) setting out clearly the expectation that they respect human rights throughout their operations; (ii) requiring human rights due diligence and communicating externally to account for how they address their human rights impacts; and (iii) cooperating and/or providing remediation for human rights abuses that they may be causing or contributing to, as set forth in the United Guiding Principles on Business and Human Rights.
7. Please indicate what additional steps that your Excellency's Government are taking, or plans to take, to protect against human rights abuses by State-owned enterprises, such as PT Pertamina, including the measures recommended in the Working Group's report on State-owned enterprises (A/HRC/32/45), such as establishing explicit mandates for boards to ensure and monitor the implementation by State-owned enterprises of human rights standards and to account for it; exercising effective oversight on such enterprises; providing capacity building to help State-owned enterprises fulfil State's requirements on human rights.

We would appreciate receiving a response within 60 days. We may publicly express our concerns in the near future as, in our view, the information upon which a press release would 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 would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that a letter on the same subject is sent to PT Pertamina.

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.

Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Anita Ramasastry

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Dainius Pūras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

**Annex**  
**Reference to international human rights law**

In connection with the alleged facts and concerns, we would like to draw your Excellency's Government's attention to the 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; and
- The International Labour Organization Conventions
- The World Health Organization Framework Convention on Tobacco Control
- The Strategic Approach to International Chemicals Management Comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action
- The United Nations Guiding Principles on Business and Human Rights

We wish to draw attention to your Excellency's Government's obligations under international human rights instruments to guarantee the right of every individual to life, liberty and security and not to be arbitrarily deprived of life, recalling Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), noting that your Excellency's Government acceded to the ICCPR on 23 February 2006.

In addition, Article 6 of the Convention on the Rights of the Child (CRC), which your Excellency's Government ratified on 5 September 1990, recognizes that every child has the inherent right to life and requires 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.

We would like to draw your Excellency's Government's attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by your Excellency's Government on 23 February 2006, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also guaranteed as a part of the UDHR Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting health of the individual, and in terms of health services. Also, 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 of health, and further mandated that States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to among other objectives, "ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care".

Reference is made to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) which describes the normative content of Article 12 and the legal obligations undertaken by the States parties to the ICESCR to respect, protect and fulfil the right to health. In paragraph 11 of General Comment No. 14, the CESCR 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”.

Also, the CESCR in General Comment No. 14 indicates that States are required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose, they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil (para. 36). In relation to the right to healthy natural and workplace environments, General Comment No. 14 provides that 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” (para 15).

In addition, the CESCR notes that “violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health ...” (para 51).

We wish to appeal to your Excellency’s government to take all necessary steps to secure the right to information. We would like to refer your Excellency’s Government to the fundamental principles laid down in Article 19 of the UDHR, and Article 19(2) of the ICCPR which guarantee the right to “seek, receive and impart information” as part of the right to freedom of expression. Also, Articles 13 and 24(d) of the CRC provide respectively that “the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice” and create an obligation for State Parties to “ensure that ... parents and children, are informed, have access to education and are supported in the use of basic knowledge of ... hygiene and environmental sanitation and the prevention of accidents”.

The right to information derives from the freedom of expression. However, the right to information is a right in and of itself and one of the rights upon which free and democratic societies depend (E/CN.4/2000/63, para. 42). Access to information is a prerequisite to public participation in decision-making and monitoring governmental and private-sector activities. Public participation in decision-making is based on the right of

those who may be affected to speak and influence the decision that will impact their basic human rights.

We would like to call the attention of your Excellency's Government to the importance of the right to information about hazardous substances to the general public, as emphasized in the Human Rights Committee's (HRC) Report of the Special Rapporteur (A/HRC/30/40) in paragraphs 7, 8 and 48, as well as in the HRC's General Comment No. 34 concerning Freedoms of Opinion and Expression (para.19). Paragraphs 18 and 19 of General Comment No. 34 indicate that the right to access to information includes "access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production."

In order to fully realize the right to information for transparent public institutions, implementation through frameworks for measuring, monitoring, reporting and verification of information are necessary for Governments to ensure accountability on their obligations. States should ensure collection and proper management of information on exposure levels, contamination, and long-term health implications of exposure to chemicals including toxic fumes and smoke, especially with regard to communities living near areas of emission. In this connection, we wish to refer your Excellency's Government to General Comment No. 14 of the CESCR provides that States should establish and maintain mechanisms to monitor implementation of policies and plans towards achieving the right to health (para 56), and further should provide "education and access to information concerning the main health problems in the community, including methods of preventing and controlling them" (para 44). General Comment No. 15 of the Committee on the Rights of the Child provides that States should regulate and monitor the environmental impact of business activities that may compromise children's right to health. Maintaining disaggregated information is necessary to understand specific events in the realization of the impact of particular actions on various groups including children, older persons, and persons with disabilities. The CESCR has in relation to various country evaluations recommended States to improve national statistics and data collection and disaggregation.

We wish to draw the attention of your Excellency's Government to the Strategic Approach to International Chemicals Management comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action, to which your Excellency's Government nominated a focal point, under which parties state that they are "determined to implement the applicable chemicals management agreements to which we are Party, strengthen the coherence and synergies that exist between them and work to address, as appropriate, existing gaps in the framework of international chemicals policy" (clause 8, Dubai Declaration) and "commit ... to respecting human rights and fundamental freedoms, understanding and respecting ecosystem integrity and addressing the gap between the current reality and our ambition to elevate global efforts to achieve the sound management of chemicals" (clause 10, Dubai Declaration). Paragraph 10 of the Global Action Plan identifies measures to strengthening knowledge and information, and in so doing promote achievement of the right to information in relation to chemicals, to include "stepped-up monitoring of the



impacts of chemicals on health and the environment, harmonized risk assessments, efforts to implement the Globally Harmonized System of the Classification and Labelling of Chemicals, and the development and publication of national pollutant release and transfer registers”.

We would like to refer your Excellency’s Government to Article 10 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, acceded to by your Excellency’s Government on 20 September 1993, which requires States to cooperate in monitoring the effects of the management of hazardous waste on human health and the environment; and to Articles 9 to 11 of the Stockholm Convention on Persistent Organic Pollutants, ratified by your Excellency’s Government on 28 September 2009, which provides for collection and dissemination of information on persistent organic pollutants and their effect on human health and the environment, as well as implementation of public awareness programmes for various categories of society including workers in general and children in particular.

We would like to underline that the obligations of States to respect human rights, to protect the enjoyment of human rights from harmful interference, and to fulfil human rights by working towards their full realization apply in the environmental context. In that context, we refer to the Framework Principles on human rights and the environment of the Special Rapporteur on human rights and the environment (A/HRC/37/59, annex), which summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Namely, the Framework Principle 1 provides that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights. In the same vein, Principle 2 reiterates that States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment. Finally, Principle 12 reaffirms that States should ensure the effective enforcement of their environmental standards against public and private actors, and according to Principle 14 says that States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

Finally, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. 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 or society performing specialized functions, required to comply with all applicable laws and to respect human rights;

- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). 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 occur.

The Guiding Principle 4 and its commentary also underline that where a business enterprise is controlled by the State an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations. Given this responsibility, the States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, including, where appropriate, by requiring human rights due diligence.

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 rights 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, including adequate monitoring of pesticide use and labor conditions.

The Guiding Principles 25-31 provide guidance to States and business enterprises on steps to be taken to ensure that victims of business-related human rights abuses have access to effective remedy. In this connection, we recall that the Guiding Principle 25 states that as part of their duty to protect against business-related human rights abuse, “States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means that when such abuses occur within their territory and/or jurisdictions those affected have access to effective remedy”.

The Guiding Principle 26 further notes that States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

In addition, the CESCR stated that “corporate activities can adversely affect the enjoyment of Covenant rights”, including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the “obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities” (E/C.12/2011/1, para. 1).

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.