

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

REFERENCE:  
AL OTH 29/2018

23 May 2018

Dear Ms. Widyawati,

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.

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.<sup>1</sup> 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 **alleged violations 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:

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

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 that the pipe had moved 120 meters from its original location. Pertamina reportedly shut down the pipeline a few hours 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 reportedly 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 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 are not sufficient to adequately protect the local community from exposure.

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 the contamination resulting from the oil spill as well as reports of burning, exposure to toxic fumes and smoke appear to constitute an infringement on and violations of fundamental human rights to life, to the highest attainable standard of physical and mental health, and to a clean and safe environment.

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 as to what human rights due diligence has been undertaken by your company to prevent, identify and remedy adverse human rights impacts in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please provide information on steps taken to cease or prevent adverse human rights impact in relation to this oil spill and to provide for or cooperate in their remediation through legitimate processes.
4. Please provide information on steps taken by PT Pertamina to establish any company-level grievance mechanisms to address, cease or prevent adverse human rights impacts caused by your company, in accordance with the UN Guiding Principle on Business and Human Rights 31.

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 company to clarify the issue/s in question.

Please be informed that a letter on the same subject is sent to the Government of Indonesia.

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

Please accept 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 company's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

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 Guiding Principle 4 and its commentary also underline that where a business enterprises 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 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 caused 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).

We wish to draw your company's attention to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and General Comment No.14 of the Committee on Economic, Social and Cultural Rights (CESCR) which 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”. The CESCR has previously stated that “corporate activities can adversely affect the enjoyment of ICESCR rights”, including through harmful impacts on the right to health, standard of living, the natural environment. The Committee has reiterated that business enterprises are required to respect the right of everyone to the enjoyment of the highest attainable standard of physical and mental health enshrined by ICESCR Article 12. The CESCR describes the normative content of Article 12 of ICESCR in General Comment No. 14, noting that the private business sector has responsibilities regarding the realization of the right to health (para. 42).

We wish to appeal to your company to take all necessary steps to secure the right to information. We would like to refer your company 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 wish to draw the attention of your company 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 the Government of Indonesia 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 company to Article 10 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, acceded to by the Government of Indonesia 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 the Government of Indonesia 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 companies to respect human rights. 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.