

Mandates of 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; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
UA IND 12/2018

29 May 2018

Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/7, 37/8, 35/15, 34/18, 32/32, 36/15, 34/5 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **killing of 12 demonstrators following excessive use of force by Police in the district of Tuticorin, State of Tamil Nadu, during a protest demanding the closure of the Sterlite Copper Smelting Plant and revocation of the proposed extension of its capacity. The protests took place in the context of the wide dissatisfaction with the alleged air pollution and groundwater contamination caused by the copper smelter plant in Tuticorin.**

According to the information received:

Sterlite Copper is a business unit of Vedanta Ltd., based in India and Sterlite is a subsidiary of Vedanta Resources, based in the United Kingdom of Great Britain and Northern Ireland. Sterlite operates a copper smelter in Tuticorin, in the State of Tamil Nadu, with a capacity to generate 400,000 tonnes of copper per year. Sterlite intends to double its smelter capacity to 800,000 tonnes per year, through the installation of a second unit of the copper smelting plant. In April 2018, the

Tamil Nadu Pollution Control Board rejected the renewal of the license to continue operating the Sterlite plant on the grounds that the company failed to comply with environmental laws. Some of the reported breaches of environmental norms included: the dumping of copper slag in a nearby river; the failure to provide groundwater analysis reports of bore-wells near the plant; and the use of shorter chimney stacks for the smelter than those legally permitted. Sterlite Copper has appealed this decision, and the Appellate Authority of the Pollution Board's decision is pending.

In April 2013, the Supreme Court of India ordered Sterlite to pay a penalty of Rs.100 crore (approximately 147.000 USD) for damaging the environment from 1997 to 2012 and for operating the plant without a valid license for a significant period.

Chronic exposure to toxic chemicals and the contamination resulting from the Sterlite Copper plant pose serious risks to human life and health. Concerned by the continued contamination of groundwater and air pollution allegedly caused by the copper smelting and other related activities, residents of the district of Tuticorin have demanded the closure of the plant and opposed the extension of its copper smelting capacity through 100 days peaceful protests commencing in March 2018.

It is reported that following a protest on 24 March 2018, the Tamil Nadu Pollution Control Board and the Rural Development Officer conducted water quality tests. According to this test, groundwater samples from seven locations within Sterlite Copper factory premises and eight from villages around the factory revealed high level of the neurotoxin heavy metal lead, which is particularly toxic to children. The level of the metal lead was between four and 55 times higher than the level considered safe for drinking water.

On 22 May 2018, residents of Tuticorin organised a peaceful march to the District Collectorate. The Police had been duly notified about the protest. Meanwhile, the district authorities had issued prohibitory orders under section 144 of the Criminal Procedure Code, barring assembly of more than four people in and around the Sterlite Copper plant. Police reportedly charged at the protestors with batons (lathi-charged) and then opened fire at the protesters marching towards the Collectorate. It is alleged that the police firing turned the demonstration violent, and that a police officer in plain clothes stood on the top of a police van and fired at protesters without any proper warning.

As a result, at least 12 people (including a 17-year old girl) were reportedly killed and more than 60 other protesters were severely injured.

On 22 May 2018, Tamil Nadu Chief Minister, Edappado Palaniswami, reportedly ordered the creation of a one-member commission of inquiry into the use of firearms against these protestors.

On 23 May 2018, the Madurai bench of the Madras High Court ordered Vendanta Limited to stop the construction of the second unit of the plant until approval is granted by the Ministry of Environment for such purpose after conducting a public hearing.

On 24 May 2018, the Tamil Nadu Pollution Control Board ordered the closure of Sterlite Copper Smelter plant with immediate effect and disconnected its electricity supply.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the alleged excessive use of force by the Police leading to the deaths of at least 12 individuals and injuries to many others. Furthermore, we express concern about the alleged environmental degradation, including contamination of groundwater and soil, due to the operation of Sterlite Copper plant, as well as its negative impact on the enjoyment of the rights to water and sanitation, particularly the quality of drinking water and water for domestic usage. We further express concern that this disproportionately affects the population in vulnerable situations who often do not have access to central piped water and need to resort to groundwater as primary source of water.

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to Articles 6(1) and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by India in 1976, which recognize that every human being has the right not to be arbitrarily deprived of his or her life and the right of peaceful assembly respectively. The Human Rights Committee in its General Comment 6, para. 3, has said that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces.

We would further like to refer to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force. In this regard, the compilation of practical recommendations for the proper management of assemblies (A/HRC/31/66) recalls that the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality (para. 57). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the

use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60). We would also like to appeal to your Excellency's Government to ensure that prompt, effective and thorough investigations are conducted into the alleged killing of these individuals following excessive use of force by police and that there is accountability for any violations including through the prosecution of perpetrators. Effective remedy (including compensation) should be guaranteed to the victims' families and injured individuals.

We wish to appeal to your Excellency's Government to take all necessary measures to ensure that the Sterlite Copper respect all applicable national and international human rights and environmental norms and standards. The alleged contamination of groundwater, soil and air resulting from the operations of the copper smelting plant allegedly violate the rights to life, to a safe, clean, healthy and sustainable environment, to the highest attainable standard of physical and mental health, and to safe drinking water and sanitation, among other human rights.

We wish to remind to your Excellency's Government that in accordance with United Nations "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, and redress such abuse through effective policies, legislation, regulations and adjudication. The Guiding Principles also recognize the important and valuable role played by civil society organizations and human rights defenders. In particular, the Guiding 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 of the Guiding 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 refer to the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by India in 1979; in particular article 11 of the ICESCR, which recognizes the right of everyone to an adequate standard of living, including food and housing, and to the continuous improvement of living conditions. In addition, we recall the explicit recognition of the human rights to safe drinking water and sanitation by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Furthermore, the United Nations General Assembly in its resolution

70/169 of 2015 recognized that “the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”, and that “the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living”.

We would also like to refer your Excellency's Government to 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. Articles 1, 2, 5 (a) and 12 of the Declaration are particularly relevant in this case.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 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 the details of any investigation, and judicial or other inquiries which may have been carried out in relation to allegations of human rights violations committed by the police officers against the protesters on 22 May 2018, including from the commission of inquiry set up to investigate the use of firearms against the protesters. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please indicate measures taken by your Excellency's Government to ensure that victims of the alleged violations committed by the police have access to effective remedy, including adequate compensation.
4. Please indicate measures taken by your Excellency's Government to ensure Sterlite Copper complies with Indian as well as international environmental laws and human rights standards, including the right to life, health, right to a

safe, clean, healthy and sustainable environment, and the right to safe drinking water and sanitation.

5. Please provide information about measures taken by your Excellency's Government agencies to ensure that the Sterlite Copper smelting plan as well as the proposed extension of its capacity, if any, is in accordance with India's environmental laws and after meaningful consultation with the affected communities.
6. Please advise about the steps taken by the Government to ensure that business enterprises such as Sterlite Copper and Vedanta Ltd. respect human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.
7. Please indicate measures taken by your Excellency's Government to monitor the quality of groundwater used as source of drinking water by residents affected by the operation of the Sterlite Copper plant.

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 responsible of the alleged violations.

Please be informed that a letter on the same matter has also been sent to the Government of the United Kingdom of Great Britain and Northern Ireland, as well as the involved companies.

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

We will publicly express our concerns through the press release enclosed to be issued on 31 May as, the matter reported warrants immediate attention.

Please accept, Excellency, the assurances of our highest consideration.

Anita Ramasastry
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John H. Knox
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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