

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 OTH 36/2018

29 May 2018

Dear Mr. P Ramnath,

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 your attention 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 Copper 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 a 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 allegations and call on Sterlite Copper to take all necessary measures to respect all applicable national and international human rights and environmental norms. The alleged contamination of groundwater and air resulting from the operations of the copper smelting plant would violate the right to a safe, clean, healthy and sustainable environment, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right to safe drinking water, and may violate right to life among other rights. 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 addition, we are concerned that there appears to have been a major decision on expanding the capacity of the copper smelting plant without any consultation with affected communities, thus triggering social tension and protests. Local residents have held protests against the plant for 100 days which indicates there would likely have been opportunities for Vedanata Ltd. to have dialogue and consultations with the protestors and impacted communities, which might have prevented the escalation of protests and the consequent loss of lives.

In connection with the above alleged facts and concerns, we would like to refer to the articles 6, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), and articles 3, 19 and 20 of the Universal Declaration on Human Rights (UDHR) which guarantee the rights to life, to freedom of opinion and expression and to freedom of peaceful assembly, respectively.

Furthermore, we refer the explicit recognition of the human rights to safe drinking water and sanitation by the UN General Assembly (resolutions 64/292 and 70/169) 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 the International Covenant on Economic, Social and Cultural Rights. 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.

We would like to underline that your company should act in accordance with "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, business enterprise must respect human rights, "(a) avoiding causing or contributing to adverse human rights impacts through their own activities, and addressing such impact when they occur; and (b) seeking 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).

As set forth in the United Nations Guiding Principles "[i]n order to meet their responsibility to respect human rights, business enterprises should have: (a) a policy commitment to meet their responsibility to respect human rights; (b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute" (Guiding Principle 15).

While the Tamil Nadu police and authorities are ultimately responsible for the management of protests in full respect of human rights, the business enterprise also has responsibilities with regards to the affected communities and protestors.

The United Nations Guiding Principles require that business enterprises involve meaningful consultation with potentially affected groups and other relevant stakeholders. Assessments of adverse human rights impacts should be conducted at regular intervals, including prior to major decisions (e.g., a decision to expand production) or changes in the operation; in response to or anticipation of changes in the operating environment (e.g. rising social tensions). (Guiding Principle 18). In addition, the Guiding Principle 19 notes that business enterprises should prevent and mitigate adverse human rights impacts and take appropriate action in this regard. The Commentary on this principle notes that "if the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it". Furthermore, the Guiding Principles also note that in order for grievances to be addressed early and remediated directly, business enterprises should

establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted (Guiding Principle 29). One of the purposes behind this provision of this is to make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.

We would also like to refer your company 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 Company to safeguard the rights of the above-mentioned person(s) in compliance with all applicable Indian laws and international human rights and environmental laws and norms.

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 information on any human rights due diligence (including environmental impact assessment) that may have been undertaken by your company to prevent, identify and remedy the adverse human rights impacts of the activities of the Smelting Plant in the district of Tuticorin in accordance with the UN Guiding Principles on Business and Human Rights. Please provide information on any steps taken to consult or seek feedback from potentially affected groups
3. Please provide information on allegations that toxic chemicals and the contamination caused a risk to health and life including on any investigations conducted into these allegations.
4. Please provide information on any other steps taken by your company to identify, prevent, mitigate and remedy any adverse human rights impacts (including environmental pollution) caused by your company and to

provide for or cooperate in their remediation through legitimate processes. Please provide information on steps taken by your company to establish any company-level grievance mechanisms to address adverse human rights impacts caused by your company and to deal with the concerns of affected communities and to deal with the concerns of affected communities.

5. Please indicate what measures have been, or will be, taken to ensure that the rights to freedom of peaceful assembly and freedom of opinion and expression are respected.
6. Please provide information on the nature and extent of consultations or dialogues conducted with peaceful protesters. If no consultations or dialogues were initiated, please explain why.
7. Please provide information on any interaction that may have taken place between Sterlite Copper and the Police. In particular, please provide information on whether Sterlite Copper had any discussions with regards to the policing of the assembly and any efforts made to use any leverage Sterlite Copper may have had to ensure they were policed in a way which fully complied with human rights standards.
8. Please provide information on any measures taken following the deaths of the protesters, including any measures Sterlite Copper may have taken or may be planning to take to provide assistance to their next-of-kin.
9. Please provide information about measures taken to ensure that Sterlite Copper's existing smelting plant as well as its proposed capacity extension in Tuticorin is in accordance with India's environmental laws and after meaningful consultation with the affected communities.

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 Governments of India and United Kingdom of Great Britain and Northern Ireland, as well as the involved companies.

We 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. The press release

will indicate that we have been in contact with your Excellency's Government's to clarify the issue(s) in question.

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. P Ramnath, 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

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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