

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 GBR 5/2018

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 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 Copper is a subsidiary of Vedanta Resources, based in the United Kingdom of Great Britain and Northern Ireland. Sterlite Copper 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 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 others. Furthermore, we express concern that the alleged contamination of groundwater due to the operation of the Tuticorin copper smelting plant of Sterlite Copper, a subsidiary of UK-based company, Vedanta Resources, negatively impacts 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.

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 the United Kingdom of Great Britain and Northern Ireland on May 20, 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 wish to appeal to your Excellency's Government to take all necessary measures to ensure that the Vedanta Resource (including all of its subsidiaries and business partners) respect all applicable national and international human rights and environmental norms throughout their global operations. The alleged contamination of groundwater and air resulting from the operations of the copper smelting plant in Tuticorin (in India's state of Tamil Nadu) 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 "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. "This requires States to "state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities" (Principle 2)."The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights.

In addition, the Committee on the Economic, Social and Cultural Rights in its General Comment 24 (2017) states that "extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective."

We also wish to refer your Excellency's Government to the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the United Kingdom of Great Britain and Northern Ireland on May 20 1976 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 seriousness of the matter, we would appreciate a response on the steps taken by your Excellency's Government to ensure that UK-based business enterprises such as Vedanta Resources respect 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 information on existing measures, including policies, legislation, and regulations, your Excellency's Government has put in place to ensure that the UK-based business enterprises discharge their responsibility to respect human rights throughout their global operations.
3. Please indicate any initiatives taken by your Excellency's Government to ensure that those affected by business-related human rights abuses caused, contributed to or directly linked with UK-based business enterprises have access to effective remedy, in accordance with the UN Guiding Principles on Business and Human Rights.

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

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