

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

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes pursuant to Human Rights Council resolution 36/15.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged violation of the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of 25 children, former residents of Berezovka village of Kazakhstan, including [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. More than three years after the accident at the Karachaganak Oil and Gas Condensate field, the alleged victims continue to suffer from serious symptoms and signs of toxic poisoning and have not received any compensation neither from the authorities of Kazakhstan nor the consortium of companies responsible for the accident of 2014, which resulted in toxic gas emissions. The current health condition of at least some of the affected children places them under significant risks and requires urgent medical surveillance and treatment.

According to the information received:

The village of Berezovka of the Western Kazakhstan Oblast is located on the border of the sanitary protection zone of the Karachaganak Oil and Gas Condensate field, one of the largest in the world, covering 280 square kilometers. Karachaganak has a high concentration of hydrogen sulfide (4%) and is considered to be a highly dangerous industrial facility. The field is operated by Karachaganak Petroleum Operating BV (KPO), an international consortium comprised of Shell (the Netherlands), ENI (Italy), Chevron (United States), Lukoil (Russian Federation) and KazMunaiGaz (Kazakhstan). Active development of the field in the last decades has led to intense environmental pollution, which, in turn has been detrimental to the health of the residents of the village. According to a survey conducted by the Western Kazakhstan Oblast Health Department in 2015, half of the adult residents of Berezovka suffer from a variety of illnesses and 80 percent of children suffer from pulmonary diseases.

On 27 November 2014, a major industrial accident took place at the Karachaganak Oil and Gas Condensate Field resulting in toxic emissions of gas.

On 28 November 2014, 25 children who used to live at the time in the village of Berezovka simultaneously fell ill during school hours. They experienced a

number of symptoms; including fainting, convulsions, strong cramps, dizziness, blood pressure surges, and severe headaches. According to the testimonies of local residents, some of the children began to faint in school already two days before 28 November 2014. During those days a strong smell of gas could be felt in the village.

On 29 November 2014, an official from the Department of Health of Western Kazakhstan Oblast, confirmed that the children were poisoned by an unknown toxic substance with a selective effect on the central nervous system.

In December 2014, "petroleum ether", a mixture of light hydrocarbons obtained from associated petroleum gases, was reportedly detected in blood samples of all affected children. The gas samples taken from equipment at the Condensate field also contained components of "petroleum ether."

On 3 December 2014, the Prosecutor of the Western Kazakhstan Oblast, confirmed to the media that there had been gas emissions into the atmosphere from the facilities at the field on the 17th, 18th, 25th, and 27th of November in amounts exceeding the maximum permissible concentration for hazardous substances.

On 20 January 2015, during a meeting with Berezovka residents, government officials reported that the results of the investigation had not confirmed that children had been poisoned due to toxic exposure. Health officials argued that almost all of the affected children had already histories of chronic diseases such as bronchitis and anemia.

In July 2015, as the result of an audit carried out by the Department of Ecology of the Western Kazakhstan Oblast, the KPO consortium was fined 9.5 billion Kazakhstani Tenge (approximately 48 million USD at the time) for non-compliance with environmental laws in 2014. However, the impact which such non-compliance produced on the health of inhabitants of Berezovka, including the children, was reportedly not addressed.

Since December 2015, the authorities and the KPO consortium started the relocation of residents of Berezovka to the nearby town of Aksai. Formally this relocation was explained by the expansion of activities at Karachaganak and the subsequent increase in the size of the sanitary protection zone.

In March 2018, [REDACTED] and [REDACTED] underwent a comprehensive examination at the Semashko Children's Center for Diagnosis and Treatment in Moscow, the Russian Federation. They were diagnosed with "toxic encephalopathy", likely to have been caused by poisoning with hydrocarbon chemicals and their fumes. The diagnosis indicated the code from the international classification of diseases, G92, and its causes, X46 (accidental poisoning by and exposure to organic solvents and halogenated hydrocarbons and their vapours).

The diagnosis also indicates that the disease started to develop in 2014. The funds for organizing the travel to Moscow were gathered through the campaign, "Children of Berezovka: It is Time to Help". The two children are in urgent need of a long-term and costly medical treatment.

On 11 April 2018, the parents of the affected children were informed that the criminal case investigating the poisoning of Berezovka's children (which was suspended in 2015) was being closed because of the absence of corpus delicti, although the case materials allegedly feature facts pointing to the connection between the poisoning of the children and the unfortunate disaster of 2014.

Currently many of the children affected by the accident continue to experience chronic symptoms from the exposure to toxic substances and experience ongoing health problems as a result of it. Some of the children have started to feel worse and report nosebleeds, nausea, pain, and numbness in their extremities as symptoms. The affected children are in urgent need of costly examinations and treatments, which in many cases are beyond the means of their families. In addition, given the perceived attitude of the authorities and public health professionals toward the affected children, parents allegedly do not believe that they can obtain effective treatment for their children in Kazakhstan.

At the meantime, neither the authorities of Kazakhstan nor the KPO consortium have assumed responsibility for and provided the children and their parents with any form of compensation for the damage caused to their health.

Serious concern is expressed regarding the health condition of 25 children who are former residents of the Berezovka village of Kazakhstan. I am disturbed by reports which confirm that the affected children, including [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] continue to experience serious health concerns three years after the accident and yet lack systematic and adequate medical surveillance and treatment. Of particular concern the fact that [REDACTED] and Ms. [REDACTED] have been diagnosed with "toxic encephalopathy" in 2018. I have serious grounds to believe that the health conditions which the affected children are suffering (including the diagnosis of toxic encephalopathy), have been caused by exposure to hydrocarbons from the Karachaganak Oil and Gas Condensate Field.

I am also dismayed at information that the victims and their families have not been provided with any form of compensation for the damage caused to their health, neither by the competent authorities nor the KPO consortium.

I see the alleged facts as serious violations of international human rights standards, which stress that victims of a violation of the right to health should have access to effective judicial or other appropriate remedies including their right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation. All victims of such violations should be entitled to adequate reparation,

which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition

I also wish to reiterate the concerns I expressed in my report presented to the 30th Session of the Human Rights Council in 2015 (A/HRC/30/40/Add.1), summarizing the findings of my official visit to Kazakhstan in the same year. I had noted with regret that at the time of his visit, the population in Berezovka still lived in a toxic environment, at great risk of infringements on their right to health. I also raised doubt whether the violations of the right to health of the residents of Berezovka had been remedied in accordance with international human rights standards.

I have taken note of the reply provided by the Government of Kazakhstan to the above-mentioned report (document A/HRC/30/40/Add.2). I regret that the arguments provided by the Government of Kazakhstan, which suggest, inter alia, that no evidence has been found to confirm the toxic poisoning of children and a faulty school boiler could be the reason for the malaise experienced them, do not correspond to the bothering information we continue to receive about the condition of health of the affected victims.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to International Law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, and I 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 details of any actions undertaken by the competent authorities of Kazakhstan, which would be aimed at the protection of the rights of children who have suffered the adverse effects of the 2014 accident, in the context of Kazakhstan's obligations as a State party to international human rights treaties, including the Convention on the Rights of the Child.
3. Please provide with the details of any measures which the central and/or local authorities of Kazakhstan have undertaken or envisage to undertake in order to provide the alleged victims with monitoring, assistance and treatment regarding the serious health impacts they continue to experience as a result of exposure to toxic emissions produced in the 2014 accident.

4. Please indicate if there is any ongoing consideration of providing a lifelong disability status and necessary social benefits to the particularly affected children whose health conditions would call for it.
5. Please provide with information regarding any measures which have been put in place for facilitating the relocation process and adaptation to a new living environment for the former residents of the Berezovka village.
6. Please explain whether any financial compensation or other means of support is envisaged to be provided to the alleged victims. If the authorities of Kazakhstan do not intend to provide the victims and their families with such compensation, please explain the reasons which have led to this decision.
7. Please provide information on existing measures, including policies, legislation, and regulations, your Excellency's Government has put in place to ensure that the business enterprises based or operating in Kazakhstan discharge their responsibility to respect human rights throughout their operations.
8. 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 business enterprises based or operating in Kazakhstan have access to effective remedy, in accordance with the UN Guiding Principles on Business and Human Rights.
9. Please explain the reasons behind terminating the criminal case which was investigating the facts of children's poisoning in the 2014 accident and indicate whether a new investigation is envisaged to take place.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I 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(s) responsible for the alleged violations.

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

Baskut Tuncak

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

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

In connection with the alleged facts and concerns, I would like to draw the attention of your Excellency's Government 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;
- The UN Guiding Principles on Business and Human Rights.

I 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), ratified by your Excellency's Government on 24 January 2006.

In addition, Article 6 of the Convention on the Rights of the Child (CRC), which your Excellency's Government ratified on 12 August 1994, 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 States Parties to take all effective and appropriate measures to diminish infant and child mortality.

I would like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency's Government on 24 January 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 physical and mental 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”.

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, “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.

I 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 States 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 has been recognized as 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 the protection of human rights from hazardous substances, to public participation in decision-making and for 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.

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 workers and children. The CESCR has in relation to various country evaluations recommended States to improve national statistics and data collection and disaggregation.

Furthermore the General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights states that a State is considered in breach of its obligations under the Convention on the Rights of the Child where it fails to respect, protect and fulfil children's rights in relation to business activities and operations that impact on children

Finally, I 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."

All States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. Guiding Principle 1 clarifies the State duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." This obligation requires that a State takes appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." In addition, this requires, *inter alia*, that a State should "provide effective guidance to business enterprises on how to respect human rights throughout their operations; encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts". (Guiding Principle 3).

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 Guiding Principle 25 notes that "as part of their duty to protect against business-related human rights abuse, State must take appropriate steps to ensure (...) that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.



The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. 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 cause or contributed to adverse impacts. The commentary of the Guiding Principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties.(...) The Guiding Principles a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services".

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.