

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 use of hazardous chemical products in humidifier sterilizers - sold on the Korean market up until 2011 as well the recent sanctioning of companies producing and selling the chemical substances, recognized for having caused the death of and major health problems amongst large numbers of consumers, including children.

As you are aware, I conducted an official visit to the Republic of Korea from 12 to 23 October 2015. One of the issues on which I concentrated my attention during the country mission was the question of humidifier sterilizers commercialised in the Republic of Korea until 2011. These products contained several hazardous substances, which are now acknowledged to have caused death, diseases and disabilities, for example, lung fibrosis among considerable numbers of population including children, pregnant women and older persons.

My findings and conclusions are described in detail in the country mission report (A/HRC/33/41/Add.1), which I presented to the Human Rights Council in 2016.

This issue has also been subject to a previous communication sent to your Excellency's Government on 12 February 2016, reference number KOR 1/2016, by several independent experts of the UN. I thank your Excellency's Government for the response provided, dated 20 April 2016. The detailed explanations provided were useful to have more insight into the circumstances of the case and ongoing proceedings at the time. However new information has prompted me to address this follow-up communication to your Excellency's Government with the aim of raising my current concerns and asking for certain clarifications regarding new developments.

According to the information received:

In 2011-2012, the Korea Centre for Disease Control and Prevention (KCDCP), under the auspices of the Ministry of Health, found the use of humidifier sterilizers to be the presumed cause of the respiratory disease and other health impacts amongst large numbers of hospitalised population. Many of the victims,

including deceased persons, were women in the post-natal period, young children and even babies.

The humidifier sterilizers were composed of several substances four of which have been identified as hazardous; PHMG (Polyhexamethyleneguanidine (phosphate)), PGH (Poly(2-(2-ethoxy)ethoxyethyl guanidium hydrochloride)), CMIT (5-Chloro-2-methyl-3(2H)-isothiazolone) and MIT (2-Methyl-3(2H)-isothiazolone). In 2012 and 2013 all four substances were designated as toxic substances. The humidifier sterilizer products were allowed to be sold on the market with grossly inadequate, in some cases non-existent, information about the potential adverse health impacts following exposure by inhalation by the general population and vulnerable groups, such as children, pregnant women and older persons.

The product to sterilize water stains and other germs in humidifiers was first developed by Korean chemical company Yukong Bioteck (currently SK Chemical) in 1994. SK Chemicals, Aekyung Industrial and Emart sold the chemical product to the major producers and retailers of humidifier sterilizers, including Costco Wholesale Korea, E-mart Co. Ltd., GS Retail Co. Ltd., Home Plus Co. Ltd., Lotte Shopping Co. Ltd., etc.

According to a 2017 report by the Ministry of Environment of the Republic of Korea, called “Establishing disease identification and standards criteria to expand the range of health hazards caused by the humidifier sterilizer” (NIER-SP2016-429), 3.5 to 4 million people have been exposed to the humidifier disinfectants at home at some point in time and 490 000 to 560 000 persons experienced health damage.¹

From 2011 to 2015, the Government of the Republic of Korea carried out three rounds of investigations to identify victims and damages caused by the humidifier disinfectants. In three rounds of investigation, 837 files were submitted, including 238 instances of death. The fourth round of investigation commenced in April 2016 and the number of files submitted to the Ministry of Environment reached a total 4897 during this round. Of these filed requests, 4050 concerned lung injury and 1119 concerned deceased individuals, 89 of whom have been confirmed eligible to receive a state remedy. Among the 3042 alleged surviving victims, only 68 have been identified eligible to receive remedies. In total only 157 victims received compensation in the fourth round.

It is our understanding that a fifth round of investigations began in October 2018. According to the Korea Environmental Industry and Technology Institute, a total of 6179 individuals have been registered as victims as of 26 October 2018. This includes 1357 cases of deceased individuals who allegedly died as a result of exposure to the humidifier sterilizer’s toxic chemical constituents.

¹ <http://library.me.go.kr/search/DetailView.ax?cid=5638910>

In the investigation process, only three health conditions have allegedly been accepted as damages related to inhalation exposure to humidifier disinfectants: lung injury, foetal damage and asthma. Reportedly, the Government of the Republic of Korea recognizes only 607 alleged cases as victims of exposure to the toxic constituents of the humidifier sterilizers. These include 468 cases of lung injury, 26 cases of foetal damage and 195 cases of asthma. The status of the vast majority of registered victims is still pending a decision by the Government for eventual compensation, including the cases of over 1 000 deceased individuals. The Government has established an independent commission to deal with this issue, which is expected to begin its work in December 2018.

In 2017, the Special Act on Remedy for Damage Caused by Humidifier Disinfectant (Act No. 14566, Feb. 8, 2017) and the Enforcement Decree (Decree No. 28239) came into force. The purpose of this Act is to provide prompt and fair remedies for victims who have suffered damage to life or health due to the use of humidifier disinfectants containing any chemicals verified toxic and for their bereaved family members. Article 3 of the Special Act states that the State shall establish and implement support measures necessary to promptly alleviate the financial hardship and urgent health concerns of the victims of humidifier disinfectants and of their bereaved family members. Article 4 states that where health damage is caused by a humidifier disinfectant, the relevant humidifier disinfectant supplier shall compensate for such damage. No information is available of legislative changes that would strengthen the protection of consumers from toxic products.

In January 2017 the Seoul Central District Court convicted 14 people, including the former head of the local unit of British consumer goods maker Reckitt Benckiser and other employees, as well as the executives of Lotte Mart and Homeplus, over the sale of humidifier disinfectants. The guilty verdicts included criminal negligence for failing to inspect the safety of the product and allowing its sale, and false labeling for marketing it as safe. The Supreme Court of Korea later confirmed the decision of the Central district Court. Reckitt Benckiser Korea, CEFU and Homeplus were also fined 150 million won (approximately US \$130,000) for false labelling.

In February 2018, it was reported that the Korean Fair Trade Commission decided to file a criminal complaint to the prosecution office against SK Chemicals and its two former heads and Aekyung and its two former heads. No information was provided regarding the prosecution.

In early 2018 three companies, SK Chemical, Aekyung Industrial and Emart, were fined a total of \$125,000 USD for the failure to label the hazardous chemical ingredients correctly. Considering that a total of 1357 cases of death have been registered in the four rounds of investigations (according to figures provided on the website <https://www.healthrelief.or.kr>), the fine amounts to approximately US \$ 92 for each death potentially caused by the chemicals in question.

It should be noted that the producers of chemicals, SK Chemical, Aekyung Industrial and Emart were allegedly aware that some of chemicals they sold were hazardous and would be added to water tanks of humidifiers and dispersed indoors. They allegedly knew that the chemicals used lacked necessary health and safety information, particularly regarding the risks of inhalation by pregnant women, children and the elderly. It is further alleged that SK Chemical continues to manufacture and sell humidifier sterilizers with potential health risks.

I note the entry into force of the Special Act on Remedy for Damage Caused by Humidifier Disinfectant in 2017, which if properly implemented may be in line with the recommendations provided in the report of my country visit. I remain concerned, however, that so few of over the 6000 cases filed, approximately 500 000 people who have experienced “health damage,” and 3.5 to 4 million people exposed unjustifiably to an inadequately tested and highly toxic chemical product, have received an effective remedy. I look forward to further information this regard, including the answers to the questions below.

In addition, I wish to express my utmost concern about the failure of SK Chemical, Aekyung Industrial and Emart to exercise their responsibility for human rights due diligence in selling the toxic chemical ingredients of the humidifier sterilizers, and their lack of accountability for their acts and omissions. There is a grave risk of recurrence if corrective measures have not been taken by chemical manufacturers and importers to ensure adequate due diligence for the impacts of their chemical products on the enjoyment of fundamental human rights. I have to add with regret that during the course of my official mission to the Republic of Korea, my attempts to open a dialogue with SK Chemical on the case were unsuccessful. I am deeply concerned that SK Chemical, Aekyung Industrial and Emart do not appear to have been proportionally sanctioned for their contribution to such a grave incidence of human rights abuse. The nature of the punishment levied, including the amount the three companies have been fined, in my eyes falls dramatically short of being considered fair or adequate, or sufficient to compel changes at these or other companies that sell chemical products to downstream businesses. I reiterate the concerns expressed previously that business entities involved in the production and distribution of humidifier sterilisers do not seem to have exercised adequate due diligence to prevent human rights harms, including impacts on the rights of the child, arising from the usage of their products.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide, in detail, additional information and any comment you may have on the above-mentioned allegations and concerns expressed.
2. Please provide an update on the status of any investigations, whether concluded or ongoing, related to this case by Your Excellency's Government. In particular, please provide information regarding criminal investigations for chemical manufactures, importers and/or distributors implicated by the sale of chemical products in the case of toxic humidifier sterilizers.
3. Please provide information on the implementation of the Special Act on Remedy for Damage Caused by Humidifier Disinfectants of 2017, including measures taken by the Government since 2015 to identify further victims and the total number of alleged and identified victims, as well as information on remedies provided, including compensation and measures to provide necessary access to medical services to those affected by the use of the humidifier sterilizer products. Please provide specific details as to why so few victims are able to access an effective remedy to date, and how the above mentioned Special Act may help to address the challenges faced by the hundreds of thousands of people who were harmed by their exposure to the toxic consumer product.
4. Please provide further information on preventative and precautionary measures taken to avoid recurrence, and to ensure that SK Chemical, Aekyung Industrial, Emart and any other chemical manufactures, importers and/or distributors are fully accountable for their contribution to this this tragedy.
5. I would also respectfully request an update on the implementation of other recommendations put forward in the report of my mission to the Republic of Korea related to humidifier sterilizers and other toxic consumer products.

I would appreciate receiving a response as soon as possible. This communication and any response received from your Excellency's Government will be made public via the communications reporting [website within 60 days](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be

alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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 above alleged facts and concerns, I would like to draw your Excellency's Government's attention to applicable international human rights laws and standards, as well as authoritative guidance on their interpretation.

I wish to draw attention to your Excellency's Government's obligations under international human rights instruments, recalling article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) on the right to life in conjunction with article 2 on the right of victims of human rights violations to an effective remedy. ICCPR was ratified by the Republic of Korea on 10 April 1990. Article 7 of the ICCPR states that no one shall be subjected to medical or scientific experimentation without free consent. Article 19 stipulates that everyone shall have the 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 his choice.

I also believe it is pertinent to refer to the thematic report that I presented to the Human Rights Council in September 2017 (A/HRC/36/41), which included guidelines for good practices in relation to the human rights obligations related to the environmentally sound management and disposal of hazardous substances and waste. The report mentions the States must prevent arbitrary deprivation of life resulting from toxics. In line with the concept of "inherent right to life", States are required to adopt positive measures to protect that right, including effective measures to prevent and safeguard against hazards that threaten the lives of human beings. In addition, the right to physical and mental integrity is implicated by exposure of humans to toxics. Although cases of acute poisoning and high levels of intoxication present an unquestionable violation of the right to physical integrity, the right also extends to protection against chronic, low-level exposure to toxic substances.

The report also concludes that access to justice is an essential component of the rule of law and a means by which victims of toxics can actively claim the entire range of rights they hold, including access to an effective remedy. Human rights obligations in the area of toxics must be matched to appropriate and effective remedies when breached. The report also talks about the right to information which is critical in the context of toxics. Despite notable improvements in many countries over recent decades, this right remains insufficiently realized in the area of hazardous substances and wastes, particularly with respect to protecting the most vulnerable from adverse impacts of exposure, whether from consumer products, at the workplace or via food, water, air or other sources. Information on toxics is essential in order to prevent adverse impacts, to ensure the realization of freedom of expression and to enable individuals and communities to participate in decision-making processes as well as to seek and obtain remedy.

I wish to draw your Excellency's Government's attention to article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by

the Republic of Korea on 10 April 1990 – which stipulates that States should “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, and requires them to “take appropriate steps to ensure the realization of this right.” Article 12 of ICESCR provides that the steps, to be taken by States to achieve the full realization of this right, shall include those necessary for the improvement of all aspects of environmental and industrial hygiene (article 12(2)(b)) and the prevention, treatment and control of epidemic, endemic, occupational and other disease (article 12(2)(c)). Interpreting this language, the Committee on Economic, Social and Cultural Rights (CESC) stated that “‘The improvement of all aspects of environmental and industrial hygiene’ (art. 12.2 (b)) comprises, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; 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” and that “‘the right to health embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as [...] a healthy environment’ (General Comment No. 14, paras. 4 & 15).

The central obligation in relation to ICESCR is for States Parties to give effect to the rights recognized therein (General Comment No. 9, para. 1). CESC stipulates that “within the limits of the appropriate exercise of their functions of judicial review, courts should take account of Covenant rights where this is necessary to ensure that the State’s conduct is consistent with its obligations under the Covenant”. The Committee further notes that “neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations” (General Comment No. 9, para. 14). Further, article 2 of ICESCR describes the nature of the general legal obligations undertaken by States Parties to the ICESCR. In General Comment No. 3, the Committee on Economic, Social and Cultural Rights asserts that “among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to the rights which may, in accordance with the national legal system, be justiciable” (para. 5).

In addition, the right of children to the highest attainable standard of health is provided for in the Convention on the Rights of the Child (CRC) ratified by the Republic of Korea on 20 November 1991, which requires States to take appropriate measures to combat disease taking into consideration the dangers and risks of environmental pollution (article 24 (2)(c)). Interpreting this provision, the Committee on the Rights of the Child, in its General Comment No. 15, urged States to take measures to address the dangers and risks that local environmental pollution poses to children’s health in all settings. It is the view of the Committee that core requirements to a healthy upbringing and development include adequate housing with non-dangerous cooking facilities, a smoke-free environment, appropriate ventilation, effective management of waste and the disposal of litter from living quarters and the immediate surroundings, the absence of mould and other toxic substances, and family hygiene.

In my report dedicated to the subject of childhood exposure presented to the Human Rights Council in 2016 (A/HRC33/41) I stress that the CRC makes it clear that States have an obligation to prevent exposure to toxics of children and women of reproductive age, with the ultimate aim to protect the right of all children to life, survival and development. Article 23 of the CRC states that adults and children who are physically or mentally disabled should have access to health care. Such care must enable those impaired to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate their active participation in the community. Article 18 of the Convention states that States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

With respect to the responsibility of business enterprises, the Universal Declaration of Human Rights proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. In June 2011, the Human Rights Council unanimously adopted the Guiding Principles on Business and Human Rights (contained in A/HRC/17/31), 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 of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- (c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

In 2006, chemical manufacturers and other business entities participating in the Strategic Approach to International Chemicals Management adopted the Dubai Declaration, in which they specifically recognize their responsibility to respect human rights.

CESC stated that “corporate activities can adversely affect the enjoyment of Covenant rights”, including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the “obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities” (E/C.12/2011/1, para. 1). States should regulate and monitor the environmental impact of business activities that may compromise children’s rights. In its general comment No. 16, the Committee on the Rights of the Child outlines a useful framework to ensure that businesses respect the right of the child not to be exposed to toxics, including legislation, regulation and enforcement, as well as access to justice and an effective remedy.