

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 35/7, 36/15, and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **human rights implications of exposure to asbestos from an asbestos fibre cement factory, which was partly owned by Belgium-based company, ETEX/Eternit, and dumping of asbestos waste in the village of Kymore, Madhya Pradesh, India.**

According to the information received:

Everest Industries Limited, (previously known as Eternit Everest Limited) (Everest) is a company headquartered in India. Established in 1934, the company has over 80 years carried out the business of manufacture and sale of building products, including asbestos fibre cement products.

Everest was a pioneer in asbestos-related products in India, first incorporated under the name "Asbestos Cement Limited". After subsequent name changes, on 18 September 1990 the company again changed its name to "Eternit Everest Limited" in line with its association with what was then known as Eternit Group (now ETEX), headquartered in Belgium.

Everest owns and operates factories in Kymore, Nashik, Coimbatore, Kolkata and Roorkee. The Kymore factory was India's first asbestos plant, built by British company Turner and Newall. A study found that between 1992 and 1998, the factory, first operated by a subsidiary of Turner and Newall, and later by a subsidiary of ETEX/Eternit, dumped asbestos waste on approximately 600,000 square metres of land on or near which more than 3000 people currently live. It also found the presence of approximately 1 million tonnes of asbestos-contaminated surface soil, with asbestos concentrations of up to 70% in some samples.

In 1998, Belgium introduced a ban, with exceptions, on chrysotile asbestos. ETEX/Eternit was a shareholder of five asbestos product factories in India between 1989 and 2001, when ETEX/Eternit sold its Indian subsidiary, soon before a full ban on asbestos production entered into force in Belgium. In 2002, ETEX/Eternit banned the use of asbestos in its production processes.

By virtue of Program Law (I) of 27 December 2006, an Asbestos fund (AFA) was set up in the Belgian Fund for Occupational Diseases, and since 1 April 2017 has been processing asbestos victims' claims and granting compensation connected with asbestos-related diseases in Belgium. In order to receive compensation from AFA, claimants must present evidence that the asbestos exposure occurred in Belgium.

Exposure to asbestos takes place through inhalation of asbestos fibres in air in the working environment, ambient air near point sources such as manufacturing plants handling asbestos, or indoor air in housing and buildings containing friable asbestos materials, according to the World Health Organization. Inhaling asbestos fibres can cause asbestosis, lung cancer, and mesothelioma.

Workers at the Kymore factory face risks of exposure to asbestos fibre, and some former workers and their family members have reported manifestation of asbestos-related diseases. According to the Directorate General Factory Advice Service and Labour Institutes, the prevalence of asbestosis in India is reported to be between 3% and 9% among factory workers.¹ However, there is an alleged general lack of comprehensive government data on the prevalence of asbestos-related diseases in India. The Directorate states that there are many undiagnosed and unreported occupational diseases. Further, the symptoms of asbestos-related diseases can take between 15 and 40 years to manifest, requiring periodic recording of health information of workers and former workers, which is reportedly lacking.

Communities that live or have lived near the Kymore factory also face risks of exposure to asbestos fibre, from sources including asbestos waste dump. Children face a great risk, with playing fields on grounds under which asbestos waste lies placing them at risk of exposure. Allegedly, there is no information of the negative health effects of asbestos in those areas, and insufficient or non adequately equipped medical centres at or near the factory to diagnose and treat asbestos-related diseases.

Some victims of the asbestos pollution, such as former workers or those living near the factory in Kymore, have allegedly been offered compensation, having

¹ Government of India, Directorate General Factory Advice Service and Labour Institutes, and the International Labour Organization (ILO) (2018) National Occupational Safety and Health (OSH) Profile <http://www.dgfasli.nic.in/Nat-OSH-India-Draft.pdf>

developed asbestos-related diseases. It is also reported that, many victims have not received compensation, while others have received less compensation than they are entitled to. Further, some workers are allegedly afraid of reporting exposure to asbestos or the health effects for fear of job losses or other adverse actions.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reports of alleged infringement and violation of the rights of workers and communities near asbestos fibre cement product plants, including their human rights to life, to health, to access to information, and to a safe and healthy work environment. This is underscored, *inter alia*, by the obligation under the international human rights framework for your Excellency's Government to protect against human rights abuse within its territory/jurisdiction by third parties, including business enterprises. This requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations, and adjudication.

Serious concern is expressed over the impacts on the health and safety of workers and former workers, over their exposure to asbestos in the working environment, ambient air near point sources such as manufacturing plants handling asbestos. Concern is also addressed to reports of exposure of communities who live or have lived near point sources of asbestos, including through the continued use of asbestos cement products and other asbestos materials for houses and other buildings. Moreover, we would like to express concern about the lack of concrete health related data of the negative health effects of asbestos in affected areas and about the lack of adequately equipped medical centres to diagnose and treat asbestos-related diseases.

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.

It is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, and we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate any steps your Excellency's Government plans to take to fulfil its obligation to protect and fulfil human rights in a way that complies with international human rights standards especially the right to life, and to the highest attainable standard of health, in relation to exposure to asbestos.
3. Please provide information on any steps taken by your Excellency's Government towards improving early diagnosis, treatment, social and

medical rehabilitation of asbestos-related diseases and establishing registries of people with past and/or current exposures to asbestos. Please provide comprehensive statistical and disaggregated data, if available, on persons who have developed asbestos-related diseases and/or whose deaths have been linked with exposure to asbestos.

4. Please provide any data on any projections of the number of people who are likely to contract asbestos-related diseases in the future.
5. Please provide information on any measures taken by your Excellency's Government in training workers and potentially affected communities on the risks and health implications of exposure to asbestos. In particular, please expand on any existing initiatives to ensure workers and residents of areas near factories or other points of handling asbestos products, such as ports, factories, and dumps, are fully informed of the health risks of asbestos exposure and on the required precautions to avoid exposure.
6. Please provide information on any steps taken to fulfil the right to remedy of victims of asbestos exposure, including benefits or compensation workers receive in the event of asbestos-related illness. Also, please identify any measures your Excellency's Government plans to put in place in relation to remediation of the site of the Kymore asbestos waste dump.
7. Please provide information on the plans, if any, of your Excellency's Government with regard to banning asbestos use; or replacing asbestos with safer substitutes and developing economic and technological mechanisms to stimulate its replacement; or preventing exposure to asbestos in place and during asbestos removal (abatement).
8. Please provide information on the position of your Excellency's Government with regard to the listing of chrysotile asbestos under Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.
9. Please provide any information on the measures taken to protect workers who report exposure to asbestos or its health effects.
10. Please indicate the steps that the Government has taken, or is considering to take, to ensure to implement the United Nations Guiding Principles on Human Rights, such as (i) setting out clearly the expectations that all businesses respect human rights throughout their operations (ii) taking appropriate steps to ensure the effectiveness of State-based mechanisms with respect to business-related human rights abuses.

We would appreciate receiving a response **within 60 days**. Past this delay, this communication and any response received from your Excellency's Government will be

made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that letters addressing similar allegations and concerns as mentioned above have been sent to the Government of Belgium, as well as to Everest Industries Limited, and ETEX/Eternit.

We may publicly express our concerns in the near future as, in our view, the information upon which a press release would be based is sufficiently reliable to indicate a matter warranting attention. The press release would indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

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

Surya Deva

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

Baskut Tuncak

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

Dainius Puras

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Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we 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.

We 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), acceded to by your Excellency's Government on 10 April 1979. We would like to call the attention of your Excellency's Government to General Comment No. 36 (2018) of the Human Rights Committee which affirms that the right to life should not be interpreted narrowly, and that it concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity (para 3). Further, it recognizes that implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.

In addition, Article 6 of the Convention on the Rights of the Child (CRC), which your Excellency's Government acceded to on 11 December 1992, 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.

We would like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by your Excellency's Government on 10 April 1979, 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”.

We would also like to draw the attention of your Excellency’s Government to Article 7 of the ICESCR which enshrines the right of everyone to the enjoyment of just and favourable conditions of work, including safe and healthy working conditions. 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). General Comment No. 14 further 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.

We 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, 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

In relation to the right to an adequate standard of living, including the right to housing under article 11 of the ICESCR, we would like to recall General Comment No. 4 of the CESCR, which provides that the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity, but rather it should be seen as the right to live somewhere in security, peace and dignity (para 7). In fulfilling the right to housing, a number of factors must be taken into account including habitability; protecting inhabitants from "threats to health, structural hazards, and disease vectors". Further, "inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates (para 8(d)).

Finally, we 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."

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory and/or jurisdiction. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

Business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19). Moreover, where business enterprises “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Furthermore, business enterprises should remedy any actual adverse impact that they cause or contribute to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

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