

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

REFERENCE:
AL OTH 6/2019

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Dear Mr. Sanghi,

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.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information I have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company 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

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

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.² However, there is an alleged

² 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>

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 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. 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.

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 mandates 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 provide information on existing measures, including policies your company has put in place to ensure occupational health and safety and the protection of workers from exposure to asbestos. Please provide details on any mechanisms or initiatives by your company in relation to data collection, measuring, monitoring, reporting and verification of information on health of workers.
3. Please explain any measures taken by your company to prevent or mitigate any adverse human rights impacts of its activities in relation to the rights of workers and of affected communities.
4. 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 sickness caused by exposure. Also, please provide information on any steps taken to establish any company-level grievance mechanism to address adverse human rights impacts caused or contributed to by your company, including to provide for remediation of the site of the Kymore asbestos waste dump.
5. Please provide information on any existing initiatives to ensure workers and residents of areas near your company's operations, including children, are fully informed of the health risks of asbestos exposure and on the required precautions to avoid exposure.
6. Please provide information as to what human rights due diligence steps, as set out in the United Nations Guiding Principles on Business and Human Rights, have been undertaken by your company to identify, prevent, mitigate, and remedy the negative human rights that your company could have caused or contributed to.

We would appreciate receiving a response **within 60 days**. Past this delay, this communication and any response received from your company 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.

Please be informed that letters on the same subject have been sent to the Governments of India and Belgium, as well as to 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 company to clarify the issues in question.

Please accept 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

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), after years of consultations involving governments, civil society and the business community.

The Guiding Principles have been established as the global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. They apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights.

"The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek 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).

To fulfill their responsibility to respect human rights, business enterprises should have in place:

- “(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 Principles 15)

In this connection, we recall that Guiding Principle 22 states that 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”. The Guiding Principle 20 states that business should track the effectiveness of their response. Tracking should: a) be based in appropriate qualitative and quantitative indicators; and b) draw on feedback from both internal and external sources, including affected stakeholders.

The Guiding Principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to effective remedy.

We would also like to draw your attention to other international human rights standards, relevant for this case, including those brought forward by the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee on Economic, Social and Cultural Rights states 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 reiterates the “obligation of State 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). Particularly, business enterprises are required to respect of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health enshrined by Article 12 of the ICESCR. The CESCR describes the normative content of Article 12 of ICESCR in General Comment No. 14, noting that the private business sector has responsibilities regarding the realization of the right to health (para. 42).

In addition, Article 7 of the ICESCR enshrines the right of everyone to the enjoyment of just and favorable conditions of work, including safe and healthy working conditions. General Comment No.14 of the Committee on Economic, Social and Cultural Rights (CESCR) provides that the improvement of all aspects of environmental and industrial hygiene comprises, inter alia, “preventive measures in respect of occupational accidents and diseases [and] 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”.

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)).

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