

**Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

REFERENCE:  
AL JPN 3/2020

14 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food and 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 resolutions 37/8, 44/15, 32/8 and A/HRC/45/L.41.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **oil spill from Japanese the bulk carrier vessel MV Wakashio, under the flag of Panama off the coast of Mauritius beginning on 25 July 2020 and its aftermath. MW Wakashio is owned by the Japanese corporation Nagashiki Shipping Co Ltd and operated by Mitsui OSK Lines.**

According to the information received:

On 25 July 2020, a bulk carrier vessel, MV Wakashio, ran aground on the reef of Point d'Esny, near the town of Mahebourg off the coast of Mauritius, approximately 40 kilometres southeast of the country's capital, Port Louis. The vessel was carrying nearly 4,200 metric tons (MT) of fuel, including low-sulphur fuel oil (3,894 MT), diesel (207 MT) and lubricant oil (90 MT).<sup>1</sup> The MV Wakashio is owned by the Japanese corporation Nagashiki Shipping Co Ltd and operated by Mitsui OSK Lines. It was under the flag of Panama.

The location where the ship ran aground was located near ecologically sensitive and important areas, including the Point d'Esny Wetlands, Ile aux Aigrettes Nature Reserve, Blue Bay Marine Area and Mahebourg Fishing Reserves.

In a briefing note by the Ministry of Environment, Solid Waste Management and Climate Change, it states that on 6 August there had been a breach in the vessel and that there had been leakage of oil. Fisher people and boat operators were requested to immediately remove their boats from the beach lagoon in the areas mentioned above.

The MV Wakashio broke in two on 15 August. The vessel still held around 90 tons of oil on board when it ruptured. An estimated 40 tons were removed by 15 August, while efforts went on to pump the remaining oil from the ship and

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<sup>1</sup> [Mauritius: MW Wakashio Oil Spill - Flash Update No. 1 \(8 August 2020\) - Mauritius | ReliefWeb](#)

extract it via helicopter in order to minimize the oil spill from the vessel after splitting.

We have been informed that environmental surveys were undertaken, under the leadership of the Ministry of Environment, to assess the extent of the oil spill. An estimated 30 kilometres of shoreline would have been heavily affected, and the presence of contaminated algae has been identified in multiple locations, including Deux Frères, Bambous Virieux, Anse Jonchee Vieux and Providence, while mangroves affected with oil have been identified at Bois des Amourettes, Rivière des Créoles, Anse Fauverelle, Deux Frères, Pointe du Diable and GRSE. Structured monitoring has, according to the information received, been performed on the flora and fauna in the region.

### **Responses to the incident:**

#### Mauritius:

On 7 August, Mauritius' Prime Minister, Pravind Jugnauth, declared a “state of environmental emergency”, two weeks after the ship ran aground. The Government has since been leading the response and has established the following coordination mechanisms: the National Crisis Management Committee (chaired by the Prime Minister); the National Oil Spill Coordination Committee (chaired by the Director of Environment). There is also a National Emergency Operations Command chaired by the Commissioner of Police and a dedicated Coordination Committee for the Salvaging of the Vessel (chaired by the Director of Shipping).

The National Environment Laboratory—together with the Ministry of Health and Wellness, Ministry of Ocean Economy, Marine Resources, Fisheries and Shipping and Ministry of Agro-Industry and Food Security—have been monitoring the quality of air and marine resources.

Environmental groups have also explored the extent of the damage. The MV Wakashio oil spill has affected highly ecologically sensitive sites, such as the Blue Bay Marine Park, Ile aux Aigrettes and Pointe D'Esny, protected under the Ramsar Convention. At the same time, according to the information, the livelihoods of people in affected areas have been impacted, particularly those who rely on fishing.

According to a Press Statement of the National Crisis Committee the remainder of the MV Wakashio was deliberately sunk on 24 August. The planned sinking of the stem (forward) section of the casualty was completed at around 3.30pm in the afternoon.<sup>2</sup>

The National Crisis Committee took note of the status of clean-up activities by two service providers namely Le Floch Dépollution and Polyeco which were progressing at a satisfactory pace. The Solid Waste Management Division was closely monitoring the operations on the ground whereby it was noted that the total amount of waste which had been carted away was as follows: - 1,122 tons of liquid waste and 792 tons of contaminated solid waste.

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<sup>2</sup> Press Release from the National Crisis Committee on 24 August

Daily monitoring of air quality was continued by the National Environmental Laboratory. Mild petroleum odour was observed at Mahebourg Waterfront. The analysis of sea water for oil and grease contents on the shoreline at 27 sites has shown no abnormality except at two sites, namely, Grand River South East (pH content) and Grand Port (oil and grease content).

Information has also been received that around fifty whales and dolphins have been found dead in areas close to the oil spill. In relation to this, it seems that lack of transparency in the handling of these incidents has caused concerns among the Mauritian population. This appears to have been one of the main reasons for such large national protests about the handling of the oil spill response by many of the international organizations in Mauritius.

Remains of the 49 marine animals have been taken to the Mauritian Government's Forensic Science Laboratory (FSL), which sits under the Prime Minister's Office and which is close to the University of Mauritius in the center of Mauritius near the town of Réduit.

As of August 2020, a solidarity grant has been paid to fisher people and fishmongers to compensate them for the cessation in sea activities in the affected areas, as a result of the oil spill.<sup>3</sup>

#### United Nations:

United Nations entities that are resident in Mauritius are working closely with the Government to support the immediate response. These include technical support on issues related to environment, oil spill and impact assessment by United Nations Development Program (UNDP), support from the United Nations Educational, Scientific and Cultural Organization (UNESCO) Oceanographic institute, public health support by United Nations World Health Organization (WHO), mapping of populations at-risk by the International Organization of Migration (IOM) and forensic investigation plus legal support from United Nations Office on Drugs and Crime (UNODC).

At the request of the United Nations Resident Coordinator for Mauritius and Seychelles, several UN Experts have been deployed under the United Nations Disaster Assessment and Coordination (UNDAC) mechanism for the Wakashio Oil Spill. A Civil Society (CSO) Dialogue was organized with three United Nations Experts on 14 August.

A United Nations Recovery Fund worth USD2.5 million was launched on 24 August 2020 to support the Government of Mauritius and local communities in an effort to minimize the socio-economic and environmental impact following the oil spill.<sup>4</sup>

On 16 September, the Board of Directors of the African Development Bank approved a \$500,000 emergency assistance grant to support international

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<sup>3</sup> <https://reliefweb.int/report/mauritius/mv-wakashio-solidarity-grant-rs-10200-those-affected-oil-spill>

<sup>4</sup> <https://reliefweb.int/report/mauritius/mv-wakashio-un-recovery-fund-help-minimise-impact-oil-spill>

recovery efforts. The funding, to be sourced from the Special Relief Fund, will complement ongoing activities by the Government of Mauritius, development partners, and other actors to undertake salvaging and cleaning operations, conduct damage and loss assessments, along with other socio-economic evaluations.<sup>5</sup>

### Reactions from African Commission on Human and Peoples' Rights

On 11 August, the African Commission on Human and Peoples' Rights expressed its grave concern about the dire consequences of the oil spill to the environment and economy, including for the thousands of species around the pristine lagoons of Blue Bay, Pointe d'Esny and Mahebourg that are reported to be at risk of drowning in a sea of pollution, to the food security and health of people in the affected areas and the Mauritian ecosystem and biodiversity.<sup>6</sup>

The African Commission further noted that the oil spill carries serious immediate and potential risks to various human and peoples' rights, affecting in particular Mauritian coastal communities. The rights that are seriously impacted include the right to health, the right to life, the right to a general satisfactory environment favourable to development, the right to food, the right to livelihood and the right to economic development. The African Commission welcomed the declaration of an environmental state of emergency by the Government of Mauritius for containing the spill and its impacts. However, the African Commission also recognized the need for investigating preventive measures that could have avoided or limited the risk of the oil spill considering that the carrier/ship, the MV Wakashio, struck the reef on the southeast coast of the Indian Ocean Island on July 25.<sup>7</sup>

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern about the threat of devastating ocean pollution caused by the incident. The oil spill has resulted in health, environmental and economic challenges for Mauritius. The population remains at ongoing risk of severe illness from petroleum and its associated pollutants.

We are especially concerned that such a spill would violate the right to life, and a life with dignity, which demands States to address risks of environmental degradation and exposure to hazardous substances that can interfere with the effective enjoyment of human rights. We also wish to express our concern that the rights to health, food and to a healthy environment, are at risk of violation.

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 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:

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<sup>5</sup> <https://reliefweb.int/report/mauritius/mauritius-african-development-bank-approves-emergency-relief-boost-clean-marine-oil>

<sup>6</sup> <https://www.achpr.org/pressrelease/detail?id=526>

<sup>7</sup> <https://www.achpr.org/pressrelease/detail?id=526>

1. Please provide any additional information and/or comments you may have on the above-mentioned information.
2. Please provide information regarding the oil spill response plans, procedures, and resources that your Excellency's Government has put in place.
3. What actions are being taken to reduce or eliminate the effects of the oil spill on human rights including the rights to food, health, and a healthy environment?
4. What steps have been taken on behalf of your Excellency's Government to guarantee the public its right to be provided with timely and accessible information about the health and environmental impacts of the oil spill, as well as the actions being taken to clean up and restore the environment?
5. What steps have been taken on behalf of your Excellency's Government to guarantee that the public has a right to participate in the required investigation and in decision-making about clean up and restoration activities, including the decision regarding the fate of the broken vessel?
6. Please provide information regarding how your Excellency's Government is protecting to the right to food, in terms of protecting the livelihoods of fisher-people in the affected area and what measures have been foreseen in the sense of any compensation to victims who have suffered impacts from the oil spill?
7. Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to uphold its extraterritorial obligations to protect against human rights abuse by Japanese business enterprises domiciled in its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights.
8. Please describe the guidance, if any, that the Government has provided to Japanese business enterprises on how to respect human rights throughout their operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human rights due diligence, consulting meaningfully potentially affected stakeholders, and remediating any negative impacts.
9. Please provide information regarding the measures that your Excellency's Government is taking, or considering to take, to ensure that those affected by business-related human rights abuse, by the overseas activities of Japanese companies have access to effective remedies as per the UN Guiding Principles.

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, 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(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please note that a letter expressing similar concerns was sent to the Governments of Mauritius and Panama, as well as to the companies involved in the abovementioned allegations.

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

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Anita Ramasastry

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

Michael Fakhri

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## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention 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;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child;
- UN Declaration on the Rights of Indigenous Peoples;
- UN Framework Principles on Human Rights and the Environment; and,
- UN Guiding Principles on Business and Human Rights.

We wish to draw the attention of your Excellency's Government to obligations under international human rights instruments, to which Mauritius is party, 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), which guarantee the right of every individual to life, liberty and security.

The UDHR 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.

We would also like to call your attention to General Comment No. 36 of the Human Rights Committee (HRC) on the right to life. According to the HRC, the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para 26). 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 (para 62).

We would also like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 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 the health of the individual, and in terms of health services. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) describes the normative content of ICESCR Article 12 and the legal obligations undertaken by the States parties to respect, protect and fulfil the right to physical and mental 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”.

Moreover, the CESCR 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).

In addition, we would like to draw the attention of your Excellency’s Government to the United Nations Declaration on the Rights of Indigenous Peoples, which reflects existing legal obligations sourced in international human rights treaties. In particular, article 24.2 of the Declaration provides that indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. Also, Article 24 of the Convention on the rights of the child (CRC) recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health, and the concomitant duty of the State to provide adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

Further, Article 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples reiterate the right of Indigenous peoples to self-determination. Article 32 of the Declaration also recognizes the right of indigenous peoples “to determine and develop priorities and strategies for the development or use of their lands or territories and other resources” and to be consulted in good faith “through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” Also, Article 29 provides that States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

Moreover, we would like to recall the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. As per Article 1.2, the Declaration applies to any person engaged in artisanal or small scale agriculture, crop planting, livestock raising, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of peasants. In addition, Article 18.1 of the Declaration states that “peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their lands, and of the resources that they use and manage”. Article 18.2 further provides that “States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment.”

We would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly (A/74/480). This



obligation derives implicitly, but clearly, from any number of rights and duties enshrined within the global human rights framework, under which States are obligated to respect and fulfil recognized human rights, and to protect those rights, including from the implications of exposure to toxics. Those rights include the human rights to life, health, safe food and water, adequate housing, and safe and healthy working conditions. The duty to prevent exposure is further reinforced by the national and regional recognition of the right to a safe, clean, healthy and sustainable environment, including clean air. The existence of the State's duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the person, which helps to provide context to the extent to which every person should have the right to control what happens to their body (see A/HRC/39/48). Read together, international human rights clearly establish a duty of the part of your Excellency's Government to prevent exposure to hazardous substances and wastes.

We would also like to bring to the attention of your Excellency's Government the Framework Principles on Human Rights and the Environment as detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The Principles state that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2); and States should ensure the effective enforcement of their environmental standards against public and private actors (Principle 12).

We would further like to recall in this sense the African Charter of Human and People's Rights, which in its article 24 states that all peoples shall have the right to a general satisfactory environment favourable to their development.

We further recall the African Commission's Guidelines and Principles, which state that the obligation of States also entails, in case of despoliation of the environment resulting from the activities of extractive industries, that the people residing in the affected areas be entitled to a number of protection measures, including: that scientific inspection/assessment of the nature and scale of environmental, health and socio-economic impact of oil spillage, gas flare ups, leakage of dangerous chemicals into land, water and air is promptly conducted; that they be provided with all information on the nature of the despoliation, on its actual and potential environmental and health impacts and on measures to be taken; that they receive full, adequate and effective compensation for the consequences of environmental damage arising from industrial activities; and they be provided corrective measures necessary for the cleaning up and restoration of the affected environment.

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) after years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. 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.”

The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8). In accordance with these legal obligations, Guiding Principle 1 reiterates the State duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” Moreover, Guiding Principle 3 reiterates that States must take 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”. Lastly, in accordance with the right recognized in treaty and customary international law (see for example ICCPR Article 2 (3), the Guiding Principles reiterate that States must 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. 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 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.(...) 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”.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

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 to which they contribute. 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](http://www.ohchr.org) or can be provided upon request.