

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:
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14 December 2020

Mr. Ikeda,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 55 thematic and country mandates on a broad range of human rights issues. 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 we have received. 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 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 your attention information we have received concerning **the oil spill from the Japanese 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).¹ 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 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.

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

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.²

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.

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.³

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

² Press Release from the National Crisis Committee on 24 August

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

(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 United Nations 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.⁴

On 16 September, the Board of Directors of the African Development Bank approved a \$500,000 emergency assistance grant to support international 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.⁵

Reactions from African Commission on Human and People's 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.⁶

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 25.⁷

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

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

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

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

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:

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 company 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 company 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 company 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 company 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 provide information about the human rights due diligence policies and processes put in place by your company to identify, prevent, mitigate

and remedy adverse human rights impacts of your activities, in line with the UN Guiding Principles on Business and Human Rights.

8. Please provide information about specific due diligence or impact assessment measures taken by your company concerning the oil spill off the coast of Mauritius.
9. Please describe the measures that your company has taken, or plans to take, to prevent recurrence of such disasters in the future.
10. Please provide information on steps taken by your company to establish operational-level grievance mechanisms, in line with the UN Guiding Principles, to address adverse human rights impacts caused by your company throughout your operations globally.

This communication and any response received from your company 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 company to clarify the issue/s in question.

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

Please accept, Mr. Ikeda, 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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management and disposal of hazardous substances and wastes

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to 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 were established as a global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. 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).

The Guiding Principles 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”.

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 or can be provided upon request.