

Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Working Group of Experts on People of African Descent; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

REFERENCE:
AL OTH 86/2020

16 February 2021

Mr. Ken Mounger,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Working Group of Experts on People of African Descent; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 43/36, 45/24, 44/15, 37/8, 42/16 and 45/17.

We are independent human rights experts 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 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 Government 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 concerned 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 allegations of environmental racism in Louisiana, specifically the industrialization of an area known by its residents as “Cancer Alley.” The development of new petrochemical facilities by Louisiana registered company FG LA LLC, (subsidiary of Formosa Plastics Group) in a predominately African American district poses serious threats to the enjoyment of

several human rights of its residents, including the right to equality and non-discrimination, the right to life, the right to health and cultural rights

According to the information received:

Originally called Plantation Country where enslaved Africans were forced to labour, “Cancer Alley” refers to the petrochemical corridor along the lower Mississippi River between New Orleans and Baton Rouge, encompassing thirteen parishes, or counties, in Louisiana. With the first plastics boom in the 1960s, more than 150 petrochemical facilities now operate on this land that historically used to be sugarcane plantations. Since the 1980s, local residents began to call this area “Cancer Alley,” where today, seven of the ten census tracts (administrative districts) with the highest rates of cancer in the United States are located. Federal air and water quality regulations, such as the Clean Water Act of 1972 and the Clean Air Act of 1963, have failed to protect the people residing in Cancer Alley. Notwithstanding environmental pollution and adverse health effects to local residents, construction of three more petrochemical complexes is underway in the predominantly African American Fifth District of St. James Parish.

Environmental Racism in Cancer Alley: Targeted Demographic

In 2014, despite the already high concentration of industry in St. James Parish, the Parish Council changed the land use plan for the Fifth District, whose residents are 86.3% black, from “residential” to “residential/future industrial” without meaningful notice to the residents. That same year, the Parish Council barred chemical companies Wolverine and Petroplex from constructing new facilities in the Third District, whose residents are 78.4% white.

In December 2018, the St. James Parish Council approved Formosa Plastics’ “Sunshine Project,” which would be one of the largest plastics facilities in the world. The Council also approved plans to build methanol complexes by YCI Methanol One and South Louisiana Methanol. All three plants are to be located in the predominately African American Fifth district.

Ancestral Gravesites

In December 2019, civil society groups communicated to St. James Parish Council that the site on which Formosa proposed—and the Council approved—to build the Sunshine Project contains at least four burial grounds of enslaved people. Residents believe these burial grounds may hold the remains of their ancestors. While Formosa has known the existence of these historic cemeteries since July 2018, it withheld this information from both the residents and the Council. Because Formosa did not disclose what it knew from its cultural resource surveys in July 2018, the Council granted Formosa’s land use permits without consideration for these sacred sites. The Parish Council has not reconsidered these permits despite civil society appeals in December 2019.

On 15 January 2020, a law suit was filed by a group of organisations against the US Army Corps Engineer about Formosa Plastic’s wetland permit alleging that the environmental and public health impacts were not properly disclosed

to the population. It also put forward the potential cultural negative consequences of the project on burial sites of importance.

In June 2020, Formosa opposed a memorial ceremony on Juneteenth when residents sought to honour their ancestors at the burial location. They were forced to go to court, which ultimately compelled the company to allow residents access.

On 4 November, the re-evaluation of Formosa Plastic's wetland permit for the Sunshine Project was announced by the US Army Corps of Engineers and the court decision was halted.

Health and Life Threatening Effects of Formosa's Sunshine Project on St. James Parish Residents

Under its proposals, Formosa will vastly expand the petrochemical footprint in Cancer Alley, constructing fourteen plants across 2,300 acres (approximately 9.3 square kilometers) of land. These facilities will be dangerously close to St. Louis Academy, a local elementary school, and less than a few hundred feet away from residential homes.

Formosa Plastics' planned petrochemical complex will more than double the cancer risks in St. James Parish, which are already higher for African American residents than for white residents. Predominately white districts in St. James Parish have a cancer risk ranging from 60 to 75 per million. The cancer risk in Fourth and Fifth Districts which are predominately inhabited by African American is 104 and 105 per million, respectively.

Formosa's planned petrochemical complex would be permitted to release 1.6 million pounds (approximately 725.7 metric tons) of toxic air pollutants in St. James. This is in addition to the 1.4 million pounds (approximately 635 metric tons) of toxic air pollutants that existing plants currently produce in the parish annually. Formosa would release 15,400 pounds (approximately 7 metric tons) of ethylene oxide, a highly carcinogenic gas linked to breast and lymphatic cancer, each year. This would amount to the fourth largest release of ethylene oxide in the United States. According to a 2016 study by the Environmental Protection Agency, acute, or short-term, effects of inhaling ethylene oxide include central nervous system depression, as well as irritation of the eyes and mucous membranes. Chronic, or long-term, exposure to ethylene oxide increases the risk of life-threatening diseases such as leukemia, breast cancer and cancer of the lymphoid tissue.

Additionally, Formosa would emit 189,700 pounds per year of other known carcinogens: benzene, 1,3-butadiene, acetaldehyde and formaldehyde. Other emissions include nitrogen oxides, which may cause or exacerbate respiratory diseases and can aggravate existing heart disease, leading to premature death. Exposure to particulate matter, specifically PM2.5, ozone and sulfur dioxide, may weaken lung function and worsen respiratory symptoms. Taken together, the respiratory effects of these toxic emissions would further exacerbate vulnerability to COVID-19, which disproportionately affects African American populations in Louisiana. Inhaling carbon monoxide may intensify

heart conditions and even cause death.

Global impact on climate and fragile ecosystems

The proposed facilities by Formosa Plastics, South Louisiana Methanol and YCI would emit massive amounts of carbon dioxide, which combined would exceed the emissions of 113 different countries. The authorities have not assessed the environmental impact of these facilities. Cancer Alley's petrochemical facilities are a major factor in the unsustainability of the environment of the Gulf Coast. Formosa has been declared as a "serial offender" for water pollution by a federal judge in Texas. Formosa's plant in Baton Rouge has violated the Clean Air Act, the Resource Conservation and Recovery Act and the Clean Water Act. YCI has planned to dump treated processed water into the Mississippi River, threatening the drinking water of nearly 24,000 people. YCI is also seeking approval to expand waste disposal into the wetlands.

Although we do not wish to prejudge the accuracy of the information made available to us, we wish to express our serious concern over the construction of three new petrochemical complexes in the Cancer Alley, which will exacerbate the environmental pollution and the disproportionate adverse effect on the rights to life, to an adequate standard of living and the right to health of African American communities.

We are concerned about the increased exposure to petrochemical footprint that will more than double African Americans' risk of contracting a life-threatening illness such as cancer, respiratory and heart diseases, leading to premature death and exacerbating their already increased vulnerability to COVID-19.

We are further concerned about this form of environmental racism that disproportionately impacts African American communities, as has been noted by the Working Group of Experts on People of African Descent.¹ In 2016, the Working Group called on the United States to "increase its efforts to address environmental threats to human rights, amid the recent outrage over lead-contaminated water in the town of Flint, Michigan."² In its 2019 Report to the Human Rights Council, the Working Group concluded that "[t]he ability to exercise and enjoy key human rights is dramatically curtailed by racial bias in decision-making."³ St. James Parish Council's different treatment of majority black Fifth District and majority white Third District in deciding whether to permit or prohibit further industrialisation raises serious concerns of such racial bias. We are also concerned about the lack of participation and consultation of African American residents and communities affected.

Exposing residents living in the "Cancer Alley" to additional and continued environmental pollution would result in a continued violation of the right to adequate housing, which includes at its core the right to live in safety and dignity in a home, that is habitable and located in an area not exposing their residents to life-threatening and health risks. We are further concerned by the legacy of colonialism in Cancer Alley. The African American descendants of the enslaved people who once worked the land are today the primary victims of deadly environmental pollution that these

¹ A/71/297; A/HRC/42/59

² A/71/297

³ A/HRC/42/59

petrochemical plants in their neighbourhoods have caused. Indeed, over the past few decades, special procedure mandate holders have concluded that colonialism and the slave trade have entrenched racial discrimination and continue to be a root cause of contemporary manifestations of racism and racially discriminatory violations of human rights.⁴

Additionally, we are concerned at the possible violations of the cultural rights of the affected African American communities in Cancer Alley, where at least four ancestral burial grounds of enslaved Africans are at serious risk of destruction by the construction of the Sunshine Project. In this regard, recognition of and reparations for the centuries of harm to Afro-descendants rooted in slavery and colonialism need to be urgently addressed as a human rights imperative.

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 appreciate your responses to the information and concerns we have listed above, as well as to the following requests:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information and concerns.
2. Please provide information the environmental and social impact studies carried out before the development of the new petrochemical facilities and methanol complexes and whether they were prepared with a human rights based approach, taking into account the social and cultural impacts and with the participation of the communities affected, and investigations of all cases of environmental pollution and its health and life-threatening effects;
3. Please indicate the concrete measures adopted to protect and respect the cultural rights of African American communities in Cancer Valley, where ancestral burial grounds are at risk of destruction.
4. Please explain what measures have been adopted to ensure that staff of your company as well as your business partners have adequate awareness, knowledge and tools to identify and report human rights abuses, including those alleged in the present letter, throughout your operations
5. 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 on people and the environment of your activities, in line with the UN Guiding Principles on Business and Human Rights and whether participation of persons affected is envisaged in such processes.

⁴ A/74/321; E/CN.4/1995/78/Add.1; A/HRC/33/61/Add.2

6. Please describe the measures that your company has taken, or plans to take, to prevent recurrence of such business-related human rights abuses in the future.
7. Please provide information on measures to provide victims with an effective, adequate and timely remedy and compensation for damages, including health-related, of environmental pollution. In particular, 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.

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 letters expressing similar concerns were sent to the Government of the United States of America, as well as to the companies involved in the abovementioned allegations.

Please accept, Mr. Mounger, the assurances of our highest consideration.

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance

Dominique Day
Chair-Rapporteur of the Working Group of Experts on People of African Descent

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

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Marcos A. Orellana

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Company to the following human rights norms and standards:

Firstly, we would like 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). 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. 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 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.

In accordance with the Guiding principle 1, States have the duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” Guiding principle 3 reiterates that States must take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, regulations and adjudication.” In addition this requires that States “provide effective guidance to business enterprises on how to respect human rights through their operations”. Lastly, the Guiding principles also reiterate that States must ensure that victims have access to effective remedy in instances where adverse human rights impact linked to business activities occur. 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.

“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)”

“In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.” Guiding Principle 18

In addition, we also recall Guiding Principle 22 that states “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 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 an effective remedy.