

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; 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 to food; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on extreme poverty and human rights

REFERENCE:
AL OTH 9/2021

11 March 2021

Dear Mr Phongsthorn Thavisin,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; 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 to food; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 45/17, 37/8, 32/8, 42/20 and 44/13.

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 56 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 the information we have received concerning **the alleged violations of the human rights of the affected communities and indigenous peoples in East Nusa Tenggara in the context of the 2009 Montara Oil Spill in the Timor Sea**. PTT Exploration and Production Australia Ashmore-Cartier Pty Ltd (PTTEPAA) owned and operated the well at Montara Oilfield, within Australian jurisdiction. PTTEPAA is a wholly owned subsidiary of your company, PTT Exploration and Production Public Company Limited (PTTEP).

According to the information received:

Mr Phongsthorn Thavisin Chief Executive Officer
PPT Exploration and Production Public Company Limited (PTTEP)

PTT Exploration and Production Australia Ashmore-Cartier Pty Ltd (PTTEPAA) is a wholly owned subsidiary of Thai state-owned company PTT Exploration and Production Public Company Limited (PTTEP). PTTEPAA owned and operated the well at Montara Oilfield, within Australian jurisdiction.

According to the information received, on 21 August 2009 around 5.30 a.m., workers on the wellhead platform observed a blowout of fluid coming from the H1 Well into the Timor Sea. The workers activated emergency response procedures and notified the Australian Maritime Safety Authority (AMSA). Once it became apparent that the efforts to stop the flow were not effective, personnel aboard the rig and wellhead platform safely evacuated.

The AMSA responded by spraying over 180,000 litres of dispersants onto the oil's surface from 23 August 2009 to 1 November 2009. It is alleged that the Government of Australia provided no public information at the time of the decision to use dispersants. It is further alleged that the use of dispersants departs from Australia's preferred mechanical recovery method, adding to the toxicity level of the water.

On 14 September 2009, work commenced on drilling a relief well. A fire broke out on 1 November 2009 on the West Atlas and the Montara Wellhead Platform after a relief well successfully intercepted the leaking well on its fifth attempt. 75 days later, on 3 November 2009, well-kill operations extinguished the fire and contained the oil leak. During that time, it is alleged the well leaked at least 400 to 1500 barrels of oil per day, and unknown amounts of gas, condensate, and water.

The Montara Commission of Inquiry

Two days after the leak stopped, in accordance with Part 9.10A of Australia's Offshore Petroleum and Greenhouse Gases Storage Act 2006, the Australian Government's Minister of Resources and Energy established the Montara Commission of Inquiry, giving it powers of a Royal Commission to report on the uncontrolled release of hydrocarbons at the Montara Well Head platform and the subsequent events. The Commission submitted its final report on 17 June 2010.¹

The Montara Commission of Inquiry report concluded that the direct and proximate cause of the blowout was the defective installation by PTTEPAA of a cemented shoe in the 9½" casing of the H1 Well on 7 March 2009. The Commission found that the actions and omissions of PTTEPAA personnel, both on-rig and onshore, were direct cause for the creation and non-detection of the defective cemented shoe casing.

PTTEPAA personnel (on-rig and onshore) failed to recognize that a wet shoe had been created after the cementing operation of 7 March 2009, which was intended to operate as the primary barrier against a blowout. These failures allegedly occurred at each of two stages: first, during the course of

¹ Report Montara Commission of Inquiry (2010), <https://www.industry.gov.au/sites/default/files/2018-11/montara-commission-of-inquiry-report-june-2010.pdf>

preparation, on-rig PTTEPAA personnel should have been alerted to the dangerous state of the cement casing shoe on 7 March 2009; and secondly, onshore personnel failed to ensure a test of the cemented shoe – contrary to “sensible oilfield practice”. PTTEPAA additionally failed to properly investigate the circumstances and causes of the blowout after it occurred.

Additionally, the Montara Commission of Inquiry report found that Australia’s Northern Territory Department of Resources should not have approved the Phase 1B Drilling Program for the oilfield in July 2009 due to PTTEPAA’s failure to adhere to “sensible oilfield practices”. The Department of Resource failed to properly regulate the company, which served as a cause for the spill.

While the Montara Commission of Inquiry acknowledged sightings of sheen and weathered oil in Indonesia reaching the island of Palau Roti through the ocean’s currents, the Commission noted that there was a lack of information on how the dispersants affected the travel of the oil by pulling the oil below the water’s surface.

The Montara Commission of Inquiry’s report made 100 findings and 105 recommendations on the main issues of the oil spill, including: the circumstances and likely causes of the blowout; the adequacy of the regulatory regime of the offshore petroleum industry and the inadequacy of the implementation of those laws; issues with arresting the blowout; the environmental response; and a review of PTTEPAA’s permit and license at Montara and other matters. In its report on the implementation of these recommendations, the Australian Government accepted 92 recommendations, 2 recommendations “in principle”, noted 10 recommendations, and did not accept 3 recommendations.

The Australian Government accepted all of the environmental response recommendations. These centered on increasing oversight and approval of corporations’ environmental plans for oilfields, monitoring Commonwealth waters, increasing enforcement of the polluter pays principle, and improving training programs on the effects of oil spills on the environment.

The final report highlights that “[t]he information provided to the Inquiry indicates that the dispersant/oil mix could have had an adverse effect on coral spawn and fish larvae and other shallow subsurface species” and these points were known and acknowledged at the time by the Australian Maritime Safety Authority.² Furthermore, despite the Montara Commission acknowledging the sighting of weathered oil in Indonesia’s Exclusive Economic Zone near West Timor and the potential health effects of prolonged exposure to dispersants, the Commission made no recommendations on monitoring the effects of the spill outside the Commonwealth. The Australian Government did not address the issue on its own.

According to the information received, the President and Chief Executive Officer of PTTEP, PTTEPAA’s parent company, sent a letter to the Minister of Resources and Energy. This letter included the Montara Action Plan on reforms to PTTEPAA’s offshore petroleum operations. The Department of Resources, Energy and Tourism (DRET) commissioned two independent

² Report of the Commission of Inquiry, p. 23.

reviews at the instruction of the Minister of Resources and Energy to look into the Montara Action Plan's compliance with industry standards. These reviews did not consider the legal implications, the environmental impacts of the spill, or the quality of PTTEP's activities outside of Australia.³

Civil society organizations, legal groups, indigenous peoples, and human rights defenders have raised various concerns related to Australia's handling of the oil spill, urging Australia to provide redress for damage caused to the affected communities and indigenous peoples in East Nusa Tenggara. Reports of these groups allege that the oil spill caused extensive damage to the fishing and seaweed industries, which serve as a primary source of livelihood for the affected communities and indigenous peoples in East Nusa Tenggara. The damage reportedly led to widespread hunger, loss of income, the reduction in children's education due to financial pressures, and the death of mangroves and marine life. Many people within the community also reported health conditions after the spill, including skin conditions, cysts, and some instances of food poisoning.⁴

The affected Indonesian communities have sought redress from Australia and PTTEPAA. In 2016, approximately 15,000 Indonesian seaweed farmers whose livelihoods were destroyed due to the oil spill brought a class action lawsuit against PTTEPAA in the Federal Court of Australia. The case is ongoing and a judgement by the Court is currently pending. There are concerns that there is little information on the Australian Government's actions to monitor or remedy the effects of the oil spill outside of Australian territory, following the Montara Commission of Inquiry report. The affected communities and indigenous peoples in East Nusa Tenggara also seek a remedy from Australia for its role and responsibility in the damaging effects of the oil spill.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the alleged damage to the environment and human rights of the affected communities and indigenous peoples in East Nusa Tenggara, whose livelihoods are at risk of destruction on the premise of economic development. The handling of the spill allegedly disregarded and continues to disregard the human rights of those affected. Specifically, we express concern regarding the threats to human rights to a healthy environment, life, health, bodily integrity, water, food, and the failure to provide a remedy for the alleged harm resulting from the oil spill. We further express concern that this event disproportionately affected populations in vulnerable situations who rely heavily on the natural resources in and around East Nusa Tenggara.

It emerges that the affected communities and indigenous peoples in East Nusa Tenggara bore long-term costs resulting from the oil spill and use of dispersants to clean it. The spill threatens the health and safety of the affected communities and indigenous peoples in East Nusa Tenggara. We also remain concerned about the lack of public information available regarding follow up into the oil spill's impact on the health and economic well-being of these peoples, which is problematic regarding the right of access to information and the positive duty of States to proactively place

³ Noetic Solutions PTY Limited, Review of PTTEP Australasia's Response to the Montara Blowout, <https://www.industry.gov.au/sites/default/files/2018-11/review-of-pttep-australasia-response-to-montara-blowout.pdf>

⁴ *After the Spill*, Investigating Australia's Montara oil disaster in Indonesia", Australian Lawyers Alliance, July 2015, p.45-59, <https://www.lawyersalliance.com.au/documents/item/412>

information of general interest in the public sphere.

Serious concern is expressed over reports that your company is failing to meet its international human rights responsibility to respect the aforementioned human rights and provide for effective grievance mechanisms to address adverse human rights impacts caused by its operations. This is underscored by your company's duty to protect against human rights abuse within its territory and/or jurisdiction by third parties, including business enterprises. The requirement includes taking appropriate steps in relation to business enterprises to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication.

We wish to appeal to your company to take all necessary measures to ensure that those affected by the Montara oil spill have access to an effective remedy.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information about specific due diligence or impact assessment measures taken by your company concerning the 2009 Montara Oil Spill in the Timor Sea.
3. Please provide information regarding the oil spill response plans, procedures, and resources that your company has put in place.
4. Please provide any information concerning the actions that are being taken to reduce or eliminate the effects of the lasting consequences of the oil spill on human rights including the rights to food, health, and a healthy environment.
5. Please provide information as to whether your company has undertaken human rights due diligence steps, as set out in the United Nations Guiding Principles on Business and Human Rights, to identify, prevent, mitigate, and account for human rights abuses caused by or contributed to through your own activities, or directly linked to your operations, products or services by your business relationships. This includes the negative impact that PTTEPAA, and its wholly owned subsidiary PTTEP, could have caused, or contributed to, on the enjoyment of human rights of the affected communities, including the right to food, health, and a healthy environment.
6. Please provide information on how your company provides for, or cooperates in the remediation, including adequate compensation, of adverse impact on human rights of affected communities through

legitimate processes, if it has caused or contributed to such impact. This may include establishing or participating in effective operational-level grievance mechanisms, as set forth in the UN Guiding principles.

7. Please provide any information about the 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.
8. Please provide any information about the steps that 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.
9. Please provide information regarding how your company is protecting 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.
10. Please describe the measures that your company has taken, or plans to take, to prevent recurrence of such disasters in the future.

This communication and any response received from your company will be made public via the communications reporting [website](#) after 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 Australia, Thailand and Indonesia.

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

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

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

Michael Fakhri
Special Rapporteur on the right to food

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

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).

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) examining the duty of States to protect against human rights abuses involving those business enterprises that they own or control. In particular, we would like to highlight the following conclusions and recommendations:

88. All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations.

101. State-owned enterprises should strive to be role models and fully meet their responsibility to respect human rights.

102. To do so, they should adopt appropriate policies and processes to address abuse, including a policy commitment, human rights due diligence and remediation mechanisms when harm occurs, which are integrated throughout their operations.

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