

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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(Please use this reference in your reply)

16 May 2024

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human right to a clean, healthy and sustainable environment; Special Rapporteur on the right to food; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders 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 53/3, 55/2, 49/13, 52/9, 50/17, 51/21, 52/4 and 54/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **prolonged adverse human rights impacts of the release of hazardous substances in 2016 in Viet Nam by the Formosa Ha Tinh Steel Corporation, a subsidiary of Formosa Plastics Corporation, a company headquartered in Taiwan, province of China. In particular, we would like to highlight the continued lack of access to effective remedy by those affected by the toxic discharge.**

According to the information received:

In the first half of April 2016, over 300 tons of fish died in four provinces of the North Central Region of Viet Nam: Ha Tinh, Quang Binh, Quang Tri, and Thua Thien-Hue. Local fishermen reported that an underwater pipe from the Vung Ang Industrial Zone, in Ha Tinh, was discharging foul-smelling waste into the water.

In the following weeks, the Vietnamese Ministry of Natural Resources and Environment carried out inspections of the industrial plants located in the Vung Ang Industrial Zone and attributed the pipe in question to the steel plant belonging to Formosa Ha Tinh Steel Corporation (Formosa), which was ordered to dig it up. Formosa is a subsidiary of Formosa Plastics Corporation, a company headquartered in Taiwan, province of China, that produces various materials for the plastic industry as well as fibres, textiles, dyes, and electronics.

At the end of June 2016, Formosa acknowledged their responsibility for the toxic discharge. In the following days, a report by the then Minister of Natural Resources and Environment officially identified the Formosa Ha Tinh steel mill as responsible for the toxic discharge, pointing out the existence of 53 regulatory violations. According to the allegations received, the company's negligence has had wide-ranging consequences for the population and amounted to multiple human rights abuses and violations.

Adverse environmental impacts

On 11 April 2016, a few days after the first fish deaths in Ha Tinh, preliminary reports from the Vietnamese Ministry of Agriculture and Rural Development (MARD) noted the presence of toxic chemicals in the water. This was confirmed on 20 April 2016, when a report from the MARD indicated that the concentration of phosphate was twice the amount allowed, which increased the alkalinity of the water tenfold, thereby increasing the toxicity of other substances. On 26 April 2016, another report found heavy metals (chromium), ammonia and nitrogen above the authorized limits.

The cause of the sea pollution was determined to be Formosa's release of untreated water—contaminated with phenol, cyanide, and iron hydroxide—into the sea as a power failure shut down the plant's waste treatment facility. The Government estimated that the recovery of the local environment would take 10 years if sufficient rehabilitation work were carried out.

Adverse health and food impacts

Given that fish is a staple food in the Vietnamese diet, this toxic discharge had a dramatic effect on the right of access to food. The massive fish and seafood deaths and the reduced availability of sea life in the coastal waters of the affected provinces, combined with generalized fears and aversion to fish consumption caused by the toxic discharge, led to severe food insecurity for many people in the region.

Further, many cases of sickness have been linked to swimming in the polluted waters and eating contaminated seafood. In particular, there were several reported cases of deep-sea divers becoming sick after swimming in the polluted water, in early to mid April 2016. The toxic substances that were discharged in the water by Formosa posed a health hazard, with medical professionals reporting that the specific types of toxins released by Formosa are linked to increased risks of stomach and colon cancer, among other serious threats.

Adverse labour impacts

Fishing and tourism activities are essential means of subsistence for the people living in Viet Nam, especially in the four coastal provinces impacted by the Formosa toxic discharge. The Formosa toxic discharge has had severe consequences on the fishing and tourism industry, its workers and related business sectors, with many workers becoming unemployed and having to

change jobs or to emigrate as a result of the toxic discharge.

Adverse impacts on access to information, freedom of expression, and freedom of assembly

When members of the public and civil society actors sought to share their testimonies, express their views and submit reports to the UN Human Rights Mechanisms on the toxic discharge, and on the manner in which Formosa and the Government had handled it, they were persecuted, criminalized and silenced. This contributed to a climate of fear, confusion and misinformation which worsened the human rights impacts related to the contamination.

Access to remedy

The right to an effective remedy continues to be violated in the Formosa case as fishing communities and others in the affected provinces still face many barriers to obtaining adequate compensation and reparation for the damages and various human rights abuses and violations that they have suffered.

In 2019, an association of 7,874 victims pursued access to remedy by filing a lawsuit in Taiwan, province of China, where Formosa's parent company is headquartered. Despite the Taiwan Supreme Court granting jurisdiction to the victims, the victims and their legal representatives have encountered many obstacles. Formosa demanded an authentication process of the victims, which requires approval from the Vietnamese Government – a requirement which victims cannot fulfill because of the Vietnamese Government's reported lack of cooperation in enabling them to obtain passports and personal documents from the local authorities. Further, the victims have purportedly been harassed and pressured by the Vietnamese Government to drop the charges, including through summoning at the police station, aggressive questioning, threats, and surveillance. The deadline for victims to obtain authentication from the Vietnamese Government is fast approaching and failure to obtain personal documents may result in the case being dropped, further delaying access to remedy for the victims.

To this day many victims of the toxic discharge have yet to receive any financial reparation. This is particularly concerning given that the deadly impacts of Formosa activities on marine life are still felt to this day.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned about the continued adverse human rights impacts of the Formosa toxic discharge. We are also seriously concerned at the exposure of the population to the hazardous substances released by Formosa and the concomitant serious adverse threats to human and environmental health. We are also concerned about the continued adverse impacts in relation to the rights to food, work, and water.

Further, we are extremely concerned about the prolonged lack of access to effective remedy for those affected by the toxic discharge, which took place in early 2016. The Special Rapporteur on the right to development reiterated the continued need for compensation in relation to the Formosa toxic discharge in his end of mission

statement following his country visit to Viet Nam.¹

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 explain what measures have been taken to prevent recurrence of similar incidents.
3. Please specify the measures taken by your Excellency's Government to ensure the public's right to receive timely and accessible information on the food, health and environmental effects of the toxic discharge.
4. Please indicate what measures have been taken to ensure the rights to freedom of expression and freedom of peaceful assembly of human rights defenders and community members exercising their legitimate rights in relation to the Formosa toxic discharge are guaranteed.
5. Please provide information on the measures that your Excellency's Government plans to take to prevent the recurrence of an ecological disaster at the hands of a company domiciled in its territory.
6. Please highlight the steps that Your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to fulfil its obligations to protect against human rights abuses by business enterprises under its jurisdiction, and ensuring that business enterprises domiciled within its territory 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 (UNGPs).
7. Please provide information on the measures that your Excellency's Government is taking or considering taking to ensure that persons affected by activities occurring outside your territory by business enterprises domiciled in your jurisdiction have access to remedy in your country, through State judicial or extra-judicial mechanisms.
8. Please provide information on the measures taken to consult with affected people and to monitor the effects of the toxic discharge on people and the environment. As part of this response, please also

¹ <https://www.ohchr.org/sites/default/files/documents/issues/development/sr/20231115-eom-statement-viet-nam-sr-dev-en.pdf>

indicate whether your Excellency's Government has consulted with affected populations throughout the compensation process.

9. Please provide information regarding what processes and mechanisms are available to survivors to file complaints, make their grievances known or make inquiries with regard to compensation or other issues related to the Formosa incident. Please detail what steps, if any, are being taken to raise the awareness of survivors to these processes and mechanisms. Please also indicate what measures you are taking to ensure access to remedy for existing legal processes related to the Formosa toxic discharge.
10. Please indicate what measures have been taken to ensure that individuals and human rights defenders are able to exercise their right to effective remedy, without fear of threats or acts of intimidation and harassment of any sort.
11. Please indicate what steps your Excellency's Government has taken to ensure that the chapter on business and human rights in your national action plan is aligned with the UNGPs, and how your Excellency's Government is ensuring that the measure to promote responsible business conduct is being implemented in relation to the Formosa toxic discharge.
12. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises domiciled in your territory and/or jurisdiction establish or participate in effective operational-level grievance mechanisms in line with the UNGPs, and to cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 be informed that a letter on this subject matter has been also sent to those business enterprises that are involved in the abovementioned allegations, including Formosa Ha Tinh Steel Corporation and Formosa Plastics Corporation, as

well as to the home-States of all involved companies (Viet Nam).

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

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

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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 wish to draw your Excellency's Government's attention to articles 11 and 12 of International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified by China on 27 March 2001. They stipulate the rights of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and to the enjoyment of the highest attainable standard of physical and mental health.

With regard to article 12, the Committee on Economic, Social and Cultural Rights (CESCR) adopted general comment No. 14. This general comment describes the normative content of article 12 of ICESCR and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfil the right to health. The Committee stated that the right to health "embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as [...] a healthy environment" (para. 4). It 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 drinking 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 (para. 11). According to general comment 14 of the CESCR, States must protect the right to health of its population by taking measures to prevent pollution caused by businesses (para 35 and 51). States must also take all measures to ensure that the activities of the enterprises present on their territory are in compliance with the right to healthy food and its access (para 15 and 27). The Committee has determined on numerous occasions that any person whose rights to health and to food have been violated by the State or by a company have the right to an effective remedy and to adequate reparation (general comment No. 14 para 59; general comment No. 12 para 32; general comment No. 24 para 14, 15 and 38-57).

The CESCR has also described the core content of the right to food, in its general comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, the availability of food, acceptable within a given culture, in a sufficient quantity and quality; and accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights (para. 8). The right to adequate food refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems (para. 12). It entails both economic and physical accessibility of food, as well as the sustainability of food access for both present and future generations (para. 7).

In its general comment 15 on the right to water, CESCR explains that the right to water is considered implicit in articles 11 and 12 of ICESCR, covering the right to an adequate standard of living and health, respectively. The Committee has affirmed that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

Furthermore, the Committee stated that environmental hygiene is an aspect of the right to health encompassing taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions (para. 8). In addition, in July 2010, the UN General Assembly adopted a resolution that “recognized the right to safe and clean drinking water and sanitation as a human right essential for the full enjoyment of life and all human rights” (GA res 64/292).

The central obligation in relation to ICESCR is for States Parties to give effect to the rights recognized therein (general comment No. 9, para. 1). Moreover, 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).

States have a duty to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes to the United Nations General Assembly (A/74/480). This obligation derives implicitly, but clearly, from a range of rights and duties enshrined in the global human rights framework, under which States are obliged to respect and fulfil recognized human rights, and to protect those rights, including from the consequences of exposure to toxic substances. These rights include the human rights to life, health, food and drinking water, a healthy environment, adequate housing and safe and healthy working conditions.

Both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. In this regard, we would like to draw the attention of your Excellency's Government to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The Principles provide that States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights (principle 1); States must respect, protect and fulfill human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2); and States must ensure effective enforcement of their environmental standards against public and private actors (principle 12).

We would like to note that several Special Rapporteurs have adopted similar interpretations on transboundary human rights obligations. In 2011, a number of special rapporteurs joined with scholars and representatives of civil society organisations, and adopted the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. This suggests that all States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially. Principle 20 states that “all States have the obligation to refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories.”

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights

Council in June 2011, are relevant to the impact of business activities 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.”

According to the guiding principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. In this regard, China has a duty to ensure that businesses domiciled within its territory respect human rights by taking steps to prevent as well as investigate, punish, and redress abuses through legislation, regulations, policies, and adjudication. Furthermore, China has an obligation to ensure access to effective remedial mechanisms for persons whose rights have been violated by businesses domiciled within its territory. States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (guiding principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (guiding principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights [...]” (guiding principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting 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. Moreover, the commentary of principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. 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”.

The guiding principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (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).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

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).

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.

Furthermore, it should be noted that, based on international law, the Maastricht Principles aim to clarify the content of States' extraterritorial obligations to realize economic, social and cultural rights in order to promote and give full effect to the purposes of the Charter of the United Nations and international human rights. [...] All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially. Each State has the obligation to realize the economic, social and cultural rights of all persons within its territory to the maximum extent of its capabilities. All States also have extraterritorial obligations to respect, protect and fulfill economic, social and cultural rights.

Further, the right to an effective remedy is a key component of the full enjoyment of human rights, recognized as such in all three documents of the International Bill of Human Rights (UDHR art. 8; ICCPR art. 2; ICESCR art. 2). Without being able to access an effective remedy, human rights violations go unpunished, and victims may be deprived of justice, compensation and their dignity.

Additionally, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of

Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. The Human Rights Council resolution 31/32 in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy.