

Mandate of 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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Excellency,

I have the honour to address you in my capacity as 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 resolution 27/23. In this capacity, I undertook an official country visit to Germany, at the invitation of your Excellency's Government, from 30 November to 7 December 2015.

During my trip, key stakeholders provided me with valuable information on **the National Action Plan on Business and Human Rights**, which is currently being developed under the auspices of the Federal Foreign Office¹. As a follow up to my country visit I would like to make a written submission to the process of this important undertaking for your consideration.

I am pleased to note that several good practices have developed in Germany and the European Union in recent years to prevent harm from toxic and hazardous substances. However, as is the case in all countries, hazardous substances continue to present profound challenges, particularly when viewed through the human rights lens. The National Action Plan on Business and Human Rights, which I hope follows the Guidance² prepared by the UN Working Group on Business and Human Rights on the subject, provides an ideal opportunity for addressing these challenges and providing protection for human rights in the business sphere.

The chemical industry has a long history in Germany, and a responsibility to respect human rights implicated by hazardous substances, such as the right to the highest attainable standard of health and the right to information. This includes both the responsibility to undertake due diligence to prevent adverse impacts and the responsibility to help realize an effective remedy when human rights abuses result.

¹ http://www.auswaertiges-amt.de/EN/Aussenpolitik/Aussenwirtschaft/Wirtschaft-und-Menschenrechte/Wirtschaft-und-Menschenrechte_node.html

² http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf

Human rights due diligence speaks directly to the responsibility of businesses to prevent exposure to hazardous substances and wastes. As the scientific evidence continues to grow of both the health risks and impacts of hazardous substances in Germany and around the world, the transition to safer chemicals is necessary to ensure the progressive realization of human rights, particularly of those who are marginalised or are in vulnerable situations. The risks to those most vulnerable to toxic chemicals must be the basis of efforts by those businesses whose activities are implicated under the National Action Plan.

When viewed through the human rights lens, several recent achievements in Germany and the EU on chemicals management stand out; but so do on-going challenges. As a way of illustration of the remaining challenges, I would like to highlight four cases which allege human rights abuses by German companies operating abroad.

The first case alleges exposure of farmers to highly hazardous pesticides by Bayer in India³. A Monitoring Report submitted by the European Centre for Constitutional Human Rights (ECCHR) to the Panel of Experts on Pesticides Management at the Food and Agriculture Organization (FAO) of the United Nations, has alleged that Bayer is involved in the sale of highly hazardous pesticides, which are very likely to cause harm to farmers and communities even with proper information and training, and are thus banned in Germany.

The second case concerns alleged exposure of workers and local populations to highly hazardous pesticides by BASF in Brazil,⁴ where workers employed at and living near a pesticide manufacturing plant, first owned by Shell and then by BASF, to have suffered cancer and other severe health problems as a result of land and groundwater contamination around the plant.

The third case concerns alleged fatalities as a result of Bayer's clinical trials in India⁵. Bayer is alleged to have conducted dangerous drug trials in poor, developing countries as these offer a large reservoir of test subjects, low prices, fast procedures and little supervision by the authorities.

The fourth case alleged fatalities and toxic chemical exposure by workers and local population as a result of the export of end-of-life ships for disposal⁶. German ship owners operate the world's third largest merchant fleet (in terms of number of vessels), and have been linked to fatalities and toxic chemical exposure of workers and local populations including children, who dismantle end-of-life ships in deadly conditions. In 2014, German ship owners sold a record high 95% of their end-of-life tonnage for substandard breaking on the beaches of South Asia.

³ <http://business-humanrights.org/en/india-report-alleges-bayer-syngenta-failed-to-adequately-inform-farmers-about-dangers-of-the-pesticides-companies-refute-claims>

⁴ <http://business-humanrights.org/en/shellbasf-lawsuit-re-brazil#c18656>

⁵ <http://business-humanrights.org/en/india-ngo-coalition-alleges-fatalities-as-a-result-of-bayers-clinical-trials#c65303>

⁶ <http://www.shipbreakingplatform.org/press-release-new-list-of-global-dumpers-is-out-2/> ; http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2014/05/NGO-Shipbreaking-Platform-Fact-Sheet-Why-ships-are-toxic.pdf

These four cases have been reported to me and have been in the public arena for some time now. Details of all cases have been available on the websites of two credible non-governmental organisations - the Business and Human Rights Resources Centre and the Shipbreaking Platform - and there has been the opportunity for the companies concerned to present their point of view on both websites.

Recognizing the on-going human rights impacts of highly-hazardous pesticides, and the potential for safer alternatives to replace these dangerous products, Ms. Hilal Elver, the UN Special Rapporteur on the Right to Food and I recently called on states and businesses to progressively phase out highly hazardous pesticides.⁷ The Germany chemical industry can play a very constructive role in the transition away from highly hazardous pesticides, toward safer alternatives.

Indeed, German businesses have a long-standing reputation for innovation that achieves high standards of quality and performance. I have been impressed with the capacity of the German industry to improve performance by a number of indicators, such as energy efficiency. I am confident that your Excellency's Government can lead efforts to reduce the use of hazardous substances and prevent double standards, creating a level playing field for all. I look forward to seeing German businesses emerge as leaders in the transition to safer chemicals and to your Excellency's Government's effort to better enable this shift. Your Excellency's Government should create the much needed incentives and frameworks for German businesses to foster a positive human rights record.

This communication will be made available in a report to be presented to the Human Rights Council. A copy of this letter will also be sent as a matter of courtesy to Bayer and BASF who are referred to in this letter.

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

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

⁷ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16510&LangID=E>