

**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**

Ref.: AL OTH 73/2024

(Please use this reference in your reply)

16 May 2024

Dear Mr. Chang,

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.

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 60 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 the 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 **prolonged adverse human rights impacts of**

Formosa Ha Tinh Steel Corporation

**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, and the State has also failed to act to fulfil its duty to protect human rights.

#### *Adverse environmental impacts*

On 11 April 2016, a few days after the first fish deaths in Ha Tinh, preliminary reports from the 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.

According to the information received, the Vietnamese authorities failed to provide adequate oversight mechanisms to monitor the activities Formosa and

to ensure its compliance with environmental regulations.

#### *Adverse health and food impacts*

Delays in Government action to investigate the causes of fish deaths in the affected, combined with mixed messaging from the authorities, who at times provided contradictory advice and information on whether fish from the affected areas was safe to eat and the water safe to swim in, threatened the general health of the population and exposed them to unsafe food and water sources.

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. To remedy this situation, the Government provided rice to many citizens, a measure which was insufficient to ensure that citizens had access to an equivalent amount of healthy food as compared to before the toxic discharge.

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*

By failing to inform the population about the cause of the toxic discharge in a timely manner, and by neglecting to provide consistent instructions on the safety of the water and the sea life, the Vietnamese Government contributed to create a climate of fear, confusion and misinformation which worsened the human rights impacts related to the contamination. Moreover, when members of the public and civil society actors sought to share their testimonies, express their views and submit report 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 by the State.

### *Access to remedy*

To this day many victims of the toxic discharge have yet to receive any financial reparation. According to the information received, Viet Nam has largely failed in its obligation to provide its citizens with effective and adequate remedies for the various human rights violations that they suffered. This is particularly concerning given that the deadly impacts of Formosa activities on marine life are still felt to this day.

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.

With regard to the compensation that was negotiated by the Vietnamese Government with Formosa, the 500 million USD appears to be wholly insufficient in repairing the pecuniary harm done to members of the fishing industry, let alone the non-pecuniary rights violations concerning the right to health, right to food, and the right to a clean, healthy and sustainable environment, among others. When divided by the population of the affected regions, the settlement amounts to roughly 130 USD per household, which is markedly inadequate to compensate the human rights abuses and violations experienced by the victims. According to the information received, the compensation package was negotiated secretly and prematurely, before the full extent of the damages could be evaluated, and without properly accounting for the gravity of the toxic discharge. While Formosa was at fault and is fully liable to compensate the Vietnamese population for its actions, the information received alleges that the Government also failed to fulfil its duty to protect human rights, and must provide access to remedy.

Moreover, the entire compensation process has been tainted by a lack of transparency and the limited participation of affected communities, as many individuals have received little information from local authorities on their eligibility or the administrative process involved in making a claim for compensation. In addition, affected communities have described the perceived arbitrariness and bias in the distribution of compensation, which allegedly largely favoured individuals who were active members of the Vietnamese Communist Party. Furthermore, many villages and communities that have experienced the impacts and consequences of the toxic discharge have nevertheless been excluded from Government compensation schemes on the basis that they are not located in the four primarily affected provinces. Certain industries which were indirectly impacted by the toxic discharge, such as salt farming and the tourism sector, have also not been prioritized in the calculation of compensation.

The Government also proposed converting many fishermen to rice farmers as a means of remedying violations to the right to work, but these solutions have been inadequate in practice. Government-sponsored job retraining was not offered to many of the victims, and the prospect of becoming rice farmers forced some individuals to move their families and their lives to regions where the land quality is more suitable for agriculture.

In cases where individuals sought alternative avenues to have their rights enforced or for remedies outside of the state administrative apparatus, for example by filing petitions and complaints to local and governmental authorities (including the National Assembly, the Ministry of Natural Resources and Environment and the Ministry of Public Security), or simply by peacefully demonstrating, they have been either ignored or reportedly punished by the Vietnamese Government. Most notably, a court in Ky Anh rejected a class action lawsuit filed against Formosa in September 2016, while petitioners who tried initiating judicial procedures in the following months were reportedly brutally arrested and prevented from reaching the courts.

As a result, 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 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.

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. We note that Special Rapporteurs have repeatedly engaged on this topic, including for instance the then Special Rapporteur to the right to food on her country visit report to Viet Nam, where she encouraged the Government to be more transparent regarding the mechanism to compensate families for the severe impacts on their livelihoods as a result of the toxic discharge, as there had been large numbers of claims of discriminatory practices (A/HRC/40/56/Add.1). More recently, 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 at the end of his country visit to Viet Nam.<sup>1</sup>

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

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

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 highlight the steps that your company has taken, or is considering to take to fulfil its obligations to respect human rights, including conducting effective human rights due diligence to identify, prevent, mitigate and account for how you address impacts on human rights throughout your operations, as set forth by the UN Guiding Principles on Business and Human Rights (UNGPs).
4. Please provide details on any measures that your company has taken since the incident to respect the right to a clean, healthy and sustainable environment of the populations in the affected provinces.
5. Please provide details on any measures that your company has taken since the incident to respect the rights to food and to health of the populations in the affected provinces.
6. Please provide details on any measures that your company has taken since the incident to respect the right to safe drinking water of the populations in the affected provinces.
7. Please provide details on any measures that your company has taken since the incident to respect the right to work of the populations in the affected provinces.
8. Please indicate what steps your company has taken to ensure the public's right to receive timely and accessible information on the water, food, health and environmental impacts of the Formosa toxic discharge.
9. 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.
10. Please provide any steps that have been taken by company to ensure that the alleged victims have received effective remedy. In particular, please provide information as to whether your company has implemented any measures and mechanisms to ensure the transparency of the compensation process. Please describe any steps taken to monitor and ensure that compensation payments reach their intended recipients, and that estimates of the damage incurred and actual

compensation received by affected communities are consistent.

11. 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 indicate whether your company has consulted with affected populations throughout the compensation process.
12. Please provide information as to whether your company has established process through which affected people can receive compensation payments. If such a process is not in place, please explain why.
13. 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.
14. Please indicate what measures have been taken to ensure that individuals and human rights defenders are able to exercise their right to effective remedy abroad, without fear of threats or acts of intimidation and harassment of any sort.
15. Please indicate the steps that your company has taken, or is considering to take, to ensure that it establishes or participates 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 you 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 company 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 company 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 allegation, including Formosa Plastics Corporation, as well as to the home-States of all involved companies (Viet Nam and China).

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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**

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. 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, 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 caused 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).

Furthermore, we would like to refer to the fundamental norms set out in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, otherwise known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to article 1 of the Declaration, which states that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.

Finally, we would like to draw your attention to the end of mission statement of the Special Rapporteur on the right to development on his visit to Viet Nam. In it, he highlights that Formosa should provide adequate remediation, including compensation, to the thousands of individuals affected by its 2016 toxic discharge.<sup>2</sup>

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<sup>2</sup> <https://www.ohchr.org/sites/default/files/documents/issues/development/sr/20231115-eom-statement-viet-nam-sr-dev-en.pdf>