SR Toxics -- Remarks regarding prevention article 9 @ IGWG 2018

Thank you your Excellency. Excellences, distinguished delegates, friends & colleagues:

Nearly 25 years ago, the mandate I now hold originated from grave human rights violations and abuses of irresponsible businesses. These businesses were illegally disposing of hazardous waste in communities, often times across borders. Impunity was rampant, laws at all levels lax and insufficient, with diseases, disabilities and pre-mature death the result. Today the mandate’s scope has expanded, recognizing that the problem of waste is a symptom of a much broader problem.

Today, we have a more holistic picture of the problem of pollution and toxic chemical exposure through the lifecycle of consumption and production – and the impacts this is having on human rights. Pollution is the single source of premature death in low- and middle-income countries, largely because of globalized supply chains and production processes that have been transferred without adequate diligence for human rights impacts, in particular for workers and local communities.

Exploitation takes many forms. As I described in my report to the Human Rights Council last month, a particularly vicious form of exploitation is the exposure to toxic substances. The impacts are cruel, ranging from the pains of cancer, to the suffocating torture respiratory diseases, to the torture of watching one’s own children suffer physical and mental health impacts. For most victims, there is no semblance of an effective remedy. In my view, remedy is only truly effective if it prevents recurrence.

Solutions exist to make tremendous advancements in reducing the burden of disease through the prevention of exposure. Sadly, States are failing to compel businesses to adopt safer alternatives, instead enabling companies to exploit the most vulnerable, such as women, and children, particularly those living in poverty, to the cruelty of unnecessary and unjustifiable exposures to toxics and the suffering that it brings.

With this perspective in mind, I am grateful for the opportunity to offer a few comments on the zero draft.

**1. States should compel all businesses in their territory or jurisdiction to actively monitor, identify and prevent human rights violations.**

The draft’s proposal to create mandatory due diligence requirements is very much welcome. Although seemingly obvious, this is not sufficiently being done in a number of industries. For example, during my missions to Germany, the United Kingdom and Denmark, I have had the opportunity to speak with numerous chemical companies about their policies and practices. I encountered only one chemical company conducting human rights due diligence.

Various industry-wide initiatives across a number of industries and sectors are presented to me as being the equivalent to human rights due diligence. However, by and large, these initiatives follow neither the letter of the Guiding Principles on Business and Human Rights, nor the sprit of human rights in general. It is of utmost importance that States compel businesses to conduct human rights due diligence and I believe this draft takes important steps in that direction.

**2. HR due diligence must be traceable throughout supply and value chains.**

I am concerned that the scope of application is constructed such that we will continue to remain blind to human rights abuses at various levels of supply chains. The lack of traceability in supply chains is enabling the exploitation of workers and local communities who are poisoned by toxic chemicals, pesticides and pollution. Harmful exposures and human rights abuses continue to be buried deeper and deeper in complex supply chains and contractual relationships with small and medium sized enterprises.

[Exposure to hazardous substances, and the abuse of human rights, happens throughout the lifecycle of consumption and production, requiring a broad scope of application of the article on prevention to create a virtuous chain of due diligence throughout supply and value chains.

However, the limitations placed on the scope of monitoring, identification, prevention, as well as environmental and human rights impact reporting, seem to leave the potential for human rights abuses to persist in supply chains. ]

**3. Due diligence should be transparent**

It is essential that due diligence is transparent. Transparency about toxic chemicals in products and production processes has been the key to advancing change in most instances where companies have transitioned away from carcinogens, chemicals that alter hormone systems and impact fertility and brain development. The intent of the language is section “d” is very much welcome.

However, I am concerned that it does not go far enough to ensure transparency. I believe businesses could and likely would hide information relevant to environmental and human rights impacts behind claims of secrecy under these provisions.

[For example, it is unclear how severity would be assessed – say for example of exposure of workers or consumers to chemicals untested for safety, which is the vast majority today. It is very unclear who would assess claims of confidentiality and how the decisions would be scrutinized to ensure only information is withheld only under justified circumstances, in particular with respect to environmental health risks.]

**4. Due diligence should explicitly include actual and potential exposures to hazardous substances.**

Despite a global declaration in 2006 recognizing the links between human rights and toxics, there is still a considerable challenge in including exposures to hazardous substances that have direct bearing on rights to life, health, bodily integrity, safe water, healthy food, adequate housing, as well as the rights of the child and other vulnerable groups, in the discourse of businesses on human rights.

As mentioned earlier, only one of the many companies I met in the chemical industry is conducting human rights due diligence. If you look downstream to the users of toxic chemicals produced by these industries, such as many tobacco and palm oil producers, you will also find very superficial attention given to the risks of pesticides to workers or communities within their human rights due diligence.

The due diligence applied under this treaty may not adequately address crosscutting thematic human rights issues such as the insidious threat posed by hazardous substances and wastes to human rights. The section may wish to highlight some key issues that should be included in the due diligence requirements, such as the exposure of communities and workers to hazardous substances.

[Unfortunately, much of the exposure that is resulting in serious violations and abuses of human rights is considered legal. This is not because it is right or justified, but simply because the pace of innovation is far beyond the speed at which states can, or are willing to, regulate new products and processes that result in pollution and environmental impacts.]

Thank you.

NOTES:

**Scope**

The provisions also do not seem to adequately cover suppliers, such as those to companies in electronics and textiles sectors whose products are made with toxic products that again poison workers and their families. For these and other sectors, the most significant risks to workers and local communities may be buried deep within supply chains, including the activities of small and medium enterprises, which could be exempted. Also, subsection (e) seems unnecessarily limited to those under direct control.

For example, how much leverage must one entity has over another to amount to indirect control?

The network or chain of due diligence that is intended should be broad enough to include cover the full-lifecycle of consumption and production, from cradle-to-grave. Businesses should be responsible for their inputs and their outputs. However, as I read the provisions of the draft, the due diligence may not extend throughout the lifecycle of products that are linked to human rights impacts. For example, due diligence may not extend from to the end use of toxic chemical products, such as the hazardous pesticides currently used by poorly equipped, trained and monitored farmers which poison themselves and their communities.

Perhaps include language on the lifecycle approach to business activities

**Transparency**

[“The requirement to disclose [non-financial matters] should be subject to an assessment of the severity of the potential impacts on the individuals and communities concerned, not to a consideration of their materiality to the financial interests of the business or its shareholders.”].

**Language on toxics**

Compliance with applicable environmental and occupational laws is not enough to protect workers or their communities from being poisoned. This is particularly true when we are talking about the transnational activities, where lower standards are used as an incentive for economic growth.