STUDY

LABOUR AND SOCIAL JUSTICE

EXPLOITATION BY EXPOSURE

How Toxic Substances Poison Workers' Rights

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Chronic exposure to toxic substances at the workplace represents a particularly vicious form of exploitation of workers. Over two million workers die every year from occupational diseases, of which nearly one million are due to toxic exposures alone.

Solutions to end this abuse of workers' rights are available, should States choose to compel businesses to adopt them.

To this end, the UN Human Rights Council's mandate on human rights and hazardous substances and wastes has developed 15 principles to help States, business enterprises and other stakeholders better protect workers whose rights are infringed by occupational exposures to toxic and otherwise hazardous substances.

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Contents

I

INTRODUCTION*

Everyone has the right to just and favourable conditions of work. Every worker has a right to dignity, to be treated ethically, with respect and without being subjected to conditions of work that are dehumanizing or degrading. States have undertaken an ambitious goal under the Sustainable Development Goals: to ensure decent work for all by 2030.

Despite clear obligations relating to the protection of workers' health, workers around the world find themselves in the midst of a public health crisis due to their exposures to hazardous substances at work.

It is estimated that one worker dies every 30 seconds from toxic exposures at work, while over 2,780,000 workers die globally from unsafe or unhealthy conditions of work each year. Occupational diseases – those contracted primarily as a result of an exposure to risk factors arising from work activity, including chronic exposure to toxic industrial chemicals, pesticides or other agricultural chemicals, radiation and dust, among other hazards – account for 2.4 million (over 86 per cent) of total premature deaths. Approximately 160 million cases of occupational disease are reported annually.[1]

The diseases and disabilities that result from exposure to toxic substances are cruel. They include the excruciating pains of cancer, the suffocating torture of respiratory diseases, and the psychological torment of parents watching the impacts of their own occupational exposures materialize in their children. Furthering the suffering of victims is the outrageous behavior of certain States and businesses that go to unimaginable lengths to deny impacts on health, set permissible exposure levels that cause health impacts in workers, or go as far as blaming the victims themselves for the misuse of toxic substances, even when labeled in foreign languages or symbols.

While the World Health Organization (WHO), the International Labour Organization (ILO) and others have called for action on this public health crisis for decades, the global problem of workers' exposure to hazardous substances remains poorly addressed. Inaction by States and businesses on this global public health crisis is estimated to cost nearly 4 per cent of global gross domestic product, or almost $3 trillion. Virtually every sector is implicated in this public health crisis, including both public and private sectors and the world's most economically powerful industries. Many of these industries have — by their own design — vast and opaque supply chains, including links to the informal economy.

In this context, it is essential to improve the integration of human rights into occupational safety and health discussions at the national and international levels. The importance of the issue has been largely forgotten and deprioritized in relevant international forums, resulting in a lack of global progress in confronting the growing concern.

This study provides a summary of the impacts on workers and their communities. It presents the human rights of workers that are implicated by chronic exposures to toxic substances at work and describes many of the challenges that have led to the crisis of basic human rights facing workers around the world today. The report then presents the 15 principles developed by the UN mandate on human rights and hazardous substances and wastes to better protect workers from toxic exposures at work.

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1 For citations to the facts, figures and other information provided in this study, please consult the 2018 report of the UN Special Rapporteur on the human rights implications of hazardous substances and wastes to the Human Rights Council (A/HRC/39/48 and corr.1), available in six languages here: http://www.srtoxics.org/resources/thematic-reports/workers-rights-and-toxic-exposures-hrc-2018/ . The principles contained herein will be presented to the UN Human Rights Council in September 2019 by the Special Rapporteur.

II

THE IMPACT OF EXPOSURE TO TOXIC SUBSTANCES ON THE HEALTH OF WORKERS

The impact of exposure to toxic and otherwise hazardous substances on the health of workers is profound. Cancers account for over 70 per cent of occupational diseases globally and are estimated to cause the deaths of at least 315,000 persons annually; 5.3–8.4 per cent of all cancers, and 17–29 per cent of deaths from lung cancer among men, are attributed to occupational exposure to toxic substances. Almost all such cancers can be prevented. More than 200 different known factors, including toxic chemicals and radiation, have been identified to date as known or probable human carcinogens, and workers are exposed to many of these in the course of their jobs.

Debilitating and fatal lung diseases, neurological disabilities and reproductive impairments such as infertility and inability to carry a pregnancy to term are among various other health impacts that plague workers exposed to toxic substances. Occupational exposures result in 12 per cent of deaths from chronic obstructive pulmonary disease and it is estimated that an additional 29,000 deaths are due to the occupational diseases silicosis, asbestosis and pneumoconiosis.

Due to differences in social roles, including occupational and household roles, women and men are exposed differently to toxic chemicals with respect to, among other things, the substances encountered and the degree of exposure. Biological differences between men and women, such as physiological and hormonal differences, create differing susceptibilities to the effects of exposure. For example, women are more likely to store higher levels of environmental pollutants in their adipose tissues than men. During pregnancy, lactation and menopause, women's bodies undergo changes that may increase their susceptibility to health impacts from toxic exposures.

Of particular concern is the exposure to toxic chemicals of workers who are women of reproductive age. Protecting only pregnant women from exposure is insufficient because a developing fetus can be harmed by exposures that preceded knowledge of the pregnancy. Adverse health effects, especially in expectant mothers and the fetus but also for the workforce at large, occur even at extremely low levels of exposure. As evidence of adverse effects accumulates, »safe« levels of exposure are continually revised downward and children continue to be born with a host of adverse health outcomes due, in particular, to the exposure of their mothers to toxic chemicals during pregnancy.

Furthermore, official statistics are likely to underestimate the extent of problems arising from exposure to toxic and otherwise hazardous substances. For example, incidences of exposure are grossly underreported in some contexts and countries. As official incidence rates are based on reported data, an advanced country such as Finland may show a higher incidence of occupational disease than a country such as India, merely because of the former country's greater ability to diagnose and identify occupational exposure as the source of a disease. Furthermore, some countries have no legal definition or reference list of occupational diseases to facilitate reporting the incidence of diseases and deaths from specific causes. Major occupational diseases such as chronic obstructive pulmonary disease may not be well recognized and tend to be underdiagnosed. Moreover, and importantly, self-employed workers, subsistence farmers and workers in the informal economy are rarely captured in national statistics. The informal workforce comprises a large portion of the global workforce and accounts for the majority of workers in certain countries, the largest and most populous of which are in less-developed regions. As many countries have inadequate capacity to collect information on causes of death, information on the disease and death patterns must be estimated.

III

HUMAN RIGHTS OF WORKERS AND EXPOSURE TO TOXIC SUBSTANCES

Workers' rights are human rights, and human rights are workers' rights. These rights are interrelated, indivisible and universal. They include civil, political, economic, social and cultural rights. No one can be deprived of these human rights because of the work they perform.

Workers are especially vulnerable to the violation and abuse of their human rights, not the least of which is from being subjected to exposure to toxic substances in the course of their work. The harms of chronic exposures are often invisible, and it may be years or even decades until adverse health impacts become manifest in workers or their children. Prevention of exposure to toxic substances is essential to protect human rights, including the rights of workers.

A. RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS

The right to just and favourable working conditions, enshrined in the Universal Declaration of Human Rights (art. 23) and again in the International Covenant on Economic, Social and Cultural Rights (art. 7), includes the right to safe and healthy working conditions. By separately stipulating the right of workers to safe and healthy working conditions, the Covenant recognizes and emphasizes the vulnerability of workers to violations and abuses of their rights. This vulnerability heightens the obligations of States and other parties to prevent institutionalized exploitation of workers due to hazardous work.

The right to safe and healthy work is a right in itself; however, it also encompasses many other interrelated and interdependent human rights of workers. Everyone, including workers in both formal and informal settings, has the inherent right to life (International Covenant on Civil and Political Rights [ICCPR], art. 6) and the right to enjoy the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights, art. 12). States have a clear obligation to adopt preventive measures to protect both the right to life and the right to health, including provisions for »healthy working conditions«. The Committee on Economic, Social and Cultural Rights further clarifies that States have a duty to improve all aspects of industrial hygiene. This includes preventive measures in respect of occupational accidents and diseases and the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals that directly or indirectly impact upon human health.

In addition, everyone, including workers, has the right to physical integrity of their body. This right encompasses the right of each human being to autonomy and self-determination over their own body, including over the entry of unwanted, toxic substances into their body, whether from occupational or other sources. Acute poisonings and other cases of extreme exposure to toxic substances present unquestionable violations of the right of workers to physical integrity, subjecting them to violent, cruel, inhuman and degrading forms of treatment. However, this right also extends to longer-term exposure to toxic substances, which can also give rise to violent, cruel, inhuman and degrading outcomes.

Furthermore, workers have a right not to be subjected to scientific experimentation without their consent (ICCPR, art. 7). The exposure of workers to substances without sufficient information about whether they can cause cancer or harm a developing fetus when such information can be made available and accessible raises concerns that workers have been and continue to be subjected to a form of human experimentation. This right illustrates the importance of the right to information to enable the realization of the human rights of workers.

Under the rubric of the right to safe and healthy working conditions, the exposure of workers to toxic substances without their prior informed consent, with the real possibility of refusing to perform the hazardous activity, should be recognized as a violation and abuse of their rights. This is an essential part of the right of every worker to be protected from unsafe and unhealthy working conditions. Every worker has an inherent right not to be exposed to toxic substances without their prior informed consent. This right is at the crux of the right to physical integrity, the right to information and the right not to be subjected to scientific experimentation without consent.

The ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) recognizes the right of workers to safe and healthy working conditions, although

the ILO does not include this right as a »fundamental right at work«. The ILO implicitly recognizes the right of workers not to be exposed without their prior informed consent through recognition of the worker's »right to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health«. The ILO has issued relevant recommendations to States, e. g. to put in place national policies, systems and programmes to prevent occupational injuries, diseases and death for the protection of all workers, in particular, workers in high-risk sectors, and vulnerable workers such as those in the informal economy and migrant and young workers.

B. RIGHTS TO INFORMATION, PARTICIPATION AND ASSOCIATION

Everyone, including workers, has the inalienable rights to freedom of expression, assembly and association, including the freedom to join and form trade unions, and the right to information (UDHR, art. 24; ICCPR, arts. 19, 22 and 25; International Convention on the Rights of All Migrant Workers and Members of Their Families, art. 26).

The right to information is the foundation for the realization of all workers' rights regarding toxic exposures. Workers have the right to know, inter alia, the implications of exposure, the action being taken to prevent exposure and their rights in relation to such exposure.

Public frameworks for collecting, measuring, monitoring, reporting and verifying information on hazards and exposure levels are necessary for evaluating and analysing health implications and accountability. Maintaining disaggregated, accurate and complete information is necessary to understand specific events and for accurate knowledge of the impact of particular actions on various workers as well as on other exposed groups including children, women of reproductive age, migrant workers and their families, older persons and persons with disabilities.

The ILO recognizes several aspects of workers' (and their representatives') right to know in its conventions, as well as of the duties of States and the responsibilities of employers' businesses, including chemical suppliers. For example, concerned workers and their representatives have the right to »information on the identity of chemicals used at work, the hazardous properties of such chemicals, precautionary measures, education and training«. However, while the Chemicals Convention calls for the classification of chemicals according to their potential health hazard (art. 6), it requires suppliers merely to assess the properties of these substances »on the basis of a search of available information« (art. 9 (3)), i. e., the Convention does not require them to conduct tests to generate missing information relevant for such classification.

All health and safety information held by public bodies and business enterprises should be subject to disclosure, unless it falls within a narrow set of public-interest limitations such as the protection of privacy or public health. It is never legitimate for States or businesses to refuse to disclose health and safety information on the ground that it is confidential, particularly on the ground that it would adversely affect profits or competitiveness. To this end, international agreements on toxic chemicals, such as the Stockholm Convention on Persistent Organic Pollutants and the Minamata Convention on Mercury, have repeatedly stipulated that health and safety information about toxic substances shall not be regarded as confidential.

Workers defending their right to safe and healthy work, among other rights, find strength in numbers. Strong protections for the right to organize, including the formation of unions, the right to freedom of association and the right to collective bargaining, have proven effective in strengthening protections for workers from exposure to toxic substances as well as other risks. ILO conventions provide for these rights, which the ILO considers to be fundamental rights at work.

C. RIGHTS OF WORKERS AT HEIGHTENED RISK

Workers, like all human beings, are born free and equal in their rights (UDHR, art.1). Often, it is persons living in situations that marginalize them and render them vulnerable to violations of their rights who are harmed by exposure to toxic substances. Yet everyone has the right to protection from discrimination and equal treatment before the law. No worker, or worker's child, should bear the burden of occupational disease or disability that can follow from discrimination on the grounds of age, income, race, religion, gender, country of origin, intelligence, political views or other distinction.

1. RIGHTS OF THE CHILD AND WOMEN

Every child has the right to be free from the worst forms of child labour. Work where children use or are otherwise exposed to pesticides, toxic industrial chemicals, metals or other hazardous substances constitutes one of the worst forms of child labour. The Convention on the Rights of the Child recognizes the right of the child to be protected from performing any work that is likely to be hazardous or to be harmful to the child's health or physical development (art. 32). The Worst Forms of Child Labour Convention, 1999 (No. 182) identifies as the worst forms of child labour »work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children« (art. 3). Exposing children to toxic substances at work is indefensible.

Safeguarding reproductive health from hazardous working conditions is a core obligation of States in the elimination of discrimination against women in employment (Convention on the Elimination of All Forms of Discrimination

against Women [CEDAW], art. 11 (1) (f)). Women workers have a right to special protection during all periods that pose reproductive risks to them (CEDAW, art. 11 (2) (d)) as well as to their offspring, which requires protection from work that exposes them or their fetus to toxic chemicals.

At the same time, women should not be deprived of equal opportunities for employment or income. Of particular concern is that women workers are exposed to toxic substances at work before and during the earliest stages of pregnancy, even before they may know they are pregnant. This reality requires special care on the part of States and businesses to protect women's reproductive health by preventing their exposure to toxic substances without limiting employment in a discriminatory fashion. The best means of doing so is by eliminating toxic substances at work.

2. RIGHTS OF MIGRANT WORKERS AND WORKERS WITH DISABILITIES

The prohibition against racial discrimination applies in all its forms. Race or ethnicity should likewise not be a prohibiting factor in the realization by workers of the right to safe and healthy working conditions (International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (i). Migrant workers, whether documented or undocumented, have a right to equality and to enjoy equal treatment to nationals regarding safety and health and other conditions of work (International Convention on the Rights of All Migrant Workers and Members of Their Families, art. 25 (1) (a)). Persons with disabilities have the right, on an equal basis with others, to safe and healthy working conditions and related human rights (Convention on the Rights of Persons with Disabilities, art. 27)

D. RIGHT TO AN EFFECTIVE REMEDY

Accountability is a fundamental principle of human rights. States and other duty bearers must be answerable to workers, among other rights holders, for observing human rights obligations. The right to an effective remedy is inseparable from the right to information, as effective remedies for exposure to toxic substances depend on the availability and accessibility of certain information regarding such substances and working conditions.

All workers who are victims of infringement or violations of their rights have the right of access to an effective remedy (ICCPR, art. 2 (3) (a), Guiding Principles on Business and Human Rights: Implementing the United Nations »Protect, Respect and Remedy« Framework). Effective remedies for violations of workers' rights due to exposure to toxic substances include the right of victims to prompt restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as bringing to justice the perpetrators of rights violations. The prevention of future exposures is a key element of an effective remedy in this regard.

Every rights holder is entitled to initiate proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. States must ensure timely access to effective remedies to victims of violations occurring from exposure to hazardous chemicals. In various circumstances, States have shifted the burden of proof to the employer or other beneficiary of services. In other cases, judicial and non-judicial mechanisms have lessened the burden of proof on workers to help ensure access to remedies.

IV

CHALLENGES TO THE RIGHTS OF WORKERS AFFECTED BY TOXIC EXPOSURE

A. INADEQUATE STANDARDS OF PROTECTION

Laws and policies for occupational health are often not health protective. They continue to permit workers to be exposed to toxic substances at levels that are hundreds if not thousands of times higher than for non-workers in the same jurisdiction. Risk assessments are often based on incomplete knowledge or false assumptions, resulting in misleading assurances of safety and widespread impacts on workers' health. Processes for improving standards of protection from exposure continue to be deliberately delayed for years if not decades, resulting in countless premature deaths.

B. LIMITED PROGRESS IN PREVENTING EXPOSURE

The most effective means to prevent exposure of workers to toxic substances is to eliminate such substances from the workplace. This is reflected in the good practice known as the hierarchy of hazard controls, or »inherently safer design«, encouraged by the ILO and national bodies concerned with occupational safety and health. In descending order of effectiveness in terms of preventing exposure, elimination is followed by risk mitigation options such as substitution with less hazardous substances and materials, engineering controls, administrative controls and the use of personal protective equipment.

Although examples of its application exist, this approach is only practised to a very limited extent. Requiring the adoption of the hierarchy of controls as an international standard would level the playing field by harmonizing upwards. However, business actors continue to stifle global progress by insisting that applying the hierarchy will reduce competitiveness. Workers continue to be exposed to toxic substances, including toxic industrial chemicals and highly hazardous pesticides, when demonstrably less dangerous alternatives exist. An egregious example of an industry that continues to externalize impacts on poor workers and communities in developing countries by failing to apply the hierarchy is the shipping industry and its practice of shipbreaking.

Business enterprises can develop and adopt alternatives that reduce harm to human health and the environmental impact of their operations and business relationships. Some have done so. However, many enterprises have outsourced and/or buried the problem of toxic exposure further down their global supply chains, enabling them to continue business as usual instead of adopting measures to respect workers' rights affected by toxic work, despite increasing expectations that business enterprises should prevent exposure to toxics as part of their human rights due diligence.

C. MONITORING AND ENFORCEMENT GAPS

To ensure they are not turning a blind eye to the exploitation of workers, States must monitor working conditions, including routine monitoring of exposures, and enforce laws for the protection of workers' rights. However, the vast majority of States do not adequately perform their duties related to monitoring, oversight, protection or redress for workers whose rights are abused by their exposure to toxic substances in their jurisdiction. The systematic decline in funding for institutions responsible for monitoring presents significant and enormous difficulties for States in monitoring the large number of workplaces in their jurisdiction, and challenges persist in relation to the collection of statistical information, particularly with respect to the informal sector. In most countries, recording and notification of occupational accidents and, in particular, diseases is poorly done, not harmonized and significantly underreported.

D. INFORMAL ECONOMY

National policies and programmes to promote safe and healthy working conditions should aim not only at the formal but also at the informal economy. In many developing countries, the number of those formally employed is small compared to those who work in the informal sector. Those working in the informal sector are usually not captured in statistics regarding the impacts of hazardous substances on workers.

E. DELIBERATE EFFORTS TO DELAY OR OBSTRUCT PROTECTION FROM EXPOSURE TO TOXIC SUBSTANCES

For economic gain, business enterprises have sought to delay the adoption of protective laws and regulations through targeted campaigns to distort science and to exploit the financial insecurity of workers through the threat of job losses. These campaigns have in essence sought to undermine the rights of workers by threatening job losses and competitive disadvantages that exploit and capitalize on the economic fear of workers. Workers continue to fear pay cuts or termination if they refuse or remove themselves from work that exposes them to toxic substances.

Furthermore, business enterprises continue to distort evidence of intrinsic hazards, harmful exposure and other risk factors for various types of toxic chemicals (e. g. carcinogens). Business enterprises and their agents have engaged in targeted marketing campaigns to manufacture doubt and uncertainty regarding results of scientific studies that illustrate the risks and impacts upon the health of workers.

Efforts by business enterprises to hinder adoption of health-protective laws, exposure standards and improved practices illustrate the contempt of certain business enterprises for their responsibility to prevent workers' exposure to toxics. It goes beyond disrespect, seeking to perpetuate the exploitation of inequalities within and between societies.

F. OPAQUE SUPPLY CHAINS AND TRANSFER OF HAZARDOUS WORK

While recognizing the societal benefits that can accompany the international transfer of beneficial technologies, the transfer of toxic work from countries with more advanced systems to countries with lower standards of worker protection continues to be a major problem. For example, chemical-intensive manufacturing and processing activities once largely located in the highly industrialized countries are now steadily expanding into developing countries and countries with economies in transition through the globalization of supply chains.

The international transfer of dangerous and dirty work, whether extraction of natural resources, use of toxic chemicals and pesticides or disposal of hazardous wastes without appropriate measures to protect workers against exposures to toxic substances, has left workers and their communities at considerable risk of grave impacts on their human rights. The lack of transparency throughout supply chains adds fuel to the problem and obstructs efforts by various stakeholders to improve occupational health.

G. DISCONNECTED EFFORTS ON OCCUPATIONAL AND ENVIRONMENTAL HEALTH

A toxic workplace generally leads to a toxic environment. For example, air pollutants affect the health of workers directly exposed but also the health of their children and broader communities. Workers engaged in highly toxic livelihoods such as artisanal mining, waste disposal and a range of manufacturing (such as textiles) and agricultural activities often work very close to their homes and communities, sometimes accompanied or helped by their children. However, potential synergies that could result from stronger linkages between labour and environmental health are frequently unrealized.

H. FAILURES TO REALIZE THE RIGHT TO INFORMATION

Information gaps create a fundamental impediment to respecting, protecting and fulfilling several human rights that are otherwise abused or violated by the exposure of workers to toxic chemicals.

At the most fundamental level, comprehensive information regarding the intrinsic health hazards of the vast majority of industrial chemicals continues to be absent, including their ability to cause cancer, to be mutagenic or to be toxic for reproduction. Further, the form and content of information communicated to workers regarding health risks remain a considerable challenge. The absence of or inappropriately communicated information is tantamount to deception, and deception of workers is a category of exploitation, which can constitute forced or compulsory labour.

Although risk assessments have helped to identify and restrict the use of substances that pose risks to workers, there are limitations, including the difficulty of predicting workers' exposure levels; the fact that the health hazards are known for a minority of substances and the lack of information about the hazards of tens of thousands of substances; and that little is known about the impacts of exposures to combined hazardous substances, intermediate substances in production processes and the products of the decay of substances over time under different conditions.

A persistent challenge to realizing the right to information in the context of toxic chemicals are claims of confidentiality or secrecy. Illegitimate claims of confidential business information or trade secrecy regarding toxic substances and possible exposures can deprive workers of their human rights, including to safe and healthy working conditions and access to remedies. Such claims involving health and safety information can mask problems and thereby stifle innovative research on products and processes to improve occupational health, while promoting a sense of impunity that can become contagious among business enterprises that continue to exploit and abuse workers by exposing them to toxic substances, and justify deriving benefits from doing so.

It is of great importance that health-related information be collected, processed and used in a well-controlled system

that protects the privacy of workers and ensures that health surveillance is not utilized for discriminatory purposes or used in any other manner prejudicial to their interests. But it is of equal importance that workers have access to their own medical records.

I. LIMITED IMPLEMENTATION OF INTERNATIONAL LABOUR ORGANIZATION INSTRUMENTS

Concerns exist that relevant ILO standards for the protection of the human rights of workers are not adequately implemented and others are outdated. An independent assessment commissioned by the ILO of its own organizational challenges attributed this to, inter alia, limited or non-existent collaboration of units and limited financial resources devoted to occupational safety and health-related activities.

The low levels of ratifications of ILO instruments on occupational safety and health may be another factor, although they may in some cases be useful models for national standards. Yet another may be the regrettable exclusion of the right to safe and healthy work as a »fundamental right at work« by the ILO Governing Body.

J. RESTRAINED FREEDOM OF ASSOCIATION

Challenges persist in realizing what ILO does consider to be fundamental rights at work, namely the rights to freedom of association, to organize and to collective bargaining. Certain categories of workers are denied the right of association in some countries. Workers' and employers' organizations are illegally suspended or interfered with, and in some extreme cases trade unionists are arrested or killed. The inability to exercise these rights, together with restraints on freedom of expression, hinder the ability of workers to defend their rights from abuses linked to toxic exposures, individually and collectively.

K. INACCESSIBLE REMEDIES, JUSTICE AND ACCOUNTABILITY

Studies suggest that only the smallest fraction of workers harmed by exposure to hazardous substances are able to access remedies. Major obstacles to accountability include the unreasonably high burden of proof, the long latency periods for consequences to manifest in some cases and the difficulty in establishing causation; substantial information gaps with respect to the identification of hazards, measurement of exposure and specification of the epidemiological impacts; possible exposure to a multitude of different substances in various occupational settings and over a working lifetime; and the provisions of contractual relationships between suppliers and purchasers which can shift responsibility up or down a supply chain.

The types of information required and the responsibility for proving the cause of harms suffered are often common denominators in cases where workers struggle to access effective remedies. Workers often lack the necessary knowledge and resources to enable them to establish the necessary elements for accessing remedies. First, it is not uncommon for them not to know to which substances they were exposed. Second, substances to which they were exposed may not have been studied for their ability to cause disease or disability in humans; adequate information, and even a minimal amount of health and safety data, is lacking for tens of thousands of potentially hazardous industrial chemicals. Third, when allegations of exposure to hazardous substances are made, objective evidence of the extent of, or even the existence of, exposure, is rarely available, although it should be the responsibility of the employer to track and maintain such data, and the failure to do so is used to justify the unacceptable denial of remedies to sick and impaired workers. Finally, workers often move between employers and industries, which can subject them to diverse hazardous exposures. The personal behaviour of workers, such as tobacco or alcohol use, may be invoked to further complicate the determination of causation.

V

EXPLOITATION OF THOSE MOST AT RISK

Multiple factors such as social status, education, age, gender, country of origin, ethnicity or disability can exacerbate the risks of exposure to toxics. Prevention and response to exposure must take into account these specific vulnerabilities to be effective.

Those most at risk of exposure are those who are most vulnerable to exploitation: the poor, children and women, migrant workers, people with disabilities and older persons. They are often prone to abuse of a myriad of human rights, they are forced to make the abhorrent choice between their health and income and their plight is invisible to most consumers and policymakers with the power to enable a just transition.

A. POVERTY

Poverty is common among most workers whose rights are abused by their exposure to toxic chemicals. The disparity of exposure between low- and high-income workers is visible both within and between countries.

Very often low-income workers have lower educational levels that drive them to accept occupations that expose them to toxic chemicals, limit their access to information and knowledge and prevent them from being able to defend their rights. The impacts of occupational exposure of low-income workers to toxic substances are more likely to be attributed to other, non-work exposures that are higher in poorer communities such as air, water and food contamination, or to lifestyle choices such as unhealthy diets and tobacco and other harmful substance use.

The economic insecurity of workers who are typically exposed to toxic substances is often exploited. The fear of job losses is often used to dissuade workers, regulators and politicians from improving protection of workers from exposure to toxic substances.

B. WOMEN WORKERS

Women comprise a significant proportion of workers in certain occupations and sectors, such as manufacturing and agriculture, as well as services and informal work, that carry a higher risk of toxic exposures. Gender-specific impacts are reported. Increasing evidence points to an association between breast cancer and occupational exposures to various pesticides, industrial chemicals and metals. There are multiple examples of increased risk of miscarriages in the manufacture of electronics. Women of reproductive age are often tasked with the use of toxic heavy metals such as mercury in artisanal gold mining, placing both themselves and future children at grave risk of health impacts.

C. CHILD LABOUR

Children continue to be engaged in one of the worst forms of child labour where they use or are exposed to toxic substances at work. For various reasons, children are far more likely to be exposed to toxic substances and are more sensitive to such exposures than adults, and thus far more likely to suffer occupational diseases as a result.

An estimated 73 million children work in mines, agricultural fields and factories, where most are likely to be exposed to various toxic substances. About 60 per cent of child labourers work in agriculture, including where pesticides are used. Children are also known to work with mercury in artisanal and small-scale gold mines in up to 70 countries globally, with some developing symptoms consistent with mercury poisoning. Hazardous exposure of children is present at various stages of a consumer product's lifecycle. In electronics, tens of thousands of children mine a toxic ingredient of batteries (cobalt) at the front end of the lifecycle and also work at the tail end, where they are exposed to various toxic substances by recovering electronic waste.

D. MIGRANT AND TEMPORARY WORKERS

Migrant workers experience a substantial risk of occupational safety and health hazards for a number of reasons, including lack of training, language barriers, discrimination and restrictions on changing employers. Many migrant workers have jobs that are dirty, dangerous and demanding, and consequently face high risks of work-related accidents and disease. Irregular or undocumented migrant workers are at extreme risk of exploitation by employers

who seek to reap the benefits of unfair competition. Clandestine movements, trafficking of persons and modern slavery can coincide with the exposure of migrant workers to toxic substances.

Temporary, including seasonal, workers often do not enjoy the same safety and health protection as that accorded to permanent or resident workers. Temporary workers are at greatly increased risk of occupational injury and illness. They may begin work at a new workplace many times a year and, as new workers, they generally have less information about the hazards they face. Employers often have less commitment to providing education or making investments to protect temporary workers. Government guidance and inspection on safety and health may be limited.

E. WORKERS WITH DISABILITIES

A worker with a disability may face additional risks or may be more susceptible to the consequences of exposure to toxic substances. Workers with disabilities tend to be employed in low-skilled jobs, on non-standard contracts such as part-time work or on temporary contracts.

F. OLDER WORKERS

Older persons also face exposure to toxic substances at work. In general, ageing is associated with a decline in cognitive functions, health and recuperative ability, including decreased aerobic capacity, lower heat tolerance, reduced muscular strength and a decline in visual and hearing acuity. Any risks to which ageing workers are exposed because of their occupation will be superimposed on their existing health problems or will amplify the natural deterioration of their sensory and physical capacities. Regrettably, impacts of occupational exposure on the health of older workers are often attributed entirely to ageing, not to the exposure itself. Alcohol use may be invoked to further complicate the determination of causation.

VI

PRINCIPLES ON THE RIGHTS OF WORKERS AND PROTECTION FROM EXPOSURE TO TOXIC AND OTHERWISE HAZARDOUS SUBSTANCES

The UN Human Rights Council's mandate on human rights and hazardous substances and wastes developed 15 principles to help States, business enterprises and other stakeholders better protect the human rights of workers infringed by occupational exposures to toxic and otherwise hazardous substances. Detailed further below, these principles are grounded in international human rights law and build upon the UN Guiding Principles on Business and Human Rights, ILO instruments and international agreements on toxic chemicals and wastes, among others. The report containing these principles and final commentary will be presented to the UN Human Rights Council in September of 2019 and available on the website of the mandate.

A. PRINCIPLES ON DUTIES AND RESPONSIBILITIES TO PREVENT EXPOSURE

1. States have a duty and business enterprises a responsibility to respect, protect and fulfil the rights of workers; consumers, the military, investors and others also have responsibilities that must be considered.

PRINCIPLE 1 — EVERYONE MUST BE PROTECTED FROM TOXIC EXPOSURES AT WORK.

2. Everyone has the right to just and favourable conditions of work,[2] including the right to be protected from toxic exposures at work, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Protection of all workers, especially those most vulnerable or at risk – children, women of reproductive age, migrant workers and their families, older persons and persons with disabilities – is essential for the realization of the rights of all workers to safe and healthy working conditions.

3. Exposing workers above levels determined to be safe under health-based evidentiary standards is an abuse of the human rights of workers. Such exposure poses a threat to the rights to life and health, and cases of workers across the world have demonstrated widespread violations of the rights to information, participation and association, and the right to an effective remedy (A/HRC/39/48). States must do everything in their power to protect – and to ensure that businesses respect – these rights, translating evidence of potential impacts to action, and applying the principle of precaution despite scientific uncertainty (A/HRC/36/41).

4. Exposing workers to substances that do not have a determination of a health-based safe level of exposure is an abuse of their rights. At the most fundamental level, comprehensive information regarding the intrinsic health hazards of the vast majority of industrial chemicals continues to be absent, including their ability to cause cancer, to be mutagenic or to be toxic for reproduction (A/HRC/30/40). Continued exposure of workers to such chemicals not only constitutes a challenge to the rights of these workers to information, but may also amount to exploitation by deception (A/HRC/39/48). Without such information about toxic exposures at work, this further limits the rights of workers to realize other related rights.

5. Where exposure is considered unavoidable, for example in the case of an exigent circumstances or other public interest necessity, the principles of justification and optimization of protection should apply.[3] Workers have the right to remove themselves from situations where they are exposed to toxic chemicals and other hazardous substances that they have a reasonable justification to believe present a danger.

PRINCIPLE 2 — STATES HAVE A DUTY TO PROTECT THE HUMAN RIGHTS OF ALL WORKERS THROUGH THE PREVENTION OF EXPOSURE TO TOXIC SUBSTANCES.

6. States must do everything in their power to protect all workers from occupational exposures to toxic substances in their territory and/or jurisdiction. This duty exists

2 Universal Declaration of Human Rights, art. 23.

3 The 2007 Recommendations of the International Commission on Radiological Protection (ICRP) Publication 103 p 88, 89 https://journals.sagepub.com/doi/pdf/10.1177/ANIB_37_2-4.

regardless of whether or not the employer is the State itself. This requires taking appropriate steps to prevent, investigate, punish and provide redress for cases of occupational exposures to toxic and otherwise hazardous substances through effective policies, legislation, regulation and enforcement, as well as adjudication.[4]

7. States must ensure their laws and policies for occupational health are health protective and rights-based. States have heightened duties regarding the protection of workers at elevated social or physiological risks, including informal workers in global supply chains. Migrants, minorities and persons with disabilities have the right to equal standards of protection. Children, young workers, women who are pregnant, who have recently given birth, or who are breastfeeding should never use or otherwise be exposed to toxic substances at work. Special measures must be taken for the protection of workers in high-risk sectors such as mining, agriculture, construction, energy, the military, manufacturing and waste disposal, among others, from exposure to toxic substances.

PRINCIPLE 3 — BUSINESS ENTERPRISES HAVE A RESPONSIBILITY TO PREVENT OCCUPATIONAL EXPOSURES TO TOXIC SUBSTANCES.

8. Business enterprises have a responsibility, as part of the due diligence expected of them, to »prevent [and] mitigate« impacts on human rights, including workers' rights, due to exposures to toxic substances.[5] These enterprises include employers, purchasers of products and suppliers of toxic substances, among others. In the case of occupational exposures, the »impacts« that business enterprises are responsible for include exposure to toxic substances and adverse health impacts. This responsibility calls for the continuous improvement of working conditions and extends to human rights impacts to which they are linked through their business relationships and supply chains, both at home and abroad, and throughout their products' lifecycles.[6]

9. Prevention of human rights abuse is principal and a prelude to mitigation in due diligence procedures.[7] To prevent impacts on workers' rights, business enterprises have a responsibility, first and foremost, to prevent exposure through the elimination of toxic substances from their products and production processes to the maximum extent possible. If hazards cannot be eliminated, business enterprises should rigorously and systematically apply the hierarchy of hazard controls to prevent exposure, with personal protective equipment the last resort. To the extent that exposure cannot be avoided after applying the hierarchy, business enterprises must mitigate the impacts of exposure on health.

PRINCIPLE 4 — HAZARD ELIMINATION IS PARAMOUNT IN PREVENTING OCCUPATIONAL EXPOSURES.

10. States should include the hierarchy of hazard controls in legislation to prevent to the extent possible exposure of workers to toxic substances. States should ensure that these laws and policies are precautionary in practice because of the high level of scientific uncertainty that often prevails. As part of their occupational safety and health legislation, States should compel business enterprises to eliminate hazards wherever possible and apply the hierarchy where the hazard cannot be eliminated.

PRINCIPLE 5 — DUTIES AND RESPONSIBILITIES TO PREVENT THE EXPOSURE OF WORKERS TO TOXIC SUBSTANCES EXTEND BEYOND BORDERS.

11. The transboundary transfer of hazardous work, materials and substances to countries with lower levels of protection should be considered a form of exploitation if appropriate preventative measures are not taken to protect workers.

12. States are obliged to take reasonable measures to prevent workers' exposure to toxic substances that occur outside their territories and that give rise to infringements of applicable rights due to the activities of business entities over which they can exercise control and that are reasonably foreseeable.[8] States should require such business entities to act with due diligence to identify and prevent abuses by foreign subsidiaries, suppliers and other business partners.

13. Business enterprises are responsible for the consequences of exposures of workers to hazardous substances that they cause, contribute to or to which they are linked.[9] Businesses have responsibilities throughout the lifecycle of their products, from extraction to final disposal, up and down their supply chains. They have a responsibility to ensure that they and their suppliers, both at home and abroad, adopt good practices such as the hierarchy of hazard controls to prevent exposure to toxic substances through their products' lifecycles, their operations and their services.

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4 Guiding Principles on Business and Human Rights, principles 1, 4 and 15.

5 Ibid., principle 15.

6 See, for example, Global Sustainability Standards Board, Global Reporting Initiative, *GRI 403: Occupational Health and Safety 2018*.

7 Guiding Principles on Business and Human Rights.

8 Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras. 30–32.

9 Guiding Principles on Business and Human Rights, principle 13.

PRINCIPLE 6 — STATES MUST PREVENT THIRD PARTIES FROM DISTORTING SCIENTIFIC EVIDENCE OR MANIPULATING PROCESSES TO PERPETUATE EXPOSURE.

14. States must prevent, through legislation or other measures, the deliberate distortion of scientific evidence or manipulation of processes by business enterprises and other third parties to the detriment of workers' health and safety, while respecting the right to freedom of expression. Notably, the protection of public health is a legitimate exception to freedom of expression. Perpetrators of such misconduct should be held accountable, including through criminal sanctions where appropriate.

PRINCIPLE 7 — PROTECTING WORKERS FROM EXPOSURE TO TOXIC SUBSTANCES PROTECTS THEIR FAMILIES, THEIR COMMUNITIES AND THE ENVIRONMENT.

15. Protecting workers from toxic exposures has broader benefits for society. States should recognize the mutually reinforcing nature of protecting workers from occupational exposures to toxic substances and the protection of the environment. Laws and policies to protect human health from hazardous substances should take into account both occupational and environmental exposures, among other factors. States should ensure effective cooperation between authorities with responsibility for labour, public health and the environment.

B. PRINCIPLES REGARDING INFORMATION, PARTICIPATION AND ASSEMBLY

16. The rights to information, participation and freedom of expression and association, as well as the rights to unionize and collective bargaining, enable the prevention of violations and abuses of human rights arising from toxic exposures of workers. Furthermore, the full realization of the right to information is necessary to realize the right of workers to an effective remedy for the adverse impacts of such exposures.

PRINCIPLE 8 — EVERY WORKER HAS THE RIGHT TO KNOW, INCLUDING TO KNOW THEIR RIGHTS.

17. Every worker has the right to know current information about their actual and potential exposures to toxic and otherwise hazardous substances. This includes information on the identity of the substance and the hazards related to working with it. Occupational health and safety information must be available and accessible to workers in a form that effectively serves their needs, bearing in mind their skills and circumstances, and communicated through training and other means (A/HRC/30/40).

18. States are duty-bound to generate, collect, assess and update information on hazards and risks encountered by workers, as well as epidemiological evidence of occupational diseases and disabilities (ibid.). States, employers and business enterprises must efficiently communicate health and safety information, including the results of medical examinations, to workers, trade unions and other workers' representatives.

19. Business enterprises are responsible for identifying and assessing the actual and potential exposure by workers to hazardous substances in their supply chains and resulting from their own activities (ibid.). This includes information on the types of hazardous substances in occupational settings, the intrinsic hazards of such substances and exposure-related data. Chemical suppliers have heightened responsibilities to identify and assess and to communicate information for the protection of workers to workers, employers, other business enterprises and States.[10]

20. As well as the right to information about occupational health risks, workers also have the right to be informed of all their rights and the relevant duties and responsibilities of States and business enterprises regarding these rights, and how they can exercise and defend their rights when they are abused or violated.

PRINCIPLE 9 — HEALTH AND SAFETY INFORMATION ABOUT TOXIC SUBSTANCES MUST NEVER BE CONFIDENTIAL.

21. States have a duty to ensure that claims that information about toxic substances are confidential business information or trade secrets are legitimate (A/HRC/30/40). While confidentiality of personal medical histories must be ensured, it must not be used to obscure health problems arising in the workplace. States should ensure that criminal sanctions are applicable to businesses and other actors that fail to disclose health and safety information. Employers and suppliers of chemical substances should clearly state in their policies that they will not keep such information secret.

PRINCIPLE 10 — THE RIGHT TO SAFE AND HEALTHY WORK IS INSEPARABLE FROM FREEDOM OF ASSOCIATION, THE RIGHT TO ORGANIZE AND THE RIGHT TO COLLECTIVE BARGAINING.

22. Freedom of association and the effective recognition of the right to collective bargaining are fundamental labour rights, applying to all people in all States regardless of the level of economic development.[11] With-

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10 ILO Chemicals Convention.

11 ILO Declaration on Fundamental Principles and Rights at Work (1998).

out freedom of association, including the right to form unions and the right to collective bargaining, workers stand little chance of defending their right to safe and healthy work and other human rights. For human rights obligations to be met and the objective of sustainable development achieved, rights holders must be involved and participation by workers throughout the system should be upheld.[12]

23. States are obliged to protect, promote, respect and fulfil the rights to freedom of association, to organize and to collective bargaining through effective legislation, regulation and policies. They must ensure that everyone can exercise the right to freedom of association in the workplace without discrimination.[13]

24. Businesses should meet their obligations to respect the rights of workers to freedom of association, to organize and to collective bargaining. States should fulfil their role in preventing or halting violations of these rights by businesses and other parties.

PRINCIPLE 11 — WORKERS, REPRESENTATIVES OF WORKERS, WHISTLE-BLOWERS AND RIGHTS DEFENDERS MUST ALL BE PROTECTED FROM INTIMIDATION, THREATS AND OTHER FORMS OF REPRISALS.

25. Empowering rights holders, particularly those most at risk, to defend their rights helps States meet their obligations under human rights law and upholds the principle of accountability and the rights to information and an effective remedy, among others.

26. For workers to enjoy their right to safe and healthy work, workers or their representatives must be able to raise their concerns with employers, their co-workers and government agencies without fear of retaliation. Workers, whistle-blowers and human rights defenders must be free from intimidation, threats and other reprisals for exercising their rights and defending the rights of those who are, or may be, victims of occupational exposures to toxic and otherwise hazardous substances.

27. The threat of loss of employment or income should never be used to gain an advantage when trying to reach an agreement on protecting the rights of workers to safe and healthy work. This includes threats by employers to move jobs abroad.

28. States should have in place national protection programmes for defenders of labour rights and should initiate appropriate disciplinary, civil and criminal proceedings against perpetrators of intimidation, or threats and other forms of reprisals against defenders. States should commission independent periodic reviews of national protection programmes to enhance effectiveness in protecting defenders of labour rights, in consultation with workers, whistle-blowers and defenders, as well as trade unions and civil society organizations that represent them.

C. PRINCIPLES REGARDING EFFECTIVE REMEDIES

29. Ensuring access to justice and effective remedies can motivate business enterprises to develop and adopt safer practices that engage their responsibility, ranging from substituting less hazardous alternatives to adopting engineering controls to reduce exposure. On the other hand, the impunity of certain business enterprises and other beneficiaries whose acts or omissions lead to the exposure of workers to toxic substances is an impediment to improving the situation of countless workers around the world. The pervasive inaccessibility of effective remedies to workers who are victims of toxic exposures serves as a barrier to the transition to safer, healthier work for millions of workers around the world.

PRINCIPLE 12 — WORKERS, THEIR FAMILIES AND THEIR COMMUNITIES MUST HAVE IMMEDIATE ACCESS TO AN APPROPRIATE AND EFFECTIVE REMEDY, WHICH SHOULD BE AVAILABLE FROM THE TIME OF EXPOSURE.

30. Workers exposed to toxics are harmed and their rights are abused or violated at the time of exposure, not only when a disease or disability manifests itself in a worker or in a worker's child. The latency of diseases and disabilities after exposure, which can be years or even decades, can make access to an effective remedy impossible for many workers and their families.

31. An appropriate and effective remedy includes prompt reparation for harms suffered, health care, compensation, guarantees of non-repetition and adequate training for rehabilitation, reinsertion and reasonable accommodation.[14] An effective remedy also includes bringing to justice those responsible for exposure to toxic substances.

32. States have the primary duty to realize the worker's right to an appropriate and effective remedy, including under their laws. States have an obligation to automatically investigate the possible existence of widespread violations after a minimum threshold is reached

12 ILO Safety and Health Convention.

13 For example, on the grounds of type of work or employment, nature of the workplace, enterprise or sector, or immigration or other status.

14 ILO, Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide (Geneva, 2016).

and to engage in international cooperation in doing so. This should be separate from any investigations or actions undertaken by the victim to pursue an effective remedy. States should ensure the cessation of conditions that give rise to occupational exposures, including changes in relevant laws and practices, prohibitions on the production and use of certain classes of substances and the dissemination of information to prevent recurrence (see A/HRC/33/41, para. 40). Penalties imposed should be significant enough to induce and motivate business enterprises and other actors to take precautionary measures to prevent workers' exposure to toxic substances and to act as a deterrent to ensure non-recurrence.

33. Business enterprises that cause, contribute to or are linked to occupational exposures to toxic substances have a responsibility to establish robust processes to enable workers to have timely access to an appropriate and effective remedy.

34. Information regarding settlements with workers is important to understand the extent of violations of safe and healthy work. This information about remedies provided should be confidential only to the extent necessary to respect the victims' right to privacy. Confidentiality provisions of settlement agreements (commonly known as gag or suppression orders) should be unenforceable when used to suppress knowledge about toxic substances and the tactics used to promote their use, given the strong public interest in disclosure.

PRINCIPLE 13 — WORKERS OR THEIR FAMILIES SHOULD NOT BEAR THE BURDEN OF PROVING THE CAUSE OF THEIR ILLNESS OR DISABILITY IN ORDER TO ACCESS AN EFFECTIVE REMEDY.

35. Placing the burden of proof on those harmed by toxic substances at work can be an enormous and often insurmountable challenge. States should ensure that when there is information that a worker may have been exposed to toxic substances at work and where such exposure has been demonstrated to cause harm in similar situations, the burden should shift to the employer to disprove concerns with reasonable certainty.[15] This may be particularly appropriate where the facts and events relevant to resolving a claim lie wholly or in part within the exclusive control of the employer or other third party.

36. Information that a worker may have been exposed to toxic substances need not be in the form of exposure levels or identification of the precise chemical; it can also include information that occupational diseases are known to have occurred in a particular type of work or industry. The employer or other beneficiaries of services should be allowed to try to rebut the presumption of responsibility, but the burden should be on the employer.

37. A major challenge for workers in supply chains is that the business enterprise may not have sufficient resources to provide an adequate and effective remedy to harmed workers. States must ensure that beneficiaries of services are also responsible for the provision of remedies. Indeed, States have developed legislation to address circumstances where an enterprise provides or enables another to acquire benefits of any kind from worker exploitation, which could include exposure to toxic substances.[16]

PRINCIPLE 14 — DEPRIVING WORKERS OF THEIR RIGHT TO SAFE AND HEALTHY WORK SHOULD BE A CRIME.

38. Criminal sanctions should be available to help ensure accountability for human rights obligations and to fight impunity. However, criminal liability should not be the primary or only means of enforcement or access to an effective remedy for the abuse of worker's rights by business entities and/or individuals.

39. States should ensure criminal sanctions are available for business entities and/or individuals regarding abuses of worker's rights arising from toxic exposures. States should investigate and prosecute such cases, ensuring that heads of business enterprises bear responsibility along with other actors knowingly or negligently involved.

PRINCIPLE 15 — STATES SHOULD ENSURE ACCOUNTABILITY FOR CROSS-BORDER CASES OF WORKERS HARMED BY OCCUPATIONAL EXPOSURE.

40. Victims of abuse of their rights by transnational business enterprises face specific obstacles in accessing effective remedies for occupational exposure to toxic substances. Challenges include proving damages and establishing causal links, as well as the financial costs of access to remedy in most jurisdictions and the lack of independence of some judicial systems. States have the duty to take the necessary steps to address these challenges to prevent a denial of justice and ensure the right to effective remedy for victims of occupational exposure to toxic substances.[17]

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15 If the employer does not exist or cannot otherwise provide an effective remedy to the worker, alternative recourse should be available.

16 See, for example, the United Kingdom Modern Slavery Act 2015, Part 1, sect. 3 (5).

17 Committee on Economic, Social and Cultural Rights, general comment No. 24.

41. States should ensure that their laws provide for jurisdiction over workers' exposures to toxic substances that occur abroad. Home States should assert jurisdiction for such corporate abuse, including criminal sanctions where appropriate. Effective accountability and access to remedies in transboundary cases require international cooperation, including measures for prevention and the disclosure of information.

VII

CONCLUSIONS AND RECOMMENDATIONS

The exposure of workers to toxic substances can and should be considered a form of exploitation. Exploitation by exposure is a global challenge, with countries of all levels of development playing a role in the problem. States, business actors and international organizations can eliminate or minimize exposures and must do so with urgency.

The 15 principles described herein (and tabulated in the Annex) can help States, business enterprises and other stakeholders protect, respect and fulfil the human rights of workers actually or potentially infringed by occupational exposures to toxic and otherwise hazardous substances. They are grounded in international human rights law and build upon the Guiding Principles on Business and Human Rights, ILO instruments and international agreements on toxic chemicals and wastes, among others. These principles are the outgrowth of numerous cases brought to the attention of the mandate on 'human rights and toxics' since its inception in 1995.

If implemented, these principles will help strengthen the coherence between human rights and occupational health and safety standards regarding the exposure of workers to toxic substances. They are not intended to be definitive, but mark the beginning of a process to clarify the duties and responsibilities of all parties in face of the challenge at hand.

ANNEX

Table 1
Principles of the UN Special Rapporteur on hazardous substances and wastes on the protection of workers from exposure to toxic substances

Principles on rights, duties and responsibilities to prevent exposure	Principle 1: Everyone must be protected from toxic exposures at work.
	Principle 2: States have a duty to protect the human rights of all workers through the prevention of exposure to toxic substances.
	Principe 3: Business enterprises have a responsibility to prevent occupational exposures to toxic substances.
	Principle 4: Hazard elimination is paramount in preventing occupational exposures.
	Principle 5: Duties and responsibilities to prevent the exposure of workers to toxic substances extend beyond borders.
	Principle 6: States must prevent third parties from distorting scientific evidence or manipulating processes to perpetuate exposure.
	Principle 7: Protecting workers from exposure to toxic substances protects their families, their communities and the environment.
Principles regarding information, participation and assembly	Principle 8: Every worker has the right to know, including to know their rights.
	Principle 9: Health and safety information about toxic substances must never be confidential.
	Principle 10: The right to safe and healthy work is inseparable from freedom of association, the right to organize and the right to collective bargaining.
	Principle 11: Workers, representatives of workers, whistle-blowers and rights defenders must all be protected from reprisal and the threat of reprisal.
Principles regarding effective remedies	Principle 12: Workers, their families and their communities must have immediate access to an appropriate and effective remedy, which should be available from the time of exposure.
	Principle 13: Workers or their families should not bear the burden of proving the cause of their illness or disability in order to access an effective remedy.
	Principle 14: Depriving workers of their right to safe and healthy work should be a crime.
	Principle 15: States should assert jurisdiction for cross-border cases of workers harmed by occupational exposure.

ABOUT THE AUTHOR

Baskut Tuncak is current the UN Special Rapporteur on hazardous substances and wastes, appointed by the Human Rights Council in 2014. He is the founder of Common Rights, a global advisory group focused on a rights-based approach to sustainability, and an adjunct faculty member of Boğaziçi University. He is an international lawyer and chemist.

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EXPLOITATION BY EXPOSURE

How Toxic Substances Poison Workers' Rights

Workers' rights are human rights, and human rights are workers' rights. These rights are interrelated, indivisible and universal. They include civil, political, economic, social and cultural rights. No one can be deprived of these human rights because of the work they perform. States have undertaken an ambitious goal under the Sustainable Development Goals: to ensure decent work for all by 2030.

Despite clear obligations relating to the protection of workers' health, workers around the world find themselves in the midst of a public health crisis due to their exposures to hazardous substances at work. It is estimated that one worker dies every 30 seconds from toxic exposures at work, while over 2,780,000 workers die globally from unsafe or unhealthy conditions of work each year. It is essential to improve the integration of human rights into occupational safety and health discussions at the national and international levels. The importance of the issue has been largely forgotten and deprioritized in relevant international forums, resulting in a lack of global progress in confronting the growing concern.

This study provides a summary of the impacts on workers and their communities. It presents the human rights of workers that are implicated by chronic exposures to toxic substances at work, and describes many of the challenges that have led to the crisis of basic human rights facing workers around the world today. The report then follows with a presentation of the 15 principles developed by the UN mandate on human rights and hazardous substances and wastes to better protect workers from toxic exposures at work.

Further information on the topic can be found here:
http://www.fes-geneva.org

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