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

 Draft Principles on the rights of workers and protection from exposure to toxic and otherwise hazardous substances

 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 has a right to be protected from toxic exposures at work.

1. Everyone has the right to just and favourable conditions of work,[[1]](#footnote-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. Yet often, it is persons living in situations that marginalize them and render them vulnerable to violations of their rights who are most harmed by exposure to toxic substances. 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 a safe and healthy working conditions.
2. Exposing workers above levels determined to be safe under health-based evidentiary standards is a violation of 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 take all possible measures to protect and businesses to respect these rights, translating evidence of potential impacts to action, and applying the principle of precaution despite scientific uncertainty (A/HRC/36/41).
3. Exposing workers to substances that do not have a determination of a health-based safe level of exposure is a violation 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 also may 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.
4. 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. [[2]](#footnote-3) According to the principle of application of dose limits, in planned exposure situations, the total dose to any individual from regulated sources in planned exposure situations other than medical exposure of patients should not exceed the appropriate recommended limits.[[3]](#footnote-4) In all exposure situations, under the principle of justification, any decision that alters a worker’s exposure situation should do more good than harm, and under the principle of optimisation of protection, the likelihood of incurring exposures, the number of people exposed, and the magnitude of their individual doses should all be kept as low as reasonably achievable, taking into account economic and societal factors. [[4]](#footnote-5)

 Principle 2 — States have a duty to protect the human rights of all workers through the prevention of exposure to toxic substances.

1. 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 regardless of whether the employer is a business enterprise or the State. 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.[[5]](#footnote-6)
2. Human rights are universal. Everyone has the same right to safe and healthy work, regardless of income, age, gender, ethnicity, race, religion or other class or status. 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 and pregnant women 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.

1. 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.[[6]](#footnote-7) 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.[[7]](#footnote-8)
2. Prevention of human rights abuse is principal and a prelude to mitigation in due diligence procedures.[[8]](#footnote-9) 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.

1. 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 4 — Workers have the right not to be exposed to toxic substances without their prior informed consent.~~

1. The right to safe and healthy work encompasses the right of workers not to be exposed to toxic substances without their prior informed consent. 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.
2. States should respect, protect and fulfil the right of workers not to be exposed without their prior informed consent. States should clearly reflect this right in their laws, investigating and punishing any alleged violations as warranted and ratifying ILO conventions. States should include the failure of business enterprises to abide by the above principle in their definitions of forced labour, modern slavery and/or exploitation.
3. Employers have a responsibility to fully inform and obtain the consent of workers prior to exposing them to toxic substances. Employers should respect this principle and right irrespective of the State’s willingness to enact necessary laws. Employers should be able to demonstrate that they have informed all employees, subcontractors and suppliers of this right and that mechanisms or procedures to remove themselves from unsafe or unhealthy conditions of work are in place. The absence of such mechanisms or procedures should not present an obstacle to the exercise of this right.

 Principle 5 — Duties and responsibilities to prevent the exposure of workers to toxic substances extend beyond borders.

1. The transboundary transfer of hazardous work to countries with lower levels of protection should be considered a form of exploitation if reasonable measures are not taken to protect workers.
2. 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.[[9]](#footnote-10) States should require such business entities to act with due diligence to identify and prevent abuses by foreign subsidiaries, suppliers and other business partners.
3. 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.[[10]](#footnote-11) 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.

 Principle 6 — States must prevent third parties from distorting scientific evidence or manipulating processes to perpetuate exposure.

1. 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. The protection of public health is a legitimate exception to freedom of expression. Criminal sanctions should be available for such misconduct by business enterprises and other actors.

 Principle 7 — Protecting workers from exposure to toxic substances protects their families, their communities and the environment.

1. 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

1. 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.

1. 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 and the hazards of working with hazardous substances. 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). 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.
2. 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.).
3. 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.[[11]](#footnote-12)
4. 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.

1. States have a duty to ensure that claims that information about toxic substances are confidential business information or trade secrets are legitimate (ibid.). While confidentiality of personal medical histories must be ensured, they 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.

1. 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.[[12]](#footnote-13) Without freedom of association, including 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.[[13]](#footnote-14)
2. 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.[[14]](#footnote-15)
3. 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 reprisal and the threat of reprisal.

1. 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.
2. 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.
3. 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.
4. States should have in place national protection programmes for defenders of labour rights and initiate appropriate disciplinary, civil and criminal proceedings against perpetrators of reprisals, intimidation or threats 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

1. 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 — Governments should criminalize allowing workers to be exposed to substances that are known or should be known to be hazardous.

1. Criminal sanctions should be available to help ensure accountability for human rights obligations and to fight impunity.
2. States should ensure that national legislation provides for criminal liability of employers and other responsible individuals and entities for exposing workers to substances that are or should be known to be hazardous. States should investigate and prosecute such cases, ensuring that heads of business enterprises bear responsibility along with other actors knowingly or negligently involved.

 Principle 13 — 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.

1. 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.
2. 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.[[15]](#footnote-16) An effective remedy also includes bringing to justice those responsible for exposure to toxic substances.
3. 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 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.
4. 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.

 Principle 14 — Workers or their families should not bear the burden of proving the cause of their illness or disability to access an effective remedy.

1. 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 prove no harm.[[16]](#footnote-17) 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.
2. 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.
3. 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 can include exposure to toxic substances.[[17]](#footnote-18)

 Principle 15 — States should assert jurisdiction for cross-border cases of workers harmed by occupational exposure.

1. 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 certain 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.[[18]](#footnote-19)
2. 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 remedy in transboundary cases require international cooperation, including measures for prevention and the disclosure of information.
1. Universal Declaration of Human Rights, art. 23. [↑](#footnote-ref-2)
2. 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>. [↑](#footnote-ref-3)
3. ICRP Publication 103 p 88, 89 <https://journals.sagepub.com/doi/pdf/10.1177/ANIB_37_2-4>. [↑](#footnote-ref-4)
4. ICRP Publication 103 p 88, 89 <https://journals.sagepub.com/doi/pdf/10.1177/ANIB_37_2-4>. [↑](#footnote-ref-5)
5. Guiding Principles on Business and Human Rights, principles 1, 4 and 15. [↑](#footnote-ref-6)
6. Ibid., principle 15. [↑](#footnote-ref-7)
7. See, for example, Global Sustainability Standards Board, Global Reporting Initiative, *GRI 403: Occupational Health and Safety 2018*. [↑](#footnote-ref-8)
8. Guiding Principles on Business and Human Rights. [↑](#footnote-ref-9)
9. 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. [↑](#footnote-ref-10)
10. Guiding Principles on Business and Human Rights, principle 13. [↑](#footnote-ref-11)
11. ILO Chemicals Convention. [↑](#footnote-ref-12)
12. ILO Declaration on Fundamental Principles and Rights at Work (1998). [↑](#footnote-ref-13)
13. ILO Safety and Health Convention. [↑](#footnote-ref-14)
14. For example, on the grounds of type of work or employment, nature of the workplace, enterprise or sector, or immigration or other status. [↑](#footnote-ref-15)
15. ILO, *Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide* (Geneva, 2016). [↑](#footnote-ref-16)
16. If the employer does not exist or cannot otherwise provide an effective remedy to the worker, alternative recourse should be available. [↑](#footnote-ref-17)
17. See, for example, the United Kingdom Modern Slavery Act 2015, Part 1, sect. 3 (5). [↑](#footnote-ref-18)
18. Committee on Economic, Social and Cultural Rights, general comment No. 24. [↑](#footnote-ref-19)