

RIGHT TO INFORMATION ON HAZARDOUS SUBSTANCES AND WASTES

Summary of the Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr. Baskut Tuncak (A/HRC/30/40)

*The report is available in all UN languages at:

<http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/Righttoinformation.aspx>

In his 2015 report, the Special Rapporteur clarifies the scope and content of the right to information throughout the life cycle of hazardous substances and wastes and identifies several challenges that have emerged in realizing this right—as well as potential solutions to these problems. He discusses several obligations of States and the responsibilities of business in relation to implementing the right to information on hazardous substances and wastes.

The Special Rapporteur emphasizes that the right to information on hazardous substances and wastes is central to the enjoyment of human rights and fundamental freedoms. He argues that information should be available, accessible and functional for everyone, consistent with the principle of non-discrimination.

HUMAN RIGHTS IMPLICATIONS OF THE RIGHT TO INFORMATION ON HAZARDOUS SUBSTANCES AND WASTES

People have a right to know whether they are being exposed to hazardous substances. Yet, whether in consumer products, food or other sources of exposure, information is not available or accessible. Over the past several decades, tens of thousands of different hazardous substances have been used by businesses with inadequate information on their properties and uses, as well as their fate as waste, to assess their impacts on human rights. The right of victims to an effective remedy, the right to meaningful participation, the right not to be subject to experimentation without consent, the right to the highest attainable standard of health and several other human rights have all been frustrated by large information gaps throughout the life cycle of substances and wastes.

Information on risks, mitigation measures and safer alternatives can help prevent harm and save lives from premature deaths due to hazardous substances. On the other hand, information gaps create a fundamental impediment to realizing several human rights. For instance, lack of information and lack of consent to be exposed to substances and their risks affect the individual's right not to be subjected without free consent to medical or scientific experimentation. Additionally, information gaps regarding hazardous properties, uses and exposure to hazardous substances create additional uncertainties and unknowns that can obstruct access to an effective remedy for victims.

NORMATIVE CONTENTS OF THE RIGHT TO INFORMATION ON HAZARDOUS SUBSTANCES AND WASTE

In the report, the Special Rapporteur argues that information should be available, accessible and functional for everyone, consistent with the principle of non-discrimination.

(1) **Availability:** Information is available when current reliable information has been generated and collected in a manner adequate to assess the magnitude of potential adverse impacts on the rights of people from hazardous substances and wastes. Necessary information on hazardous substances and wastes can include, for example, their intrinsic hazards and properties, actual and potential uses and releases, as well as protective measures and regulations. It also includes details about the amounts of substances present in people and their environments compared with risks, and the prevalence of adverse impacts linked to hazardous substances, such as cancer, impaired brain function, heart disease and other non-communicable diseases.

(2) Accessibility: Information is accessible when everyone can seek, obtain, receive and hold available information. Information is physically accessible when information is provided in a timely manner, either in response to public inquiries or when the information holder or information generator actively disseminates information. Information should be physically accessible at the time of purchase and when using a product containing hazardous substances. To be economically accessible, the cost of accessing information should be kept at a minimum, possibly charging only the cost incurred for reproduction of information.

(3) Functionality: To be functional, information should be scientifically accessible, imparting knowledge with a reasonable degree of effort on the part of the intended user. Technicalities must be translated into a language that is functional, to enable individuals and groups of individuals to make informed choices.

(4) Non-discrimination and equality: Disaggregated and specialized information is required to understand and prevent disproportionate implications and impacts of hazardous substances and wastes on individuals and specific population groups, including different ages, incomes, ethnicities, gender as well as minorities and indigenous peoples.

LIMITATIONS TO THE RIGHT TO INFORMATION ON HAZARDOUS SUBSTANCES AND WASTES

Recurring challenges to realizing the right to information in the context of hazardous substances are exceptions for commercial secrets and claims of confidentiality. The refusal to disclose information because it would adversely affect the value of intellectual property or the confidentiality of commercial businesses or industrial information is not legitimate if it may hamper public health or the overall public interest. Certain types of information about hazardous substances cannot be legitimately claimed as confidential. It is not legitimate to claim that public health and safety information on hazardous substances is confidential. There is widespread recognition that health and safety information should not be confidential, and States have legally binding obligations to this end.

OBLIGATIONS OF STATES

The obligation to implement the right to information on hazardous substances and wastes stems from various rights including those rights that are implicated through adverse impacts of hazardous substances and wastes and rights that specifically stipulate the obligation of States to provide access to information. To protect human rights affected by hazardous substances, States are duty-bound to generate, collect, assess and update information; effectively communicate such information, particularly to those disproportionately at risk of adverse impacts; to ensure confidentiality claims are legitimate; and to engage in international cooperation to ensure that foreign Governments have the information necessary to protect the rights of people in their territory.

RESPONSIBILITIES OF BUSINESSES

Businesses have a responsibility to respect human rights. The Guiding Principles on Business and Human Rights elaborate on existing standards and practices for States and businesses. Businesses have a responsibility to respect, at a minimum, all internationally recognized human rights. In discharging their duty to conduct human rights due diligence, businesses are responsible for identifying and assessing the actual and potential impacts of hazardous substances and wastes, either through their own activities or as a result of their business relationships; to communicate information to other businesses, governments and the public effectively.