



HUMAN RIGHTS AND HAZARDOUS SUBSTANCES

Key Messages

KEY MESSAGES ON HUMAN RIGHTS AND HAZARDOUS SUBSTANCES

Unsplash/David Lee

Pollution is the largest source of premature death in the developing world, causing approximately three times more deaths than HIV/AIDS, tuberculosis and malaria combined (2018 Report of the Lancet Commission on pollution and health). It disproportionately affects persons, groups and peoples in vulnerable situations reflecting both historical and ongoing discrimination, racism, and power imbalances that have given rise to powerful social movements for environmental justice. Those responsible for the harmful impacts of hazardous substances must be held legally accountable for them through the application of human rights laws, norms and standards. Meanwhile, effective international and national measures must be employed to prevent future harms. The United Nations Environment Programme (UNEP) Global Chemicals Outlook II emphasizes that ambitious, global action by all stakeholders is required to minimize the adverse impacts of hazardous chemicals and wastes. The complete lifecycle of "hazardous substances," a term used here to include all toxics and wastes that have adverse effects on human health and on the environment, starting from their manufacturing and transport, to use, to trade, and eventually disposal, can have an enormous impact on the enjoyment of fundamental human rights, such as the rights to life, to the highest attainable standard of health, to food, to clean water and sanitation, to housing, and the right to a healthy environment. Given the impact of hazardous substances on human rights including the rights to health and life, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNEP have issued the following Key Messages to highlight the human rights obligations and responsibilities of States and other duty-bearers, such as businesses, to prevent and remedy the harmful effects of hazardous substances.

01

Ensure a "non-toxic environment" for present and future generations

States have an obligation to respect, protect, and fulfil all human rights for all persons without discrimination. Exposure to hazardous substances affects the life, health, wellbeing, dignity and rights of all people everywhere, in particular persons, groups and peoples in vulnerable situations such as children, women and girls, indigenous peoples, workers at heightened risk of occupational exposure, those exposed to hazardous remnants of war and conflict, and persons with disabilities. The Human Rights Committee has emphasized that environmental degradation and pollution represent a threat to human rights including the right to life. Exposure to hazardous substances threatens a wide range of other rights including the rights to bodily integrity, health and a healthy environment. Failure to take effective measures to limit the harmful effects of exposure to hazardous substances on human health and wellbeing represents a breach of State obligations to respect, protect, and fulfil all human rights. The inability to effectively manage hazardous substances can also impede economic development and poverty reduction initiatives. However, science, technology and policy alternatives as well as litigation and free press can help prevent or minimize exposure to hazardous substances. Every State must ensure comprehensive legal and policy measures, as well as effective, rights-based and transparent enforcement, monitoring, and accountability mechanisms, to prevent and minimize exposure to hazardous substances that can be a threat to the health, life and dignity of individuals and their environment as well as groups, and communities, including exposure caused or contributed to by businesses. Furthermore, States should take steps to permanently eliminate the use of hazardous substances wherever possible and to minimise their use, prevent exposure and risks and safely dispose of them where necessary in conformity with their obligations under international law. For instance, the Basel, Rotterdam and Stockholm Conventions on hazardous chemicals and wastes and the Minamata Convention on mercury share the common objectives of protecting human health and the environment against the adverse effects of hazardous chemicals and wastes.

The United Nations Charter, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Right to Development and other human rights instruments, impose upon States the duty to cooperate to ensure the realization of all human rights.

Other global treaties and instruments, such as multilateral environmental agreements including the Basel, Rotterdam and Stockholm Conventions on hazardous chemicals and wastes, and the Minamata Convention on mercury, provide guidance on how international cooperation and technical assistance efforts could effectively prevent or minimize, in an environmentally sound manner, the risks stemming from exposure to hazardous substances. This is made possible through, inter alia, sharing of experience and information, technical assistance and capacity building, harmonizing monitoring, reporting and assessment methodologies, strengthening the science-policy interface, including input from academia and more effectively regulating the international trade of hazardous substances.

Solidarity requires, at a minimum, that States refrain from permitting the export of hazardous substances for uses in other countries different from those they permit in their own.

02

Cooperate internationally to prevent and combat harms from exposure to hazardous substances

03

Prevent exposure to hazardous substances from business activities

As recognized in the UN Guiding Principles on Business and Human Rights, States are obligated under international law to protect against human rights abuse within their territory and/or jurisdiction by businesses. States must take appropriate steps to prevent all business-related human rights harms including those related to hazardous substances and, where such harms do occur, to ensure access to effective remedies including through judicial processes.

At the same time, businesses have an independent responsibility to respect human rights. Through policy commitments and human rights due diligence, businesses should identify and prevent any negative human rights impacts stemming from their use of hazardous substances. Where human rights harms occur due to the use of hazardous substances (such as harms relating to the health of people or planet), businesses must address the human rights harms with which they are involved throughout their entire supply chains. Businesses should establish or participate in effective operational-level grievance mechanisms that can remediate concerns relating to hazardous and are accessible to affected persons. The polluter pays principle, as outlined in Principle 16 of the Rio Declaration, should be applied. Further, corporate disclosure and reporting should include information about corporate lobbying related to hazardous substances. Businesses should refrain from supporting public information campaigns based on inaccurate, misleading and unfounded assertions which harm the ability of States and the public to make informed decisions.

A human rights-based approach that emphasizes the respective duties and responsibilities of States and businesses to prevent and minimize exposure to hazardous substances is needed to ensure sustainable development and the realization of human rights for all everywhere.

All persons have the right to access information about hazardous substances that may affect them (ICCPR Article 19). However, adequate information about potential exposure to hazardous substances is not accessible to many of those affected by them, in particular by persons, groups and peoples in vulnerable situations. The systematic and often undisclosed exposure of marginalized communities to hazardous substances fundamentally violates their rights to, inter alia, bodily integrity, adequate housing, health, access to information, non-discrimination, and justice. Accurate information on the environmental health impacts of hazardous substances must be readily available, in an accessible format and appropriate context, to all, in particular consumers, workers and other rights-holders with particular attention to the specific needs of those in vulnerable situations (see also recommendations by the Special Rapporteur on hazardous substances and wastes in A/HRC/30/40 and A/HRC/42/41). This is critical to empower all people to avoid exposure to hazardous substances in consumer products, at the workplace, in their homes and communities, or via food, water, air or other sources and to seek remedy when they suffer harms from such exposure. A human rights-based approach that emphasizes the respective duties and responsibilities of States and businesses to prevent and minimize exposure to hazardous substances is needed to ensure sustainable development and the realization of human rights for all everywhere.

04

Guarantee all persons' access to information about hazardous substances

05

Ensure the meaningful and informed participation of all persons in decision-making processes

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other human rights instruments, require States to guarantee effective remedies for human rights violations. In the event that pollution-related harms do occur, States must ensure accountability and access to justice and effective remedies, including judicial and other redress mechanisms, sanctions, administrative fines and action, and civil liability. States should also address normative gaps and ratify and implement relevant international human rights instruments and environmental agreements as well as any other relevant international law and instruments by which they are legally bound. States need to be accountable to rights-holders for their management of hazardous substances, including for failure to adequately regulate the use of hazardous substances by businesses under their jurisdiction regardless of where the harms actually occur. Moreover, according to the UN Guiding Principles on Business and Human Rights, Principle 22, "where business enterprises identify that they have caused or contributed to adverse impacts they should provide for or cooperate in their remediation through legitimate processes."

International environmental law and human rights law as well as sound development policy mandate meaningful and informed participation including in environmental decision-making. The right to participation is reflected in human rights instruments such as the International Covenant on Civil and Political Rights, the UN Declaration on the Right to Development, the Human Rights Council Guidelines on participation (A/HRC/39/28), and the UN Framework Principles on human rights and the environment (A/HRC/37/59) as well as environmental instruments such as the Rio Declaration on Environment and Development, the Aarhus Convention and the Escazú Agreement. It also appears in many domestic legal provisions. State actions and decisions related to the use of hazardous substances, therefore, must involve the informed participation of affected persons. They also should do so because drawing on the diverse interests, needs and expertise of all people, including local communities and indigenous peoples, offers important insights for inclusive and sustainable environmental action enhancing the quality and implementation of decisions concerning the environment and health.

06

Ensure accountability and effective remedies for human rights harms caused by hazardous substances

07

Protect environmental human rights defenders

Environmental human rights defenders play a critical role in efforts to protect the environment and human health. They must be protected from any reprisals, threats, harassment, violence or criminalization for exercising their rights and freedom of expression.

Particular attention should be paid to the situation of environmental human rights defenders at high risk such as women and girls, indigenous peoples, journalists, and health workers, among others. States need to ensure the protection of environmental human rights defenders through enacting and effectively implementing measures to combat impunity for attacks against defenders by all actors including businesses.

Ensuring justice for all persons, groups and communities affected by hazardous substances, requires respecting, protecting and fulfilling their human rights, including rights to participation, access to information, and access to justice. In addition to violating their human rights, attacks against environmental human rights defenders may silence legitimate protest and advocacy, thereby limiting accountability and threatening the environment, sustainable development, and human dignity.

Non-discrimination and equality are core human rights principles enshrined in the Universal Declaration of Human Rights, international human rights Covenants and the Declaration on the Right to Development and elaborated upon in several other instruments, including the Convention on the Elimination of all forms of Discrimination Against Women, and the Convention on the Elimination of all Forms of Racial Discrimination. These principles are also included in many national constitutions across all regions. As a result of systemic discrimination, environmental racism, and power imbalances, the burden of health and environmental harms from hazardous substances predominately falls on the most disadvantaged.

By disproportionately affecting already marginalized groups including children, indigenous peoples, persons with disabilities, women and girls, and persons living in poverty, hazardous substances threaten State obligations and commitments related to non-discrimination and equality. For example, the poor are disproportionately exposed to air pollution increasing their risks of chronic respiratory ailments as well as deadly diseases such as COVID-19.

Environmental justice within and among nations requires effective measures be taken to eliminate the disproportionate impact of hazardous substances on those with the fewest resources and the least responsibility for pollution. This includes, without being limited to, the planning of industrial facilities and landfills, international shipping of hazardous substances for disposal, and recycling and sorting of potentially hazardous substances, including chemicals, as well as wastes (e.g. medical wastes, electronic wastes, plastic wastes), which often disproportionately impact people in vulnerable situations.

08

Protect, respect and fulfil the human rights of people who are in particularly vulnerable situations

09

Guarantee all human beings the right to benefit from scientific progress and its applications

Decision-making and action related to the protection of human health and the environment from hazardous substances must be guided by sound science, effective monitoring, and strong, independent regulatory mechanisms. According to the Committee on Economic, Social and Cultural Rights, States should adopt mechanisms to align government policies and programmes with the best available, generally accepted scientific evidence.

States should publicly share resources, scientific knowledge and technology in order to address the impacts hazardous substances have on the enjoyment of human rights and guarantee all persons the right to benefit from scientific progress and its applications (ICESCR Article 15). Measures should be taken to ensure consumers have access to the information they need to make informed decisions about the potential use and disposal of hazardous substances. Further, States should use sound science to regulate hazardous substances, and support the development and dissemination of safe alternatives to essential products ensuring all persons the right to benefit from them.

The COVID-19 pandemic has shown the importance of scientific, evidence-based, and preventive action in the face of global crises. In particular, COVID-19 recovery efforts have highlighted the importance of environmentally sound management of medical wastes. Reliable information and good governance have also been highlighted by the Special Rapporteur on hazardous substances and wastes as necessary in discharging the duty to prevent exposure to the COVID-19 virus (A/HRC/45/12).

In order to protect the human rights to health and a healthy environment, as well as other fundamental human rights, States and businesses should apply the precautionary principle throughout the lifecycle management of hazardous substances, e.g. in their production, licensing, use, trade and disposal. Where there are threats of serious or irreversible harm to human health or the environment, lack of full scientific certainty must not be used as a reason for postponing preventative action.

Effective regulations and independent regulatory mechanisms are needed to operationalize the precautionary approach. For example, where activities involving hazardous substances or potentially hazardous substances take place, laws and policies should mandate social and environmental impact assessments with meaningful public participation, prior to, during and after the activities in question.

Impact assessments should prioritise the most severe human rights risks and focus on impacts on individuals and groups at heightened risk of vulnerability and marginalization. If evidence suggests potential harm to people or planet, these activities must be stopped, and appropriate actions taken to continue monitoring the situation and remedy any harms. Clean-up and restoration of heavily polluted and/or contaminated sites must also be ensured to achieve human and ecosystem health.

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Take a precautionary approach to the handling and management of hazardous substances and potentially hazardous substances

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