

HUMAN RIGHTS and the PROTECTION of WORKERS from EXPOSURE to TOXIC SUBSTANCES

A brief explanation

How does toxic exposure impact on the human rights of workers?

Short, long-term and chronic exposure to toxic substances has a strong human rights impact: acute poisonings and other cases of extreme exposure are unquestionable violations of workers' right to:



life



health



decent work



safe and healthy working conditions

It is also strongly connected with other universal rights, such as the rights to:



information



freedom of expression
(including collective bargaining)



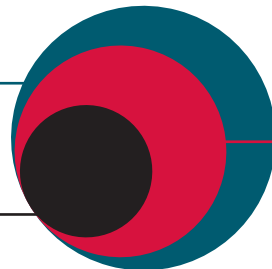
freedom of association (including joining and forming trade unions)

Toxic exposure is also a major environmental and public health issue.

1 worker dies at least every 30 seconds from occupational diseases!

2.7 million annual deaths from unsafe or unhealthy working conditions (ILO)

50% of occupational disease can be attributed to chemical exposure



80% of these deaths result from occupational disease

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What are 'hazardous substances'? Deadly or debilitating toxic industrial chemicals, pesticides, dust, radiation and other substances that are dangerous to health.

What is 'occupational disease'? Any disease contracted primarily as a result of exposure to risk factors arising from work activity, including exposure to hazardous substances. This mostly comprises cancer, lung diseases such as pneumoconiosis, neurological disabilities and reproductive impairments.

Who's involved in workers' exposure to toxic substances?

State actors: Governments often fail their duty to set laws to prevent exposure, enforce minimum protections, eliminate or ban hazardous materials, and prosecute those who are responsible for poisoning workers. They may also make it difficult for workers to know their rights, stand up to companies, and seek compensation.



Non-State actors: Companies are also often responsible in two ways:

- **By omission** (or failing to act or say things): they may not post information, not do due diligence or audit their suppliers, and not penalise the companies they work with if they find hazardous materials.
- **By things they do:** they might engage in intimidation of independent unions, consider information on toxic substances 'confidential', fail to monitor or report on accidents or mitigation measures, distort evidence about chemical impacts, pressure governments into weakening laws, discriminate against certain vulnerable groups or types of workers, or actively use dangerous chemicals to cut costs.



Extraterritorial nature: Virtually every sector is implicated in this crisis, both public and private, as well as the most powerful industries, with vast transnational and opaque supply chains, including links to informal economy. States and companies increasingly outsource dangerous and dirty work, including the extraction of natural resources, the use of toxic chemicals and pesticides or disposal of hazardous wastes, to locations without appropriate protection standards and measures.



What are the Principles and what do they aim to do?

Everyone must be protected from exposure to toxic substances at work. 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. [A/HRC/39/48, para. 76]

These human rights obligations are grounded in different international standards, which are part of treaties adopted by the majority of countries around the world:



International Labour Organization standards (in part Conventions 121 and 155)

International Covenant on Economic, Social and Cultural Rights (article 7)

When looking at the negative impact of businesses on workers and communities, the international community also agreed to emphasise and apply these standards. They explain both the government's obligation to **protect human rights** and a company's responsibility to **respect human rights**.



UN Guiding Principles on Business and Human Rights

Since 1995, the UN has mandated a [Special Rapporteur](#) to examine the human rights implications of exposure to hazardous substances and toxic wastes.

In September 2019, the current Special Rapporteur, Baskut Tuncak, [presented 15 key principles](#) compiling existing international standards and obligations with a view to end the exploitation of workers through their exposure to toxic substances. These principles have been endorsed by a [resolution](#) from the UN Human Rights Council.

Protecting workers from toxic exposure in and around the workplace by:

- › Helping States and businesses to fulfill their duties and responsibilities
- › Better integrating human rights standards and practices in law and policies. [A/HRC/42/41, para. 7]
- › Empowering workers to know and exercise their rights
- › Providing remedies for rights violations
- › Making the situation of impact of toxic exposure more visible

Following extensive research and consultation, these principles address three main fields:

- › Duties and responsibilities to prevent exposure;
- › Information, participation and assembly;
- › Access to effective remedies.

What do the Principles say about who is entitled to these rights?

Workers' rights are human rights. Workers have a universal right to work in safe and healthy conditions, which also entitles them to the rights to information, participation, association and to effective remedies.

Principle 1. Everyone must be protected from exposure to toxic substances at work. Not only directly employed workers are entitled to a full range of rights, informal workers, and other sorts of temporary workers also do. Some workers are particularly vulnerable to toxic exposure: low-income workers, women, children, migrant and temporary workers, the elderly, workers with disabilities and workers in high-risk sectors such as:



mining



agriculture



construction



manufacturing



energy



waste disposal

How does protecting these rights protect the rights of others?

Workers' rights are both **individual** and **collective**. Under Principles 7, 12 and 13, their **families and communities are equally entitled** to a set of fundamental rights. For example:

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



- When a worker is exposed to a toxic workplace, the consequences extend to families and may lead to a toxic environment for their communities. Protecting workers from toxic exposures has then broader benefits for society.
- States should also recognise the mutually reinforcing nature of protecting workers from occupational toxic exposures and the protection of the environment, when adopting protective legislation in the fields of labour, as well as public health and the environment.

Principle 11 also recognises the vital role played by **workers representatives, whistle-blowers and rights defenders** in raising concerns and striving for workers' rights.

What are these rights?

Principle 8. Every worker has the right to know, including to know their rights.



- They have the right to know about the implications of actual and potential exposure, actions taken to prevent it, together with rights related to exposure and how to exercise them when they have been violated.
- Information on occupational health and safety must be made accessible by State and companies – bearing in mind workers' skills and levels of education –, and must be disseminated, including through education and training, to workers, trade unions and other workers' representatives.

Principle 10. The right to safe and healthy work is inseparable from freedom of association, the right to organise and the right to collective bargaining.



- Strong protection to these set of rights have proven effective in strengthening protection for workers from toxic exposure.
- States must promote and protect them through effective legislation, regulation and policies; while businesses should make arrangements for workers and their representatives to be able to inquire into, and be consulted on, all aspects of work safety and health.

Principle 11. Workers, representatives of workers, whistle-blowers and rights defenders must all be protected from intimidation, threats and other forms of reprisals.



- They must be able to freely exercise their rights without reprisals or threats such as employment or income loss.
- The government must properly investigate all related allegations, and put in place national protection programmes for labour rights defenders.

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.



- They are entitled to prompt reparation for the harm suffered, including health care, compensation, guarantees of non-repetition and adequate training for rehabilitation, reinsertion and reasonable accommodation.

Principle 13. Workers or their families should not bear the burden of proving the cause of their illness or disability to access an effective remedy.



- Access to justice is often impeded by workers' lack of access to information and impossibility to gather evidence of toxic exposure. The burden of proof should be shifted to the employer, who should reasonably prove claims are not accurate.

What do the Principles say about the role of Governments?

Principle 2. States have a duty to protect the human rights of workers through the prevention of exposure to toxic substances. This includes:



- Adopting effective measures – such as policies, laws and regulations, or adjudication – to ensure healthy working conditions, including improving all aspects of industrial hygiene.
- Making sure laws and policies are health-protective and rights—based
- Ensuring regular and meaningful monitoring of working conditions

Principle 4. Hazard elimination is paramount in preventing occupational exposures. States should enact legislation about, and businesses should rigorously and systematically apply, the hierarchy of hazard controls – which ranks companies' efforts to address toxic exposure:



- First: eliminating toxic substances from workplace as the most effective prevention measure
- Then, if not possible: conduct risk mitigation options (such as using less hazardous substances), or else conduct engineering and administration controls
- Only as a last resort: use of personal protective equipment.

Principle 6. States must prevent third parties from distorting scientific evidence or manipulating processes to perpetuate exposure. They must adopt measures, including criminal actions, to prevent actions that hinder the ability to translate scientific progress into protective laws for workers.



Principle 14. Depriving workers of their right to safe and healthy work should be a crime. Although criminal sanctions should not be the only means of law enforcement, they should be used against businesses, including senior leadership, when they fail to act with due diligence and conduct activities that expose workers' to toxic substances.



Principle 15. States should ensure accountability for cross-border cases of workers harmed by occupational exposure. A government's mechanisms for accountability and redress should adapt to the realities of modern global economy, and address violations of workers' rights resulting from activities of businesses over which the authorities exercise control, and that occur outside national territories. This includes corporations and their subsidiary companies, employers, manufacturers, importers and exporters.



What do the Principles say about the role of Companies?

Principle 3. Business enterprises have a responsibility to prevent occupational exposures to toxic substances. Businesses – including employers, purchasers and suppliers of toxic wastes, and financial institutions – have the obligation to act in due diligence to prevent and mitigate human rights impacts of their activities. This includes through elimination of toxic substances from production processes, implementation of hazard control mechanisms, developing less harmful alternatives, as well as monitoring and improving working conditions.



Principle 5. Duties and responsibilities to prevent the exposure of workers to toxic substances extend beyond borders. Businesses, in particular with transnational operations, are responsible for the consequences of workers' toxic exposures resulting from activities they conduct abroad. They must act with due diligence to:



- Prevent abuses by foreign subsidiaries, suppliers and other business partners
- Investigate toxic exposures in their supply and value chains and during their products' life cycle
- Ensure suppliers both at home and abroad adopt good practices

Principle 9. Health and safety information about toxic substances must never be confidential. It is never legitimate to refuse to disclose health and safety information on grounds that it is secret or confidential, or due to claims that it would adversely affect business' profits. Employers and suppliers of chemical substances should clearly state in their policies that they will not keep such information secret.



What do the Principles say about the role of Trade Unions?

One of the most basic principles of universal rights is the freedom of expression, assembly and association, including the freedom to join and form trade unions, and the rights to unionise and engage in collective bargaining. The role of the trade union is included across many of the *Principles on Human Rights and the Protection of Workers from Exposure to Toxic Wastes*.

- When trade unions encounter occupational safety and health concerns linked to hazardous chemicals, they can play a key role in sharing information and preventing other workers (and their families) from suffering. (Principle 7)
- Workers who are worried about the kind of chemicals they use have the right to go to their worker representative to ask for information. The trade union also acts as a go-between, sharing government or business information about health and safety directly with workers, as well as informing workers of how they can exercise their rights, and how they can defend their rights when they are abused or violated. (Principle 8)
- Trade unions and worker representatives have the right to ask employers and suppliers of chemical substances for information on health and safety, which cannot be refused on ground that it is a 'trade secret'. (Principle 9)
- All workers, everywhere, regardless of the level of development, have the right to form and join a union and collectively bargain. When participation by workers throughout the system is upheld, rights can be fully protected. The role of unions can be very beneficial: for example, worker representations or organisations have a right to inquire about health and safety standards and practices, and seek help from outside experts. Yet unions also need to consider, for example, women workers' specific needs, and encourage their active participation to defend their rights. (Principle 10)
- Trade unions play a key role in ensuring that workers can raise concerns to protect themselves and their co-workers, and also need to make sure that workers who do so are not victims of retaliation, such as threats of job loss or job change that would decrease income. Unions should stand firmly against companies who threatened loss of employment or income during negotiations, and encourage the government to establish and implement programmes that protect workers and whistleblowers, facilitating direct inputs from workers and other affected individuals themselves. (Principle 11)

What can I do to use these Principles to protect my rights, and the rights of others?

With the authorities:

- Compare your government's laws and policies – at central and local level – to the expectations laid out in the Principles.
- Send the Principles to legislative bodies at national and local level to inform their decisions.
- Monitor and evaluate the measures taken to comply with the Principles and relevant international standards.
- Work with local authorities to monitor companies' compliance with the Principles and relevant national regulations.
- Use the Principles to support arguments in court.



With companies:

- Ask the company where you work about what their policies are, and whether they are in line with the Principles.
- Help inform companies about their responsibilities under the Principles and related international standards.
- If the company is not in line with the Principles, try to think about how to encourage them – maybe the trade union can explain to management, or maybe the brands can help? What about the local government?



With your trade union:

- Ask the trade union about the company's track-record on chemical hazards and occupational safety and health: is the union informed, and getting all the information they should?
- Encourage the union or other representative organisation to educate themselves, and workers, about the risks in the workplace and how to prevent them.
- Ask your trade union if workers are integrated in monitoring company steps to make workplaces safe – and if not, why not?
- Encourage particular attention to vulnerable workers in your workplace, including workers with disabilities and chronic illnesses



As a member of civil society:

- Disseminate information about the Principles to your friends, co-workers and other networks of civil society organisations and workers' associations.
- Discuss the Principles with victims, their families and communities, and raise awareness among the general public about the Principles
- On social media, consider opening a public WeChat account dedicated to workers health and safety issues, or posing questions on public platforms
- Host a conference at a university so that academics can discuss other experiences and best practices, or how the law would need to change.



With the UN:

- Write to the UN Special Rapporteur about which Principles seem to work well, or which ones are hardest to implement, and encourage the OHCHR and the Chinese authorities to think about technical cooperation or assistance.
- Use the Principles to help you organise your information, if you choose to prepare reports to other UN experts and organisations, such as the ILO, the Committee on Economic, Social and Cultural Rights, or other Special Procedures experts.
- If you meet with other UN agencies in China, make sure they know this is a useful tool for you, and that they help you share it with stakeholders in government and business.



What has the Special Rapporteur said about the situation in China?

The UN Special Rapporteurs are also mandated to **raise specific cases of human rights violations by sending private letters (or 'communications') to the Government**. Here are some of the letters the Special Rapporteur has sent to the Chinese government regarding the human rights impact of hazardous substances, and which Principles these cases relate to:

In August 2015, the Special Rapporteur wrote to the Government about the 12 August **chemical disaster in Tianjin**, which killed more than 100 individuals, and reportedly injured over 700 people, with large quantities of industrial chemicals stored near residential areas without knowledge of residents and regulators. The letter expresses concern about the reported lack of information about hazardous substances and restrictions on public access to health and safety information. It calls on the Government to assess whether its laws for hazardous substances and wastes are consistent with international human rights standards

- Every worker has the right to know, including to know their rights. (Principle 8)
- Health and safety information about toxic substances must never be confidential. (Principle 9)

In May 2018, the Special Rapporteur raised with the Government information regarding alleged exposure of workers including children, to toxic chemicals while working in **tobacco farms in Zimbabwe** run by a Chinese State-owned company and its subsidiary. The letter expresses deep concerns at reported violations of the right to life, health and access to information, as well as the Government's obligation to protect against human rights abuse by business enterprises within its jurisdiction by preventing, investigating, punishing and redressing such abuse.

- The duties of States to ensure accountability for cross-border cases of occupational exposure (Principle 15) and of companies to prevent toxic exposure of workers beyond borders (Principle 5).

In May 2018, the Special Rapporteur wrote to the Government regarding unsafe working conditions at **Catcher Technology's factory in Suqian** (Jiangsu Province) – an Apple supplier in China –, including exposure of workers to polluted indoor air; discharging of toxic wastewater in the local community; inadequate access to health and sanitation facilities, as well as the absence of adequate personal protective equipment and restrictions to workers' right to information.

- States have a duty to protect the human rights of workers through the prevention of exposure to toxic substances (Principle 2).
- Business enterprises have a responsibility to prevent occupational exposures to toxic substances (Principle 3).

In March 2019, the Special Rapporteur issued a press statement in response to a deadly **industrial explosion in Yancheng**, Jiangsu province. He acknowledged the Chinese authorities' promises to improve chemical management, following a similar disaster in Tianjin in 2015, but urged them to take meaningful action and lasting measures toward implementing effective prevention and protection of victims. He noted that China is one of the world's largest manufacturers of chemicals, and had an opportunity to elevate standards globally.

- States have a duty to protect the human rights of workers through the prevention of exposure to toxic substances (Principle 2).
- 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 12).

Does it seem like the UN human rights experts could do more? The Special Rapporteur on Hazardous Waste, and any other expert, can receive information about any relevant human rights issues, anywhere in the world, from any stakeholder. More information is available on [this website](#), and individual reports (cases, laws, major accidents) can be sent to urgent-action@ohchr.org or srtoxicwaste@ohchr.org.

How does China's legal framework for work safety stack up?

China is a member of the International Labour Organisation and has ratified five of the nine key human rights treaties. This gives the government the obligation to ensure that its laws reflect these rights. The main legislation governing workplace safety in China is the Work Safety Law of 2002, but several other laws and regulations are relevant to the protection of workers from exposure to hazardous chemicals. The chart below is intended to outline just a few examples of how national law is generally aligned with the Principles.

	Principle 1	Principle 2	Principle 3	Principle 4	Principle 5	Principle 6	Principle 7	Principle 8	Principle 9	Principle 10	Principle 11	Principle 12	Principle 13	Principle 14	Principle 15
Work Safety Law	6, 42, 52, 58	2, 9, 10, 35-36	4, 17-18, 21, 25, 29, 31, 36-37, 41-43, 48	3, 15, 34-35		12-13, 69, 89	39, 82	7, 11, 36, 50, 49, 57	38, 75, 80-81, 83, 86, 94, 106-107	7, 11, 52, 57	51-52, 64-67, 71, 74	48, 53, 89, 95		13, 87, 89-91, 93, 95-98, 102, 104-107	
Trade Union Law										6, 20, 26	24	58			
Occupational Illness Law/Categories of Occupational Disease	4, 39	3, 14	5-7, 14, 24	8				11, 40						78, 80	
Regulations on Labor Protection in Workplaces Where Toxic Substances Are Used	7, 18, 37-45	3, 47-52, 54, 56	5-6, 11-36						8, 18, 50	8	50			57-66	
Regulations on Industrial Injury Insurance												4	13, 19		
Labor Law	3, 59-61, 63-65, 73									7, 8					
Special Equipment Safety Law			3-4						53						
Law on the Protection of Rights and Interests of Women	26		26												
Social Insurance Law	33-36														
Regulations on Open Government Information									20						
Regulation on Emergency Responses to Work Safety Accidents		18							5, 7, 12				38-42		
Special Rules on the Labor Protection of Female Employees		4	4												
Rules on Special Protection for Juvenile Workers		3-5	6-10											134-137, 139	
Criminal Law															

The numbers refer to specific articles from the Chinese laws and regulations listed on the left