

PUBLIC STATEMENT

Indian government fails to reconcile its ban on mining of all kinds of asbestos and trade in asbestos waste by opposing listing of carcinogenic white chrysotile asbestos mineral fiber in UN list of hazardous chemicals at the Geneva meeting

India is yet to ban import, manufacture and use of white chrysotile asbestos

India government fails to disassociate itself from the deleterious influence of asbestos promoters like Russian Federation, Kazakhstan, Syria, Zimbabwe, Kyrgyzstan, Pakistan, the International Alliance of Trade Union Organizations “Chrysotile”, Fiber Cement Product Manufacturer’s Association of India and Asbestos Cement Product Manufacturer’s Association

Government must abandon its unscientific and unethical double speak on hazardous carcinogenic white chrysotile asbestos mineral fiber at the meetings of UN’s Rotterdam Convention

Is it defensible for the government to take contradictory position carcinogenic white chrysotile asbestos mineral fiber? Under domestic law domestic law it is hazardous and carcinogenic but in UN Meetings, it says it is non- carcinogenic and non-hazardous.

Lack of consensus led to voting at the CoP-9 of Rotterdam Convention and adoption of new Annexure VII to the Convention for establishing procedures and mechanisms on compliance, sets precedent for all existing and proposed UN treaties including the proposed legally binding Treaty on TNCs and other Business Enterprises with Respect to Human Rights

10 MAY, 2019: Disregarding the finding and observation with regard to carcinogenic white chrysotile asbestos mineral fiber published on National Health Portal (NHP)¹, Centre for Health Informatics (CHI), National Institute of Health and Family Welfare (NIHFW), Ministry of Health and Family Welfare (MoHFW), Government of India, Indian delegation opposed inclusion of this hazardous mineral fiber in the UN list of hazardous chemicals. Taking a unscientific position which is manifestly contrary to the domestic laws and government’s submissions in the Parliament, the delegation expressed its opposition during the meeting of 9th conference of parties to the UN’s *Rotterdam Convention on the Prior Informed Consent Procedure (PIC) for Certain Hazardous Chemicals and Pesticides in International Trade* (April 29-May 10, 2019) in Geneva.

¹ Asbestos-related diseases, National Health Portal, Centre for Health Informatics (CHI), National Institute of Health and Family Welfare (NIHFW), Ministry of Health and Family Welfare (MoHFW), Government of India, <https://www.nhp.gov.in/disease/non-communicable-disease/asbestos-related-diseases>, accessed on May 4, 2019

On 8th May, Rotterdam Convention Secretariat introduced the documents (RC/COP.9/10; Add.1) with regard to Chrysotile asbestos underlining that this issue has been on the agenda since the meeting of the Third Conference of Parties (COP-3) of the Rotterdam Convention. Countries like Australia, Colombia, Norway, Canada, Peru, Georgia, Uruguay, Gabon, Nigeria, Bahrain, EU, Japan, Iraq, Togo, Chile, Malaysia, New Zealand, Moldova, Switzerland, Vanuatu, Republic of Congo, Senegal, Maldives, Kuwait, Benin, Saudi Arabia and Cameroon supported listing of chrysotile asbestos in Annex III of the Rotterdam Convention, which the UN list if hazardous chemicals and pesticides.

Unfortunately, India joined countries and entities like the Russian Federation, Kazakhstan, Syria, Zimbabwe, Kyrgyzstan, Pakistan, and the International Alliance of Trade Union Organizations “Chrysotile” opposed the listing of chrysotile asbestos in Annex III of the Rotterdam Convention on the ground that there is lack of new evidence of effects on human health and the environment. Countries like Venezuela, Cuba and Iran wished to comprehend the logic of those countries which are opposed to listing of chrysotile asbestos and sought discussion on it.

The opponents including India disregarded incontrovertible conclusive scientific evidence provided by the World Health Organization (WHO) pointing out how all forms of asbestos cause cancer in humans. The International Labour Organization (ILO) observed that ILO’s Asbestos Convention should not be used to justify continued use of asbestos because it was never intended for promotion of use of asbestos.

It is quite apparent that Indian government delegation acted under the tremendous influence of the Fiber Cement Product Manufacturer’s Association of India (FCMPAI), a cartel of asbestos companies which opposed listing of white chrysotile asbestos citing discredited national governmental studies which admittedly, Asbestos Cement Products Manufacturers Association had co-sponsored, showing no negative health impacts. An entity called “Workers of Kazakhstan”, an apparent front of asbestos companies wanted chrysotile variety of asbestos to be treated differently.

As a consequence of the opposition from the seven countries and the asbestos companies, the consideration of listing of chrysotile variety of asbestos in the UN list of hazardous chemicals has been deferred for the 10th meeting of Conference of Parties of the Rotterdam Convention.

The inter-ministerial Indian delegation at the COP 9 failed to factor in the publicly and officially stated stance of National Health Portal, Government of India with regard to all forms of asbestos including white chrysotile asbestos. It states that “All forms of asbestos (chrysotile, crocidolite, amosite, tremolite, actinolite and anthophyllite) are in use because of their extraordinary tensile strength, poor heat conduction, and relative resistance to chemical attack. Chemically, asbestos minerals are silicate compounds, meaning they contain atoms of silicon and oxygen in their molecular structure. All forms of asbestos are carcinogenic to humans. Exposure to asbestos (including chrysotile) causes cancer of the lung, larynx, and ovaries, and also mesothelioma (a cancer of the pleural and peritoneal linings). Asbestos exposure is also responsible for other diseases such as asbestosis (fibrosis of the lungs), and plaques, thickening and effusion in the

pleura.”² It observes that “Exposure to asbestos occurs through inhalation of fibers in air in the working environment, ambient air in the vicinity of point sources such as factories handling asbestos, or indoor air in housing and buildings containing friable asbestos materials.” The delegation included India’s official contact point, Manoj Kumar Gangeya, Director, Hazardous Substances Management Division, Union Ministry of Environment, Forests a& Climate Change.

The official brief for the Indian delegation to the meeting of Rotterdam Convention remains unchanged. Its brief stated that “The implication of listing of chemicals is rise in trade cost” and delay in import/export of hazardous chemicals. This is far from the truth. In its myopia, the brief does not factor in the health cost incurred due unrestricted trade in hazardous chemicals.

In a 29 page long “Draft decision guidance document” on Rotterdam Convention – Operation of the Prior Informed Consent procedure for banned or severely restricted chemicals” for “Inclusion of chrysotile asbestos in Annex III to the Rotterdam Convention” is on the agenda. (Item 5 (b) of the provisional agenda, Matters related to the implementation of the Convention: listing of chemicals in Annex III to the Convention). As per the Draft decision guidance document, “Chrysotile (serpentine forms of asbestos) is included in the PIC procedure as an industrial chemical. It is listed on the basis of the final regulatory actions to ban or severely restrict its use as notified by Australia, Chile and the European Community (EC).” Chrysotile is by far the predominant asbestos fibre consumed today (94% of the world’s production) and is processed into products such as friction materials, asbestos-cement, cement pipe and sheet, gaskets and seals, paper and textiles. The asbestos-cement industry is by far the largest user of chrysotile fibres, accounting for about 85% of all use. Sadly, the Draft decision guidance document has not been approved.

It may be recalled that at the very first meeting in 2005, the Chemical Review Committee (CRC) under the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the CRC agreed to recommend to the Conference of the Parties that Chrysotile Asbestos should be listed in Annex III of the Rotterdam Convention. The CRC is a group of government designated experts established in line with Article 18 of the Convention that evaluates candidate chemicals for possible inclusion in the Convention. Chrysotile (serpentine forms of asbestos) is included in the PIC procedure as an industrial chemical.

Given the fact that the need for consensus has been used as a tool for blocking progress on the listing of hazardous chemicals in the UN list of hazardous chemicals and given the fact that all previous efforts to achieve consensus has been exhausted, Switzerland called for a vote to adopt a new Annexure VII to the Rotterdam Convention for establishing procedures and mechanisms on compliance. The voting resulted in with 120 parties supporting the proposal and 6 parties opposing it.

Countries like Brazil and Russian Federation opposed it. Countries like China and Trinidad and Tobago, Venezuela, Pakistan, Cuba, Qatar, Argentina and Iran expressed their concerns

² Asbestos-related diseases, National Health Portal, Centre for Health Informatics (CHI), National Institute of Health and Family Welfare (NIHFW), Ministry of Health and Family Welfare (MoHFW), Government of India, <https://www.nhp.gov.in/disease/non-communicable-disease/asbestos-related-diseases>, accessed on May 4, 2019

regarding this precedent in decision making. The proceedings of the 9th meeting of Conference of Parties Rotterdam convention have been recorded in the Earth Negotiations Bulletin (ENB) of the International Institute for Sustainable Development (IISD).

The proposed Annex VII of the Rotterdam Convention allows parties who do not agree to a compliance mechanism to opt out. This predicament is extremely dangerous for all the existing and proposed UN agreements and treaties including the proposed legally binding Treaty on TNCs and other Business Enterprises with Respect to Human Rights ahead of the 5th Session of the UN Open-Ended Inter Governmental Working Group (OEIGWG) to elaborate an international legally binding instrument to regulate within the scope of international human rights law and the activities of transnational corporations and other business enterprises in Geneva during 12-19 October, 2019 in Geneva. It is a universal fact that exposing human beings to asbestos fibers constitutes violation of human rights by asbestos companies. If a mandatory UN treaty on TNCs and other Business Enterprises gets adopted and comes into force asbestos based companies can be held liable both under civil and criminal law but before that happens Government of India has a duty to protect the human rights and public health of present and future generation of Indians by disassociating itself from the seven countries that are promoting white chrysotile asbestos unmindful of its human and environmental cost.

So far Government of India has ignored Supreme Court's order of 27 January, 1995 in Writ Petition (Civil) No. 206 of 1986. The Court observed: "The development of the carcinogenic risk due to asbestos or any other carcinogenic agent, does not require a continuous exposure. The cancer risk does not cease when the exposure to the carcinogenic agent ceases, but rather the individual carries the increased risk for the remaining years of life. The exposure to asbestos and the resultant long tragic chain of adverse medical, legal and societal consequences, remains the legal and social responsibility of the employer or the producer not to endanger the workmen or the community of the society. He or it is not absolved of the inherent responsibility to the exposed workmen or the society at large. They have the responsibility legal, moral and social to provide protective measures to the workmen and to the public or all those who are exposed to the harmful consequences of their products. Mere adoption of regulations for the enforcement has no real meaning and efficacy without the professional, industrial and governmental resources and legal and moral determination to implement such regulations." Rotterdam Convention's PIC procedure and the recommendations of CRC are consistent with Supreme Court's verdict.

Given the fact that mining of asbestos is rightly banned in India because of its hazardous nature, a member of Asbestos Cement Products Manufacturers Association (ACPMA) has revealed to the government and the public that the chrysotile type asbestos fiber "will be imported from Brazil³, Canada and Russia." It is the only kind that remains to be totally banned in India. Now the fact is that Brazil and Canada have banned asbestos but India has emerged as the biggest consumer of Russian white asbestos although India has technically banned mining of all kinds of asbestos and trade of asbestos waste (dust and fibers).

³ Casado, Leticia (2017) Brazilian Supreme Court Bans Use of Asbestos in Brazil November 30, Brasilia, <https://www1.folha.uol.com.br/internacional/en/business/2017/11/1939473-brazilian-supreme-court-bans-use-of-asbestos-in-brazil.shtml> accessed on May 4, 2019

All the central ministries and state governments were supposed to incorporate specific directions of the Court given in its verdict of 27 January 1995 and reiterated on 21 January 2011 with regard to fresh ILO Resolution of June 14, 2006 introducing a ban on all mining, manufacture, recycling and use of all forms of asbestos besides WHO's resolution of 2005 seeking elimination of future use of asbestos but it has been ignored so far. The Court referred to the In the "Encyclopaedia of Occupational Health and Safety", Vol-1, published by International Labour Office, Geneva, the latest 4th Edition, 1991 that provides definition of asbestos-“Its Pathology has been stated at page 188 in Vol-1, which is as follows:- "The retained fibres in the alveolar region are 3 um or less in diameter but may be up to 200 um long. Animal experiments strongly point to the longer fibres, 5 um and over, as being much more fibrogenic than shorter fibres. A proportion of the longer fibres, especially amphiboles, become coated with an iron Protein complex producing the drumstick appearance of asbestos bodies. All types of asbestos cause similar fibrosis”⁴ (Supreme Court, 1995). Drawing on the Encyclopedia, it recorded that “The signs and symptoms of asbestosis are similar to those caused by other diffuse interstitial fibroses of the lung. Increased breathlessness on exertion is usually the first symptom, sometimes associated with aching or transient sharp pains in the chest.” The Supreme Court has recorded that “whenever asbestos fibres are used for insulation and other purposes, the possibility of asbestosis among workers due to inhalation of asbestos fibres cannot be ruled out”⁵ (Supreme Court, 2005). It noted that these materials are highly dangerous to human health, if inhaled or if contacted with skin surface.

Admittedly, Government of India's National Health Portal states: “The burden of asbestos-related diseases is still rising, even in countries that banned the use of asbestos in the early 1990s. Because of the long latency periods attached to the asbestos related diseases, stopping the use of asbestos now will result in a decrease in the number of asbestos-related deaths only after a number of decades. There is no safe use of asbestos and no safe limits set by WHO, ILO (International labour organization)”⁶. It discloses that “The prevalence of asbestosis in four cement factories (Ahmadabad, Hyderabad, Coimbatore and Mumbai) varied from 3% to 5%” and “In asbestos textile industry prevalence of asbestosis was 9% in workers having less than 10 years exposure, in contrast to the reported average duration of over 20 years”⁷ (National Health Portal, Government of India).

Notably, in a reply to the Parliament, Union Minister of Health and Family welfare stated that “The Ministry of Mines has informed that the Grant of fresh mining leases and renewal of existing mining leases for Asbestos are presently banned in the country on Health Grounds”⁸ (Union Ministry of Health and Family welfare, 2014). He also shared the findings of the Indian

⁴ (1995), Order of Supreme Court, Writ Petition (Civil) N. 206 of 1986, 27 January

⁵ (2005), Order of Supreme Court, Writ Petition (Civil) No.79 of 2005

⁶ Asbestos-related diseases, National Health Portal, Centre for Health Informatics (CHI), National Institute of Health and Family Welfare (NIHFW), Ministry of Health and Family Welfare (MoHFW), Government of India, <https://www.nhp.gov.in/disease/non-communicable-disease/asbestos-related-diseases>, accessed on May 4, 2019

⁷ Asbestos-related diseases, National Health Portal, Centre for Health Informatics (CHI), National Institute of Health and Family Welfare (NIHFW), Ministry of Health and Family Welfare (MoHFW), Government of India, <https://www.nhp.gov.in/disease/non-communicable-disease/asbestos-related-diseases>, accessed on May 4, 2019

⁸ Asbestos Related Diseases, Ministry of Health and Family Welfare, Press Information Bureau Government of India, 21 February, 2014, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=104105> accessed on May 4, 2019

Council of Medical Research (ICMR), Union Ministry of Health and Family welfare which has “informed that major health hazards of asbestos include cancer of lung, mesothelioma of pleura and peritoneum and specific fibrous disease of lung known as asbestosis. All types of asbestos fibers are responsible for human mortality and morbidity....Directorate General Factory Advice Service and Labour Institutes, (DGFASLI) under Ministry of Labour & Employment has intimated data of workers suffering from Asbestosis in factories registered under the Factories Act, 1948. As per the information provided by DGFASLI, it is informed that 21 no. of Asbestosis cases were reported in Gujarat in 2010 and 2 cases in Maharashtra in the year 2012”. This has been shared by the Union Minister for Health and Family Welfare in a written reply to the Parliament and released by Press Information Bureau, Government of India.

India continues to ignore that the Schedule I of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 under the Environment (Protection) Act, 1986 provided the List of Processes Generating Hazardous Wastes. The list has 36 processes generating hazardous wastes. It must be also noted that Production of Asbestos or Asbestos containing materials which generates Asbestos-containing residues, Discarded Asbestos, Dust/particulates from exhaust gas treatment is at the serial no. 15 in the list. So far your ministry has ignored that Schedule VI of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 under the Environment (Protection) Act, 1986 that provides List of Hazardous Wastes Prohibited for Import and Export. The list had 30 such hazardous wastes which are also covered under UN’s Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal. The list mentions Waste Asbestos (Dust and Fibers) at serial no. 16 with its Basel No. A2050. **It is noteworthy that given the fact that all asbestos based products have a life span, it is natural that all asbestos based products are potential asbestos wastes.**

It may be recalled that on June 22, 2011 Indian delegation led by Mira Mehrishi, Additional Secretary, Government of India and the head of the Indian delegation had supported the listing of Chrysotile asbestos as a hazardous chemical substance at the fifth Conference of Parties to the Rotterdam Convention amidst standing ovation. Under the influence of foreign and domestic asbestos companies, India reversed its position and adopted an unscientific and unethical stance.

Even under Factories Act, 1948, the List of 29 industries involving hazardous processes is given under Section 2 (cb), Schedule First, asbestos is mentioned at serial no. 24. The Act defines "hazardous process" as “any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would--(i) cause material impairment to the health of the persons engaged in or connected therewith, or (ii) result in the pollution of the general environment”⁹. This leaves no doubt that asbestos is a hazardous substance.

So far governments have ignored the fact that the United Nations Committee of Experts on the Transportation of Dangerous Goods classifies Chrysotile Asbestos in Hazard Class and Packing Group, UN number 2590, Class 9 – Miscellaneous dangerous goods and articles. Its International Maritime Dangerous Goods (IMDG) Code is UN No: 2590: Class or division 9.

⁹ Factories Act, 1948,

http://labour.nic.in/upload/uploadfiles/files/ActsandRules/Service_and_Employment/The%20Factories%20Act,%201948.pdf accessed on May 4, 2019

Government is acting as if its left arm does not know what the right arm is doing. How can it reconcile its position in UN meeting with its current phasing out of asbestos roofs from some 8000 railway stations across the country? Taking note of hazards from asbestos of all kinds, new rules have been framed in Maharashtra as a step to make the state free of asbestos. It is significant that bitter protests of villagers led to the cancellation of asbestos based factories in Bhojpur, Muzaffarpur, Vaishali, West Champaran and Madhubani in Bihar.

Given the fact that Department of Chemicals and Petrochemicals is the Designated National Authority (DNA) for industrial chemicals under the Rotterdam Convention on Prior Informed Consent Procedures (PIC) that entered into force on 24th February, 2004, which is a legally binding instrument, it should be rescued from the vice like grip of the foreign and domestic asbestos companies. The parties to the Convention are required to communicate their import policy for these chemicals to the PIC Secretariat. The exporting Party has to provide the export notification to the importing Party in respect of banned or severely restricted chemicals in the importing country. The export notifications received from other Parties for industrial chemicals are examined by Department of Chemicals and Petrochemicals, being the DNA for industrial chemicals, and acknowledgment/ reply is sent to the DNA of the exporting country. How can India deprive itself of this procedure with regard to import of hazardous and carcinogenic white chrysotile asbestos?

While there has been failure in listing of white chrysotile asbestos in the UN list of hazardous chemicals, the fact remains nothing stops Government of India to comply with Supreme Court's verdict of 27th January, 1995 by adopting ILO resolution of 2006 which seeks elimination of all kinds of asbestos for the protection of human health.

For Details: Gopal Krishna, LL.B., Ph.D, Ban Asbestos Network of India (BANI)*/ToxicsWatch Alliance (TWA), E-mail: krishnaruhani@gmail.com, Mb: 9818089660, Web: www.asbestosfreeindia.org

*Ban Asbestos Network of India (BANI) has been working for freedom from asbestos related diseases since 2000.