

**Human Rights Legal Review by the United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes of the United Nations Chemical Conventions, in particular the Rotterdam Convention**

**Expert Group Meeting**

**January 19-20, 2019**

**Centro Cultural de España**

**República de Guatemala 18, Centro Histórico, Centro, Ciudad de México, Cp. 06000, México**

*Hosted and Coordinated by the International Indian Treaty Council (IITC) and the Center for the Autonomy and Development of Indigenous Peoples (CADPI, Nicaragua) with the Fund for Development of Indigenous Peoples of Latin American and the Caribbean*

**CONCEPT NOTE**

***"Just because something is not illegal, it may still be immoral. Allowing the export of products recognized to be harmful is immoral"***

*-- United Nations Special Rapporteur on the Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights Ms. Fatma-Zohra Ouhachi-Vesely on her country visit to the US, December 2001*

***"...Indigenous peoples such as the Yaqui have suffered grave adverse impacts on their health and dignity from of the ongoing use of highly hazardous pesticides. These pesticides are often imported from countries that have banned their use domestically because of uncontrollable and unreasonable risks."***

*-- United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste, Mr. Baskut Tuncak, in his preliminary report presented to the UNPFII 17<sup>th</sup> session, April 2018.*

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**Executive Summary**

Indigenous Peoples have long been the victims of pollution and contamination with hazardous substances of their air, water and food, as well as unsafe and unhealthy working conditions, which results in grave impacts on their rights to life, health, and well-being. In many cases of pollution and contamination, there is a corresponding insufficiency or even abject failure to respect and implement their right to free, prior and informed consent regarding the use, production, storage and dumping of toxic contaminants in their territories. These issues are cross-cutting, involving the lifecycle of consumption, production and waste disposal in a range of industries including mining and other extractives, manufacturing, agriculture, improper disposal of various forms of hazardous waste, household products and military sources, as well as the global transport of Persistent Organic Pollutants to Arctic Indigenous Communities. A particular concern long expressed by Indigenous Peoples in a number of United Nations (UN) bodies are the human rights impacts,

including on reproductive and inter-generational health, of the import and export of pesticides and other chemicals which are banned, unregistered or severely restricted for use by the exporting country as currently permitted by various national laws, as well as the UN Rotterdam Convention on the *Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*.

Other sources of environmental contamination linked to international transport of toxic wastes and activities of multinational corporations carried out in countries other than where they are based include mining and other extractive industries, large-scale industrial agriculture, hazardous waste incineration and dumping, and military activities. Documented impacts include detrimental reproductive and intergenerational health effects, serious illnesses including cancers, and contamination of land, air, waters and traditional foods, creating multiple pathways of exposure for Indigenous Peoples. Many Indigenous communities are impacted by several sources of contamination at the same time, multiplying the health and human rights impacts.

In 2014 and again in 2016, the UN Permanent Forum on Indigenous Issues called attention to this situation and called for a legal review of the UN Chemicals Convention based on UN Human Rights Convention, norms and Standards. This two-year review is currently being carried out by the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr. Baskut Tuncak. His preliminary report was presented to the UNPFII at its 17<sup>th</sup> session in April 2018. The final report is scheduled to be presented during the UNPFII's 18<sup>th</sup> session in April 2019.

### **Background**

Since 2001, International Indian Treaty Council (IITC) and other Indigenous Peoples' organizations have consistently underscored the relationship between environmental toxics and Indigenous Peoples' intergenerational, reproductive, maternal and community health. A focus for many Indigenous communities has been the impacts of the ongoing manufacture, import/export and application in Indigenous Peoples lands and territories of banned or highly restricted pesticides and chemicals. This includes pesticides which producing/exporting countries have themselves banned for use in their own countries due to well documented detrimental and often deadly health impacts. The impacts on Indigenous Peoples, communities and families where these chemicals are eventually applied, most often without their free, prior and informed consent, are pervasive and devastating. These include severe and irreversible birth defects and developmental disabilities in exposed infants and children, contaminated breast milk and cord blood, reproductive impairment and various forms of cancers resulting in untold physical and emotional pain and suffering, and many deaths.

Core obstacles to halting these critical violations are national laws, as well as the UN multilateral environmental agreements that fail to recognize or respect human rights; the Stockholm Convention on Persistent Organic Pollutants, UN Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Rotterdam Convention, in particular, continues to permit States to export pesticides and other chemicals that are banned for use in their own countries.

Since 2001, IITC has submitted over 100 community testimonies collected in Río Yaqui, Sonora, México documenting cases of birth defects, reproductive impairment and deadly illnesses among community members. The most serious documented impacts have been on women, children and infants. These cases have been presented to UN Rapporteurs on Toxics and Human Rights, Rights of Indigenous Peoples, Right to Health and Right to Food; various annual sessions, as well as two UNPFII Expert Group Meetings of the UN Permanent Forum on Indigenous Issues held in 2012 and 2014; the UN Working Group on Human Rights Transnational Corporations and other Business Enterprises during its country visits to the United States and México; various sessions of the UN Business and Human Rights Forum; various Stockholm Convention Conferences of the Parties; the UN Committee on the Elimination of Racial Discrimination for its Periodic reviews of the United States in 2008 and 2014; and the United Nations Committee on the Rights of the Child for its periodic review of México in 2015;

A key component of the normative human rights framework linking the Environment and Right to Health is Article 29 of the UN Declaration on the Rights of Indigenous Peoples which affirms that “States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent”.

The link between human and environmental health is also underscored in Article 24 of the UN Convention on the Rights of the Child which calls upon State parties “to combat disease and malnutrition... including through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;”

In addition, three International Indigenous Women’s Symposia on Environmental and Reproductive Health were held in 2010, 2012 and 2018. In the outcome Declarations, participants termed the international trade in pesticides identified as too dangerous for use within the exporting country is a form of Environmental Violence. The *“3<sup>rd</sup> International Indigenous Women’s Symposium on Environmental and Reproductive Health: Advancing Research and Assessing Impacts of Environmental Violence on Indigenous Women and Girls”* held at Columbia University Law School in New York, April 14-15, 2018 reaffirmed the call upon States made at the previous symposia *“to eliminate the production, import, export and use of pesticides, industrial chemicals and toxic by-products that disrupt the endocrine system, affect learning and neurological development, cause reproductive system cancers, undermine reproductive and maternal health, and affect the well-being of our future human generations and our relatives of the natural world.”*

The Symposium participants also expressed the ongoing need to conduct community-based participatory studies and collect testimonies from impacted community members in order to document the devastating health and human rights impacts “on the ground” and challenge national and international regulatory systems which fail to consider these impacts: *“We have seen how governments continue to collaborate with corporations to promote “acceptable risk” standards, deny impacts and allow continued contamination. Information is withheld or not provided to Indigenous communities even when the impacts of chemicals or practices they are exposed to are well known and well documented by corporations, scientists and governments. Indigenous Peoples are left with the burden of proof regarding the cause of the health impacts they are experiencing, and their anecdotal reports are ignored or dismissed as “unverified” and “unscientific”.*

### **The UN Permanent Forum on Indigenous Issues Calls for a Legal Review**

In 2014, after this issue was raised at the Expert Group Meeting on Sexual and Reproductive Health, including the IITC's presentation highlighting the continued deaths of children in Río Yaqui due to prenatal exposure to toxic pesticides, the UN Permanent Forum on Indigenous Issues (UNPFII) expressed the need to address the disconnect between the UN chemicals conventions, in particular the Rotterdam Convention and UN Human Rights norms and Standards, with the following recommendation:

***16. Considering their impact on the sexual health and reproductive rights of indigenous peoples, the Permanent Forum calls, in paragraph 62 of the report, for “a legal review of United Nations chemical conventions, in particular the Rotterdam Convention, to ensure that they are in conformity with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities.***

Subsequently, for the country review of México by the 69<sup>th</sup> session of the UN Committee on the Rights of the Child in May 2015, IITC submitted a Report which included 39 testimonies confirming birth defects, cancers and other severe impacts on maternal and children's health in Yaqui Indigenous communities in Sonora, México caused by the indiscriminate application of highly toxic pesticides, including many that are banned for use in the US but are exported from that country to México. The CRC's Concluding Observations (Committee of the Rights of the Child)<sup>1</sup> recognized for the first time the term “Environmental Health” as a right protected by the Convention of the Right of the Child and presented strong recommendations calling on México to halt the importation and use of pesticides that have been banned by the exporting country.

Other advances in the international human rights arena are also of direct relevance. For example, in its 2008 and 2014 Concluding Observations addressing the United States of America, the UN Committee on the Elimination of Racial Discrimination (CERD), called on the US to prevent the transnational corporations it registers from having negative impacts on the enjoyment of rights of Indigenous Peoples in other countries. The CERD's recommendations were based on submissions by IITC addressing the human rights impacts of the US export to México and other countries of pesticides which it does not allow to be used in its own country.

At the 16<sup>th</sup> session of the UNPFII (April 24- May 5, 2017) participants again raised the importance of the 2014 recommendation especially in light of the 2015 recommendations of the UN Committee on the Rights of the Child. Concern was expressed by UNPFII members and Indigenous Peoples that the previous UNPFII recommendation on this matter had not been implemented in large part due to the need to identify an expert with recognized competency in this area of human rights who could be approached to carry it out. The agreement of Mr. Baskut Tuncak, UN Special Rapporteur on the

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<sup>1</sup> CRC/C/MEX/CO/4-5 Committee on the Rights of the Child Concluding observations on the combined fourth and fifth periodic reports of México

implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, to assist in carrying out this review was a significant advance which was noted in the updated recommendation adopted at that session as follows:

***46. On the basis of the Permanent Forum's continued concern about the impact of environmental toxins and the export and import of banned pesticides on the reproductive health of indigenous women and girls, the Forum reaffirms its call, contained in its report on its thirteenth session, for a legal review of the United Nations chemical conventions, in particular the Rotterdam Convention, to ensure that they are in conformity with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities (E/2014/43-E/C.19/2014/11, para. 16; see also E/C.19/2014/8, para. 62). The Forum recommends that the Convention on the Rights of the Child, in particular article 24, and its recognition of environmental health as a right protected under the Convention also be considered in the legal review. The Forum invites the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to carry out a review within his mandated area of expertise and to present his conclusions to the Forum at its seventeenth session.***<sup>2</sup>

#### **The Expert Group Meeting (EGM), January 19-20, 2019, Mexico City Mexico**

The UN Special Rapporteur presented his preliminary report to the UNPFII 17<sup>th</sup> session on April 16<sup>th</sup>, 2018. His preliminary report highlighted significant gaps between UN Chemical Conventions and the United Nations Human Rights Framework, in particular with regards to Indigenous Peoples: *“As we all know, exposure to hazardous substances is harmful. The harm is not when cancer or another adverse health impact materializes; but, rather, when exposure happens without consent. This toxic trespass is violence, and should be viewed as a violation of anyone’s physical integrity, particularly of children and indigenous peoples, who have unique rights in this regard, that must be respected and protected. The existing chemicals and waste Conventions operate with the presumption that favors, rather than discourages chemical exposure, including by children during critical periods of development.”*<sup>3</sup>

The Special Rapporteur’s final report is scheduled to be presented at the UNPFII’s 18<sup>th</sup> session in April

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<sup>2</sup> Permanent Forum on Indigenous Issues Report on the sixteenth session (24 April-5 May 2017) Implementation of the six mandated areas of the Permanent Forum with reference to the United Nations Declaration on the Rights of Indigenous Peoples, Health [E/2017/43-E/C.19/2017/11, para 46]

Statement of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the Seventeenth session of the UN Permanent Forum on Indigenous Issues (UNPFII), 16 April 2018, UN Headquarters, New York, New York, Agenda Item 3: Follow up to the recommendations of the Permanent Forum

2019. The upcoming Expert Group Meeting (EGM) will be hosted and coordinated by IITC and CADPI with the support of FILAC and the Centro Cultural de España in Mexico, in coordination with the Special Rapporteur and the UNPFII. The EGM will provide Indigenous Peoples, in particular members of directly impacted communities, with the opportunity to present community-based case studies, testimonies and documentation addressing the following critical issues to be included in the review:

(1) What are the rights of Indigenous Peoples regarding the contamination of their lands and territories? What are the obligations of States, including both home and host States? What are the responsibilities of businesses in this regard?

(2) What are the impacts and experiences reported by Indigenous Peoples, scientists, United Nations experts and academics of current national and international policies and practices, including those carried out under the UN Rotterdam Convention?

(3) To what extent the rights of indigenous peoples have been respected, protected and fulfilled in terms of the above obligations and responsibilities, broken down by sectors of economic activity. This will be illustrated through different scenarios or case studies.

(4) What can States, businesses, Indigenous Peoples and the United Nations do to better protect their human rights from toxic pollution and contamination abuse in order to prevent and redress this issue?

(5) How can the Rotterdam Convention and other UN Chemicals Conventions be amended and/or implemented to be in conformity with UN human rights laws and standards?

The EGM will also provide an opportunity for experts from various UN bodies and mechanisms to address relevant issues from the perspectives of their various mandates and focus areas.

In addition to presenting the EGM, those who are interested in making submissions to this review and who are not able to present at the EGM in México City can request a questionnaire which has been prepared by the Special Rapporteur for this purpose.

*For more information about the Expert Group Meeting in México City contact: the International Indian Treaty Council via [andrea@treatycouncil.org](mailto:andrea@treatycouncil.org) or [rochelle@treatycouncil.org](mailto:rochelle@treatycouncil.org); or CADPI via [myrna.cunningham.kain@gmail.com](mailto:myrna.cunningham.kain@gmail.com).*

*For more information about how to submit testimonies, documentation or case studies to the Special Rapporteur, or to receive a copy of his questionnaire for this legal review, email to: [unsrtoxics@gmail.com](mailto:unsrtoxics@gmail.com).*

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**The International Indian Treaty Council (IITC)** is an organization of Indigenous Peoples from North, Central, South America, the Caribbean and the Pacific working for the Sovereignty and Self Determination of Indigenous Peoples and the recognition and protection of Indigenous Rights, Treaties, Traditional Cultures and Sacred Lands. In 1977, IITC became the first Indigenous organization to receive

Consultative Status with the United Nations Economic and Social Council (ECOSOC) and in 2011 was the first to be upgraded to “General Consultative Status” in recognition of its participation in a wide range of UN bodies, fora and processes.

**The Center for the Autonomy and Development of Indigenous Peoples (CAPDI, Nicaragua)** develops research processes related to the individual and collective rights of Indigenous Peoples and promotes critical reflection on the development of Autonomy in the Autonomous Regions of the Nicaraguan Caribbean Coast as a way to contribute to the definition of public policies and the improvement of institutional capacities.

**The Fund for Development of Indigenous Peoples of Latin America and the Caribbean (FILAC, La Paz, Bolivia)** is an Iberoamerican organization with joint participation of Indigenous Peoples and governments of 22 countries with the mandate to support the self-development of Indigenous Peoples. FILAC has UNGA Permanent Observer status since 2017.

**The United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (informally known as the Special Rapporteur on Toxics)** was established by the UN Commission on Human Rights in 1995 to examine the human rights implications of toxic and otherwise hazardous substances. The current mandate holder is Mr. Baskut Tuncak. For more information log on to:  
<https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/SRToxicWastesIndex.aspx>

*The EGM Coordinators express our sincere appreciation to the Lush Charity Pot and the Noyes Foundation for their contributions to the organization of this Expert Group Meeting.*