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Re: Call for Submissions “Mercury, artisanal and small-scale gold mining and human rights”

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**INTRODUCTION**

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 Peoples' organization to be recognized as a Non-Governmental Organization (NGO) with Consultative Status to the United Nations Economic and Social Council. In 2011, IITC was the first Indigenous organization to be upgraded to General Consultation Status in recognition of its active role in a wide range of international bodies and processes to ensure that the right of Indigenous Peoples are recognized, respected and upheld.

The International Indian Treaty Council (IITC) believes that the exposure of unborn children to mercury, a heavy metal known to be a highly toxic neurotoxin with especially devastating impacts on developing fetus and babies, constitutes environmental violence against Indigenous women, children, and unborn generations. However, in California, Alaska, and South Dakota, United States, legacy mines and runoff sites have not been cleaned up or reclaimed, and additional mines are now seeking and being granted permits by government bodies as the rising price of gold rises and new technologies make renewed extraction at previously closed mine sites profitable.

IITC considers it vital that Indigenous Peoples engaged in or facing the introduction of what is called “Artisanal” or “Small Scale” mining fully hear about the long-term persistent effects facing Indigenous Peoples. Indigenous Peoples still call for cleanup of contaminated mine sites decades after active mining using mercury was banned in countries such as the United States.

We also challenge the concept of “Small Scale” mining. All levels of mercury contamination are of great concern to exposed Indigenous communities facing often irreversible and devastating impacts on reproductive and intergenerational health and children’s development. In addition, gold extracted in this way causes direct exposure of Indigenous community members including pregnant and nursing mothers and other women of childbearing age and is mainly sold to large-scale and multi-national gold companies. There is nothing truly “small scale” about this nefarious practice.

**MERCURY CONTAMIANTION: A TOXIC LEGACY OF THE CALIFORNIA GOLD RUSH**

IITC started its work to build awareness about mercury impacting of Indigenous Peoples’ lands, waters, food sources and bodies in 1999 when the ongoing contamination by mercury left over from the Gold Rush in Northern California came to our attention through our *“Gold, Greed and Genocide”* video project. The first *Gold, Greed and Genocide* video and study guide were co-produced by IITC in 1999, the 150th Anniversary of the California Gold Rush, to present the largely ignored truths about the historic and ongoing impacts of the Gold Rush on California’s Indigenous Peoples. In addition to the genocide which included massacres, forced removals, disease, enforced starvation and enslavement, the 26- minute video included a segment on the persistent mercury contamination left by the Gold Rush.

The video reported that miners had dug up 12 billion tons of earth and used approximately 26 million pounds of mercury to extract gold ore. Clear Lake, the traditional homeland to Pomo Fishing Peoples, now contains over 100 tons of mercury, while the amount of mercury required to violate U.S. federal health standards is equivalent to one gram in a small lake. Abandoned gold and mercury mines were never adequately cleaned up, leaving contaminated sites that continue to produce toxic runoff.

We were shocked to learn that high levels of mercury were still present in Northern California and was continuing to accumulate in humans mainly through consumption of fish, a traditionally used food source for California Indigenous Peoples. Many or most had not been informed about the ongoing contamination they were still being exposed to, nor its impacts on their intergenerational health although many Northern California rivers, lakes and the San Francisco Bay itself had already been declared contaminated. The situation has remained largely unchanged since that time. In 2021, the California Office of Environmental Health Hazard Assessment (OEHHA) identified over 100 site-specific advisories for lakes, rivers, bays and reservoirs, with special warnings for pregnant women.

In 2019, IITC produced a follow up 13-minute video, “*Gold Greed and Genocide 20 Years Later: the struggle for Truth in History and Healing in California Continues.”* It highlights a variety of responses to mercury contamination in California since the first video was produced, including the push for education, awareness and clean up, and the role of California Indigenous Peoples in the adoption of the U.N. Minamata Convention. Both the 1999 and 2019 “*Gold Greed and Genocide”* videos, as well as an accompanying study guide for junior and high school students, are available for download on IITC’s web page, <https://www.iitc.org/gold-greed-genocide/>.

Below is a case study of the persistent and largely unaddressed impacts of past gold mining that used mercury, which continues to have far-reaching detrimental effects in the homelands of the Oglala Lakota (aka Sioux) in Očhéthi Šakówiŋ Treaty Territory, now known as South Dakota, United States.

**Ongoing Mercury Contamination on the Pine Ridge Indian Reservation in South Dakota, United States**

Indigenous Peoples in the United States, Canada, and Alaska face continued lack of access to clean, safe drinking water due to past and ongoing toxic contamination caused by mining and other extractive practices. Despite residing in so-called “developed” countries, many Indigenous Peoples, especially those in remote and/or rural areas do not have running water. Ground and well water, sometimes their only source of water, is often contaminated. Many live under “water boil advisories” that have lasted decades and even when followed, these do not make the water safe to drink in cases where heavy metals such as mercury are present. Indigenous Peoples in these countries are also directly impacted by water pollution and contamination caused by past, current and ongoing imposed development on and near their lands and water sources, such as rivers and ground water tables, without the use of free, prior and informed consent. The Lakota of the Očhéthi Šakówiŋ (“Great Sioux Nation of Lakota, Dakota and Nakota) located in South Dakota, United States is one of the most egregious examples of lack of access to clean potable water and adequate sanitation in a “developed” country. This situation results in negative health outcomes that are comparable and even far worse than in many “developing” countries.

The Oglala Lakota are among the Očhéthi Šakówiŋ Nations that concluded the 1868 and 1851 Fort Laramie Treaties with the United States. These Treaties continue to be legally binding to this day, as further confirmed by a US Supreme Court decision “*United States* v. *Sioux Nation of Indians*, 448 U.S. 371 at 388 (1980).

The 1851 Treaty recognized an Indigenous land base of over 50 million acres. Nevertheless, the Lakota are currently confined to much smaller reservations. The Oglala Lakota Pine Ridge Reservation was established under the authority of the U.S. Secretary of War and was known as “Prisoner of War Camp No. 344.” It now consists of 2,220,160 acres [see enclosed maps showing the originally recognized Treaty territories and the currently recognized reservations including Pine Ridge].

The U.S. engages in ongoing failure to recognize, honor or implement its legally binding obligations under these Treaties, including the land and water rights and jurisdiction of the Lakota and the other Indigenous Nations of the Očhéthi Šakówiŋ. The 1868 Ft. Laramie Treaty stipulated the requirement to obtain consent from the Indigenous Treaty Parties before any incursions could take place by non-Indigenous persons into the recognized Treaty territory boundaries in Article 16 as follows:

*The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or* ***without the consent of the Indians first had and obtained****, to pass through the same.*

Nevertheless, beginning soon after the Treaty’s legal ratification by the U.S Senate, mining interests, particularly gold mining using mercury for ore extraction, was allowed to begin in the sacred Black Hills without such consent ever being sought or obtained. Gold and uranium mining, along with other mineral extraction, has continued to this day in violation of these Treaties, causing high levels of contamination of rivers and water tables, with devastating impacts to the health of the Lakota and other original Nations of the area.

The Oglala Lakota (with a population of approximately 30,000) reside on the Pine Ridge Indian Reservation which is recorded to be the poorest county in the United States. Approximately 80% of tribal citizens are unemployed and average $8,678 per capita income. There is an extreme shortage of housing on the Reservation where more than additional 2,500 houses are needed to address such a crisis. There are as many as 18 family members living in single trailers between 600 and 1,300 sq. feet.

The Lakota have the lowest life expectancy of any group in the United States. In a 2017 study, the average life expectancy for a Lakota person was recorded to be 46 years, 33 years less than the average American. By comparison, in Haiti, considered to be the poorest country in the hemisphere, the average life expectancy is 47 years old. This is also lower than the average life expectancy in Sudan, India and a number of other “developing” counties.

The Reservation is extremely rural and lacks access to adequate healthcare, experiences severe food deserts and lacks access to clean potable running water. Pine Ridge currently experiences the highest rates of alcoholism, diabetes, and heart disease. According to a study published in 2017 by the Red Cross using Indian Health Service data “Lakota Indians die at higher rates than other Americans from alcoholism (552% higher), diabetes (800% higher) all American Indians (182% higher), infant mortality (300% higher), unintentional injuries (138% higher), homicide (83% higher), suicide (74% higher) teenage suicide rate is (150% higher), cervical cancer (500% higher), and tuberculosis (800% higher) (IHS) [2].”

Indigenous Treaty lands in what is now South Dakota, United States have been mined for gold since the late 1800’s in violation of the 1851 and 1868 Ft. Laramie Treaties. Many of these mines used mercury for ore extraction until the mid-20th century when it was phased out in most gold mining in the U.S. and replaced with other substances such as cyanide.

As a heavy metal, mercury continues to persist in the environment. Today open pits and unclaimed mines continue to infiltrate South Dakota water systems and cause harm to human health and life. In a 2020 study, The Lakota People's Law Project tested surface waters at 16 different locations across the span of the Pine Ridge Reservation and parts of western South Dakota. 14 of the 16 sites were contaminated with heavy toxins and metals. Copper, magnesium, manganese, mercury, molybdenum, sulfur, and strontium were found at above accepted EPA maximum contaminant levels (MCL). Mercury tested at different municipal drinking water sites was found to have 8 times the acceptable mercury levels. There are no safe amounts of mercury intake, and this poses intergenerational threats to the human body and in to particular to the neurological system of developing babies on the Reservation.

On Pine Ridge Reservation, approximately 33% of Tribal members live without running water or electricity. Ground water used on the Reservation is highly contaminated. The majority of the surface waters analyzed and described in a 2020 study provided by Dr. LaGarry claims, “Mní Wičhóni intake from the Missouri River and the Mní Wičhóni tap water at Potato Creek, closely approach, equal, or exceed the EPA MCL for mercury.” Mercury is known to be an extremely dangerous neurotoxin which can lead to renal failure and has continued debilitating effects on the nervous system. Mercury is also known to bioaccumulate in animals and the human body. This is especially dangerous in the case childbearing-age women and can lead to irreversible intergenerational impacts such as infertility, spontaneous abortion, and congenital deficits, learning disabilities and other abnormalities.

Furthermore, water supplies across the entire state of South Dakota, home to 9 different Indian reservations, exceed the EPA maximum contaminant level for mercury and uranium. Additionally, 5 other toxic metals are near the EPA health advisory levels for children weighing 22 pounds or less.

Despite the continuing impacts of past mining that have never been addressed, currently, there are 13 pending Black Hills mining permits on Treaty territory. If granted, they will create runoffs that will contaminate water ways and ground water tables that flow towards Očhéthi Šakówiŋ Reservations. Under the 1868 and 1851 Fort Laramie Treaties healthcare, housing, and protection of land and water rights are protected and recognized rights. According to these recent reports, the Treaties are being continuously violated and the public health crisis continues unattended.

Sources:

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