The Center for the Human Rights of Children
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April 20, 2016

Special Rapporteur on human rights and hazardous substances and wastes
Sustainable Human Development Section
Special Procedures Branch
UNOG-OHCHR
Palais des Nations
CH-1211 Geneva 10, Switzerland

Dear Mr. Tuncak:

On behalf of the Center for the Human Rights of Children at Loyola University Chicago, please accept the following statement in relation to your questionnaire addressing United Nations Convention on the Rights of the Child in developing policies and laws related to environmental hazards and wastes in the United States.

Center for the Human Rights of Children, Loyola University Chicago. Recognizing that children require special protections due to their vulnerabilities, the Center for the Human Rights of Children (CHRC), a University Center of Excellence, was established in 2007. The mission of the CHRC is to advance and protect the rights of children. The CHRC pursues an agenda of interdisciplinary research, outreach and education, and advocacy to address critical and complex issues affecting children and youth, both locally and globally. Loyola University Chicago, a private university founded in 1870 as St. Ignatius College, is one of the nation's largest Jesuit, Catholic Universities and the only one located in Chicago. It is also a 501(c) 3 registered non-profit organization.

Among the priority issues of contemporary children's rights issues that the CHRC addresses is the critical need to raise awareness of the linkages between environmental factors and the well-being of children through a human rights framework. Environmental pollutants and their impacts affect millions of children each year. The costs to the individual of these toxins can be school absenteeism, learning difficulties, academic failures, lack of employment, lifelong health problems, socialization problems, and criminal records. See www.luc.edu/chrc for more information about our work.

The United States remains the only nation in the world that has not ratified the Convention on the Rights of the Child (CRC) (1989). The United States Government should take prompt action to ratify the CRC as one of the main instruments for creating a protective environment for all children. While the US has not ratified the CRC, many of the tenets of the CRC fit with existing state child protection principles. A few of these laws are highlighted below.

Unfortunately, despite the United States' wealth and capacity, hazardous substances disproportionately impact children in low-income communities of color.[1] Inequalities resulting from racism and unequal distribution of material resources foster disparate burdens of exposure within and across communities. A local example includes the disproportionate percentage of substandard housing units that contain hazardous substances in Cook County, Illinois. African American children who live in low-income communities are more likely to have negative health outcomes than other low-income children.[2] Economic and racial inequality not only creates disparate impact from hazardous substances, but they also dictate the availability of resources to mitigate some of the most negative effects, particularly among children.[3]

The Role of Local Government and the CRC

While the tenants of the CRC affect issues of federal jurisdiction, they also affect policies and regulations imposed by states and local bodies of government, including the regulation of environmental hazards and wastes. Whereas the United States has not ratified the Convention on the Rights of the Child, eleven municipalities[4] and five states[5] throughout the U.S. have passed resolutions supporting the principles of the CRC. In 2009, for example, the Chicago City Council passed a resolution that both affirms support for the CRC and upholds the City Council's responsibility to "advance policies and practices that are in harmony with the principles of the Convention on the Rights of the Child in all city agencies and organizations that address issues directly affecting the City's children."[6] Although passing a resolution at the local or state level is non-binding, it does provide an opportunity to encourage local government to apply the CRC as a standard for assessing local governmental policies. This is particularly relevant in the United States, as many policies guiding the oversight of hazardous substances are developed a municipal and state level.

Recent events in Flint, Michigan, as well as other municipalities across the country[7], prominently demonstrate the role of local and state government actions, as well as their failure to consider children's rights and right to a healthy and safe environment. In April 2014, the city of Flint, a home to 99,000 residents – 8,657 of whom are under the age of 6 and 40 percent whom live in poverty and are predominantly African American – opted to switch opted to switch its water source from nearby Lake Huron to the Flint River to decrease costs. Immediately after the switch, residents complained of rashes and hair loss and called attention to the color and taste of the water. For well over a year, residents continued using the water despite growing proof that the water was not safe, which conflicted with the Michigan's Department of Environmental

[1] Bullard, R. (2000). *Dumping in Dixie: Race, class, and environmental quality* (3rd ed.). Westview Press; Evans, G. W., & Kantrowitz, E. (2002). Socioeconomic status and health: the potential role of environmental risk exposure. *Annu Rev Public Health*, *23*(Figure 1), 303–31.

[2] Joint Center for Political and Economic Studies. (2012). Place matters for health in Cook County: Ensuring opportunities for good health for all. Washington, DC: Joint Center for Political and Economic Studies.

[3] Schulz, A., & Northridge, M. E. (2004). Social determinants of health: implications for environmental health promotion. *Health Education and Behavior*, *31*(3), 455–471.

[4] Austin, TX; Cambridge, MA; Chicago, IL; Cleveland, OH; Detroit, MI; Kansas City, MO; Minneapolis, MN; New York, NY; San Diego, CA; and Savannah, GA.

[5] Hawaii (2007); Rhode Island (2002); Vermont (1997); South Carolina (1992); and New York (1989)

[6] City of Chicago Resolution Adopting the UN Convention on the Rights of the Child (2009). http://www.law.northwestern.edu/legalclinic/cfjc/documents/chicagocitycouncil-resolution.pdf.

[7] See Sebring, OH; Newark, NJ; Dickson, TN; DeBerry, TX;

Quality's findings[8] that the water was safe to drink. Not until October 2015, after independent researchers[9] provided additional evidence of the water's toxicity, did the local and state governments appropriately begin addressing the harms. Research found that the water was highly corrosive and contained elevated levels of lead. An estimated 25 percent of all Flint homes had elevated lead levels in their water that exceeded the United States Environmental Protection Agency's stated national safety thresholds.

In January 2015, Flint's Emergency Manager, appointed by the state of Michigan Governor Rick Snyder, declined an offer to reconnect to Detroit's water supply – even after Detroit agreed to waive the $4 million connection fee – citing that the monthly cost to use Detroit's water was too high. [10] At the time, this was the only approach that would stop the delivery of corrosive water. Even Flint's elected City Council could not compel the state to respond accordingly. In March 2015, the Emergency Manager dismissed the Flint City Council's vote to "do all things necessary" to correct the problem. Consequently, not until October 2015 did Michigan's Governor permit Flint to switch to Detroit's safer water supply. Unfortunately, this decision was too late and, in addition to the poisoning of its citizens and children, the pipes had become irreparably damaged. It is estimated that between 6,000 and 12,000 children in Flint have been exposed to drinking water with high levels of lead, and additional research finds that the percentage of children with elevated blood-levels doubled across the city – with some areas seeing a triple increase.[11]

In addition to ignoring and minimizing its citizens' concerns and pleas, public officials made critical decisions that prioritized financial prudence before its citizens' right to health and safe drinking water. In doing so, they not only physically harmed community members, but diminished their dignity, thus creating additional mistrust, resentment, and anger. On April 20, 2016, Michigan Attorney General Bill Schuette announced criminal charges filed against two state regulators and a Flint employee. Charges included evidence tampering and several other felony and misdemeanor counts related to the Flint, Michigan lead-poisoning water crisis. There will likely be additional public officials charged, and both criminal charges and civil suits filed on behalf of citizens of Flint, Michigan.

United States Laws and Policies - Highlights

Flint, Michigan provides a case study of the importance of both local and state policies and laws addressing environmental hazards, including lead, and waste. Federal policies and oversight have an equally important role. While the United States has not ratified the CRC, there are examples of United States policy and that considers the impact of environmental health risks, such as

[8] Shamus, K. J. (2016, February 14). State DEQ didn't take Flint water concerns seriously. *Detroit Free Press*. Retrieved from http://www.freep.com/story/news/local/michigan/2016/02/13/state-deq-flint-water-concerns/80332954/

[9] http://flintwaterstudy.org/2015/09/test-update-flint-river-water-19x-more-corrosive-than-detroit-water-for-lead-solder-now-what/ (2015); Hanna-Attisha, M., LaChance, J., Sadler, R. C., & Champney Schnepp, A. (2016). Elevated blood lead levels in children associated with the Flint drinking water crisis: A spatial analysis of risk and public health response. American Journal of Public Health, 106(2), 283–290.

[10] Emergency Manager City of Flint Genesee County Michigan, Order No. 3

[11] Hanna-Attisha, M., LaChance, J., Sadler, R. C., & Champney Schnepp, A. (2016). Elevated blood lead levels in children associated with the Flint drinking water crisis: A spatial analysis of risk and public health response. *American Journal of Public Health*, *106*(2), 283–290.

hazardous substances, on children's health. Please see the Appendix (page 6) for examples of such laws and policies, and hyperlinks to the full text. The passage of laws and policies, however, is only the first step in promoting health and safety of children. Outreach and education, research, monitoring, adequate appropriations and financial support, and advocacy are critical components of effective implementation of laws and policies.

Although several federal and local laws and policy require toxic chemicals and drugs to consider children's health and disproportionate risks to children, many still do not require the evaluation and assessment of all toxic chemicals and their impact on children. For example, the Toxic Substance Control Act of 1976[12] (1976), which gives the Environmental Protection Agency authority to govern the manufacture, import, processing, distribution, use and disposal of chemical substances, "grandfathered" over 62,000 chemicals already in existence. Accordingly, these chemicals remain "safe" until the Environmental Protection Agency determines that they pose an "unreasonable risk" in which case they can be removed from commercial use. This standard, however, is overly burdensome and has resulted in only five chemicals being removed from the exempted list of "safe" chemicals.[13] On new chemicals, companies have no legal obligation to develop new information, only to supply data that may already exist. Moreover, the standard does not consider children's additional susceptibilities that cause children to be at continued risk, and there is a high likelihood that some of the exempted chemicals in commercial use pose additional harm to children.[14]

Applying a Rights-Based Approach in the Absence of Ratification

Children's exposure to hazardous substances is compounded by their lack of control over the surroundings, lack of decision-making power, and prolonged exposure over their lifetime. Moreover, inadequate and unsafe living conditions can lead to pervasive violations of children's rights that can make it incredibly difficult for children to thrive.

Utilizing a rights-based approach grounded in the CRC and other human rights treatises in the United States can provide a process for informing government decisions that treat marginalized citizens with dignity and respect and promote socially just solutions that encourage government accountability. Unlike the United States' current policy strategy, a rights-based approach that prioritizes children in governmental action. It requires that government use the available resources to proactively identify, evaluate, and address hazardous substances in children's environments. This would require that government (1) identify the possible sources for toxic and/or hazardous substances, (2) evaluate the potential harm of those sources using reliable methods, and (3) take the necessary steps to eliminate the harm. Efforts would, initially, focus on those individuals and communities where hazards are most likely to occur and fewer resources, historically, are available for remediation. Consequently, applying a rights-based approach to the United States' current policy strategy would potentially have prevented the lead poisoning of thousands of children in municipalities like Flint, and spur the evaluation and testing of all 62,000 exempted chemicals and any other newly created chemical for their impact on children's health, among other positive outcomes.

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[12] Toxic Substances Control Act of 1976, Pub. L. No. 15 U.S.C. §§ 2601-2629 (1976).

[13] See speech by Environmental Protection Agency (EPA) Administrator Lisa P. Jackson, available at https://yosemite.epa.gov/opa/admpress.nsf/8d49f7ad4bbcf4ef852573590040b7f6/fc4e2a8c05343b3285257640007081c5!OpenDocument.

[14] Landrigan, P. J., & Goldman, L. R. (2011). Children's vulnerability to toxic chemicals: A challenge and opportunity to strengthen health and environmental policy. Health Affairs, 30(5), 842–850.

In conclusion, we recommend the United States ratify the CRC. In the absence of national ratification, we encourage more local governments to adopt the CRC, and apply its tenants and principles to develop, implement and monitor policies and laws related to environmental hazards and wastes and their impact on children's rights.

We thank you for the opportunity to contribute to your efforts and we are available to answer any further questions.

Sincerely,

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APPENDIX

A. Examples of United States Federal Laws and Policies Addressing Environmental Hazards

B. Examples of Municipal and State Laws and Policies Addressing Environmental Hazards – City of Chicago and state of Illinois

A. Examples of United States Federal Laws Addressing Environmental Hazards

Executive Order 13045[15] (1997) requires that all federal government agencies (1) consider children's special susceptibilities in all policy and rule making; (2) identify and assess health and safety risks that disproportionately affect children; and (3) that all policies, programs, and activities "address disproportionate risks to children that result from environmental health risks or safety risks."

Food Quality Protection Act of 1995[16] and the Best Pharmaceuticals for Children Act of 2002[17], requires that potentially dangerous chemicals (pesticides and drugs for children) are to be studied in context of children's unique physical vulnerabilities and that they do not disproportionately and negatively affect children. The impact of these policy efforts have also resulted in an increased investment in children's health research that includes a national network of Centers for Children's Environmental Health and Disease Prevention Research, which is supported by both the National Institute of Environmental Health Sciences and the Environmental Protection Agency.[18]

Toxic Substance Control Act of 1976[19] (1976), provides the Environmental Protection Agency authority to govern the manufacture, import, processing, distribution, use and disposal of chemical substances, "grandfathered" over 62,000 chemicals already in existence.

B. Examples of Municipal and State Laws and Policies Addressing Environmental Hazards – City of Chicago and state of Illinois

State of Illinois:

- ***Illinois Environmental Protection Act*:** the purpose of this Act is to establish a unified, state-wide program to restore, protect and enhance the quality of the environment and to regulate environmental damage that causes harm to the public health, safety and welfare of the people of Illinois. This includes regulation over the

[15] Exec. Order 13045, 3 C.F.R. 19885–19888 (1997).
[16] Food Quality Protection Act of 1995, Pub. L. No. 7 U.S.C. §§ 104-170 (1996).
[17] Best Pharmaceuticals for Childrens Act of 2002, Pub. L. No. 107-109, 115 Stat. 1408 (2002)
[18] Landrigan, P. J., & Goldman, L. R. (2011). Children's vulnerability to toxic chemicals: A challenge and opportunity to strengthen health and environmental policy. Health Affairs, 30(5), 842–850.
[19] Toxic Substances Control Act of 1976, Pub. L. No. 15 U.S.C. §§ 2601-2629 (1976).

destruction, damage, and harm caused by the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes.

- ***Illinois Toxic Pollution Prevention Act 1990:*** the purpose of this Act to reduce the disposal and release of toxic substances that may have adverse and serious health and environmental effects. It promotes toxic pollution prevention as the preferred means for achieving compliance with environmental laws and regulations, to establish State programs that provide attention to toxic pollution prevention policy initiatives, to integrate existing regulatory programs to promote toxic pollution prevention, and to stimulate toxic pollution prevention strategies by industry.
- ***Illinois Pesticide Act:*** The purpose of this Act is to regulate the labeling, distribution, use and application of pesticides. Such pesticides may cause unreasonable adverse effects on the environment or may be injurious to animals or man if not properly used.
- ***Regulation of Phosphorus in Detergents Acts:*** the purpose of this Act eliminates the use, sale, manufacturing, or distribute for sale of any cleaning agent containing more than 0.5% phosphorus by weight, expressed as elemental phosphorus, in Illinois.
- ***Pollution Abatement Enforcement Act:*** the Act provides the Illinois Attorney General with defined power and authority to prevent air, land or water pollution within Illinois using legal action. Defines the administrative legal procedures for utilizing the authority.
- ***Illinois Low-Level Radioactive Waste Management Act:*** the purpose of this Act is to establish a comprehensive program for the storage, treatment, and disposal of low-level radioactive wastes in Illinois. It is the intent of the General Assembly that the program provide for the management of these wastes in the safest manner possible and in a manner that creates the least risk to human health and the environment of Illinois and that the program encourage to the fullest extent possible the use of environmentally sound waste management practices alternative to land disposal including waste recycling, compaction, incineration and other methods to reduce the amount of wastes produced, and to ensure public participation in all phases of the development of this radioactive waste management program.

Cook County:

- *Cook County Code of Ordinances, Chp 30, Articles III, IV, VI, VII:* purpose is to preserve, protect and improve the air, water and land resources of the County so as to promote the health, safety, welfare and comfort, prevent injury to human health, plant and animal life, and property; foster the comfort and convenience of its inhabitants and to the greatest degree practicable, facilitate the enjoyment of residents and visitors of the living, recreational and business environment of the County and recognizing that environmental damage does not respect political boundaries or subdivisions of the County.
    - Sulphur Oxides, Nitrous Oxides, Carbon Monoxide, Asbestos, Solid Waste all regulated under these ordinances.

City of Chicago:

- Chicago Municipal Code section 2-112-160: This purpose section of this section of the Chicago Municipal Code is to define the powers of the city as it relates to public health. This includes actions related to hazardous substances and environmental protections.

- *Final Rules for the Control of Emissions from the Handling and Storage of Bulk Material Piles:* The purpose of these rules and regulations is to prescribe reasonable, specific operating and maintenance practices to minimize emissions of airborne particulate matter from the storage, on-site handling, loading, unloading, stockpiling, and Processing of Bulk Solid Materials as defined herein, including but not limited to ores, coal, and coke, including petroleum coke ("petcoke") and metallurgical coke ("metcoke").

- *Control and Mitigation of Lead bearing Substances:* This policy defines the rules and regulations regarding lead bearing substances throughout the city.