

11 November 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes pursuant to Human Rights Council resolution 36/15.

In this context, I would like to draw the attention of your Excellency's Government to concerns relating to the **proposed amendment to the Ordinance concerning the export of pesticides banned in Switzerland "owing to their effects on human health or on the environment" (ORRChim ; RS 814.81).**

Recent reports to the UN Human Rights Council (see e.g. [A/HRC/34/48](#)) raise grave concerns regarding the use of hazardous pesticides<sup>1</sup> and their resultant impacts on human rights. These concerns have been reinforced by recent findings of UN human rights treaty bodies of violations of various human rights from exposure to pesticides around the world.<sup>2</sup>

On 13 December 2017, a Member of the National Council of Switzerland, Lisa Mazzone, filed motion 17.4094 at the National Council (motion Mazzone),<sup>3</sup> stating that "Switzerland is exposing thousands of people in developing countries to products of which it is known to be highly toxic ... where regulations and means of control are weaker."

The Swiss Federal Council acknowledged in its opinion of 21 February 2018 that "The use of such pesticides can cause serious health or environmental problems" and that "[i]ndeed, in developing countries in particular, workers and farmers expose themselves and their environment regularly to these pesticides as they do not have the information, training and protective equipment necessary for safe use."

However, the Federal Council considered it "disproportionate to ban the export" of these pesticides, and instead proposed to prepare a draft amendment to the Ordinance on the Reduction of Risks Relating to the Use of Particularly Dangerous Substances, Preparations and Articles<sup>4</sup> for exports of these pesticides to "require the explicit prior approval of the country of import." A report of the Federal Office for the Environment dated 14 March 2019 explained this proposed amendment (RS 814.81), which has a goal of putting in place this requirement.<sup>5</sup> According to the report "The export authorization may only be granted with the explicit consent of the importing country."

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<sup>1</sup> The term "pesticides" as used here includes herbicides, fungicides, rodenticides and other chemicals used in agriculture and food processing to kill living organisms.

<sup>2</sup> See UN Human Rights Committee, *Portillo Cáceres et al. v. Paraguay*, Communication No. 2751/2016, Views of 9 August 2019, UN Doc. [CCPR/C/126/D/2751/2016](#), para. 2.1 (Spanish only); and UN Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Mexico [CRC/C/MEX/CO/4-5](#) (3 July 2015) para 51 and 52.

<sup>3</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20174094>.

<sup>4</sup> Ordinance on Chemical Risk Reduction, ORRChim.

<sup>5</sup> Explanatory report concerning the amendment to the Ordinance on Chemical Risk Reduction [https://www.admin.ch/ch/f/gg/pc/documents/3028/Paquet-d-ordonnances-environnementales-printemps-2020\\_ORRChim\\_Rapport-expl\\_fr.pdf](https://www.admin.ch/ch/f/gg/pc/documents/3028/Paquet-d-ordonnances-environnementales-printemps-2020_ORRChim_Rapport-expl_fr.pdf)

I wish to convey to your Excellency's Government my view that the proposed explicit prior approval requirement is grossly insufficient and is highly unlikely to reduce or end exposure to hazardous pesticides. It is feared that the proposed amendment may infringe on the rights to life and to dignity,<sup>6</sup> and the right to health,<sup>7</sup> having in consideration the extraterritorial obligations of States parties to the International Covenant on Economic, Social and Cultural Rights according to General comment No. 24.

It is difficult to envisage how hazardous pesticides that are prohibited from use under relatively strong governance structures of Switzerland can be safely managed in destination countries with weaker governance structures. Certain countries that may import these pesticides do not have proper monitoring in place, or effective mechanisms to secure access to justice and remedies. The explicit consent of these importing countries will not raise standards of protection or lower the risk of exposure to these hazardous pesticides. To the contrary, the risk of exposure is in certain destinations already acute and growing due to both economic and political factors.

Just this year, the UN Human Rights Committee found that the use of hazardous pesticides in Paraguay was in violation of the State's duty to protect the human rights to life and dignity of over 20 members of an agricultural community, one of whom tragically died from pesticide exposure. The UN Committee on the Rights of the Child specifically observed violations of the rights of the child from the use of imported pesticides in Latin America that are banned from use in their countries of origin.

The UN Committee on Economic Social and Cultural Rights has stated that States parties' obligations to respect, protect, and fulfil human rights under the Covenant do not stop at their territorial borders: States parties are required to take the steps necessary to prevent and redress human rights abuses abroad by corporations domiciled in their territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory).<sup>8</sup> The Committee emphasizes that this is especially the case where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.

The UN Human Rights Council has recognized recently in a resolution that States have a duty and businesses a corresponding responsibility to prevent exposure of workers to hazardous substances, including pesticides.<sup>9</sup> These duties and responsibilities extend beyond borders.<sup>10</sup> It is further recognized that the best way to prevent such exposure is to eliminate the hazard. As clearly stated by the Special Rapporteur on the right to food, it is a myth that

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<sup>6</sup> International Covenant on Civil and Political Rights, article 6; Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life.

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights, article 12; Committee on Economic, Social and Cultural Rights, General Comment No. 14, para 11, para 51.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, [E/C.12/GC/24](#), Part III C.

<sup>9</sup> [A/HRC/RES/42/21](#)

<sup>10</sup> Principles on human rights and the protection of workers from exposure to toxic substances, [A/HRC/42/41](#).

pesticides are necessary to feed the world and that their adverse impacts on health and biodiversity are somehow a cost that must be borne by modern society.<sup>11</sup>

Switzerland has long been a leader in strengthening global treaties for chemicals and wastes to protect human rights from unscrupulous actors and their toxic products and by-products. While there is a desperate need for a stronger global regime for toxic chemicals than is presently afforded, the lack of a more comprehensive global regime is not an excuse to delay steps that could be taken individually. For example, long before global standards to end the export of hazardous waste from wealthier to poorer States (the “Ban Amendment” to the Basel Convention on the transboundary movement of hazardous waste), the European Union took necessary steps to end exports of hazardous waste to developing countries out of an admirable sense of moral responsibility.

European countries have restricted the manufacture, sale and export of certain toxic chemicals linked to human rights violations. For example, recognising the prevalent use of toxic chemicals around the world in executions under the death penalty, and taking into account the human rights obligation to prevent torture, the European Union took the lead and effectively banned the export of such toxic chemicals to third countries for use in executions by lethal injection. In my view, the situation with pesticide exports is analogous.

I urge your Excellency’s Government to reconsider the proposed amendment to ORRCHim and instead implement a ban on the export of pesticides and other substances prohibited from use in Switzerland. I would welcome the opportunity to discuss further with your Excellency’s Government various ways through which Switzerland can improve on protections of the rights to life, health, and other human rights implicated by export of harmful impacts abroad. I would be most grateful if your Excellency’s Government may provide any information and any comment it may have on the above observations.

Please be informed that this communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the [OHCHR communications reporting website](#) within two working days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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<sup>11</sup> See [A/HRC/34/48](#), para. 2, quoted in [A/74/480](#) para 70 (“Reliance on hazardous pesticides is a short-term solution that undermines the rights to adequate food and health for present and future generations”). See also, Damian Carrington, *UN experts denounce the myth pesticides are necessary to feed the world*, THE GUARDIAN (7 March 2017), available at: <https://www.theguardian.com/environment/2017/mar/07/un-experts-denounce-myth-pesticides-are-necessary-to-feed-the-world>