

**Questionnaire for States**

**Call for submissions “The impact of toxics on Indigenous peoples”**

Mandate of the Special Rapporteur on toxics and human rights

The [Special Rapporteur on toxics and human rights](https://www.ohchr.org/EN/Issues/Environment/SRToxicsandhumanrights/Pages/Index.aspx), [Marcos Orellana](https://www.ohchr.org/EN/Issues/Environment/SRToxicsandhumanrights/Pages/Marcos-A-Orellana.aspx), wishes to thank States, Indigenous peoples, civil society organisations, academic institutions, businesses, international organisations and other stakeholders for the continued engagement with this mandate. He launches the process of gathering inputs from States and other stakeholders to inform his thematic report on the impacts of toxics on Indigenous peoples and human rights. The report will be presented at the 77th session of the United Nations General Assembly in October 2022. The Special Rapporteur kindly requests States, UN agencies, civil society organizations, academics, business enterprises and all other interested parties to share views and relevant information, which could feed his work, as explained below.

**Introduction**

Indigenous peoples throughout the world are disproportionately affected by toxics and hazardous waste. Indigenous peoples maintain a deep connection to the environment, and therefore environmental pollution severely affects their bodies and cultures. The dumping of hazardous wastes in Indigenous lands is a direct assault on their rights and wellbeing.

Often, Indigenous peoples live in territories rich in natural resources, which are often exploited by business entities in irresponsible ways that contaminate the land and expose Indigenous peoples to hazardous substances. For example, artisanal and small-scale mining is causing widespread environmental toxification with mercury. Other extractive industries, such as uranium mining, have serious adverse effects on Indigenous peoples’ rights. In addition to extractive industries, agro-businesses use highly hazardous pesticides that compromise the enjoyment of human rights.

Exposure of Indigenous peoples to hazardous substances and waste infringe on their collective and individual human rights. These rights include free prior and informed consent, self-determination, lands and resources, health and well-being, culture, development, a healthy environment, water, food and subsistence, life, and security of person.

In light of these considerations, and pursuant to the Human Rights Council resolution 45/17, which calls for monitoring of “adverse consequences for persons and groups in vulnerable situations, including indigenous peoples,” the Special Rapporteur on toxics and human rights has decided to focus his upcoming thematic report to the 77th Session of the United Nations General Assembly on the impact of toxics on Indigenous peoples.

The following questionnaire seeks information on how toxics have affected Indigenous peoples’ rights and how States are taking steps to eliminate the effects of toxic exposure on Indigenous peoples. This information may include ways that Indigenous peoples are being exposed to toxics, ways that countries are preventing Indigenous peoples’ exposure to toxics, and the legal rights and remedies available to Indigenous peoples exposed to toxics and hazardous waste.

**Questionnaire**

*You can choose to answer all or some of the questions below*

1. **Are Indigenous communities in your country suffering from the adverse effects of hazardous substances and toxic wastes? Please describe the case and circumstances of these effects in detail, including the source of the toxic exposure, the types of hazardous substances Indigenous peoples are being exposed to, the degree of government and company consultation and consent to relevant activities, as well as any efforts made by the government and companies to provide effective remedies.**

Banjima People are a specific language group of Australian Indigenous People who have been formally recognised by the Federal Court of Australia as having native title rights and interests in Banjima Country.

Banjima Native Title Aboriginal Corporation (BNTAC) is the Prescribed Body Corporate (Registered Native Title Body Corporate) that holds native title in trust for the Banjima People.

The Banjima native title determination area covers a large area of land and waters in the Pilbara region of Western Australia. There are approximately 600 adult Banjima People and many more Banjima children.

A total of 3,265,000 tonnes of rock were mined at the Wittenoom and Colonial mines over many years in the 1900’s (40’s – 60’s) leaving behind 3,104,000 tonnes of contaminated crocidolite asbestos tailings.

The Wittenoom Asbestos Management Area, classified under the Contaminated Sites Act 2003, stretches almost 47 thousand hectares, from the town to Wittenoom Gorge and Joffre Floodplain.

This area is now listed as a contaminated site (ID No 11860) and this covers in essence approximately 470 km² of the centre of our (Banjima) homelands.

After decades in the courts, on 14th March 2014, Banjima People achieved Native Title over our homelands, but we didn't get our country. We were handed back the largest contaminated site in the southern hemisphere, with no support, help or plan to fix it.

Now, almost sixty years after the Wittenoom and Colonial asbestos mines closed, the Western Australia State Government has agreed to officially close the townsite.

However, there are still no plans to clean up what remains the largest contamination site in the southern hemisphere. The Banjima people have been lobbying the State Government to call to action the clean-up of Wittenoom. Only after our petition was submitted to the State Legislative Council on 12 October 2021, has anything been said. There is still nothing in the budget, allocated to the clean-up of the Wittenoom and Colonial asbestos mines. There is no plan or course of action. No accountability and no intention to clean up the tailings.

The Wittenoom Asbestos Management Area is the Banjima people’s homelands/Country. The uncontained tailings pose a severe risk to those that enter the vicinity, and as such our People are put in danger were they to enter. Some still do.

We want to be safe in our home. We want to be able to come back home.

1. **What are the adverse impacts of toxic and hazardous waste on Indigenous communities’ collective and individual rights, such as their rights to lands, resources, culture, health, livelihood, political and economic involvement, etc.?**

Not only does this contamination violate the Banjima People’s human rights, it violates our Native Title rights. See below quote from the court determination.

*Paragraph 3: ‘Subject to paragraphs 4, 5, 6 and 9 the nature and extent of the native title rights and interests in relation to the Determination Area (other than the Exclusive Area) are that they confer the following non-exclusive rights on the Banjima People, including the right to conduct activities necessary to give effect to them:*

1. *the right to access and move about the land and waters of the Determination Area, be present on the land and waters, live on the land in camps and shelters, and engage in cultural activities on the land and waters including conducting and participating in ceremonies and meetings;*
2. *the right to hunt and take fauna, gather and take flora, take fish and take stones, timber, ochre and water;*
3. *the right to have access to, maintain and protect places and areas of importance on or in the land and waters of the Determination Area, including rock art, engraving sites, stone arrangements and the like.’*

*(Banjima People v State of Western Australia (No 3) [2014] FCA 201, [3]).*

Banjima people are unable to safely and freely access their homelands due to this contamination. The 3 million tonnes of dumped asbestos tailings are not contained. The Banjima people are at risk of contracting mesothelioma and other asbestos related diseases should they enter the contaminated area.

1. **Is the government implementing a right to free, prior, and informed consent regarding exposure to toxics and hazardous substances on Indigenous communities’ lands and territories?**

No. Our lobbying for the clean-up of Wittenoom/the Contaminated area is falling on deaf ears.

1. **Are companies responsible for producing the toxics and hazardous waste implementing dialogue with regards to those substances and their consequences with Indigenous communities?**

There has been dialogue with the parent company (Hancock Prospecting Pty Ltd) but no action has been forthcoming, these were private mining companies most of which are no longer in operation. The State Government needs to take accountability as they are now responsible for the tailings piles. When the Banjima People received their Native Title, we were handed back the largest contaminated site in the southern hemisphere, with no support, help or plan to fix it.

1. **Have Indigenous peoples tried to take action (either legal action, advocacy campaign, etc.) to raise awareness on the issue and/or have they tried to obtain compensation?**

Yes, lobbying the State Government. A petition was presented to the Western Australia State Legislative Council on 12 October 2021 (awaiting a response). Letters to the UN.

1. **What are the most significant challenges to eliminating exposure to toxics in Indigenous communities?**

The State Government has indicated to the media that the clean-up is cost prohibitive. The State Government has costed the clean-up but will not release the costings under a freedom of information application.

1. **What community education does your country, or the responsible company, provide for Indigenous peoples living in areas with high exposure to toxic and hazardous waste?**

None other than saying under the Contaminated Sites Act 2003, this site has been classified as "Contaminated - remediation required" and the area is not suitable for any human occupation or land use and all access to the Site should be prevented.

1. **What specific actions has your country taken to protect the rights of Indigenous persons exposed to toxics, in particular women and children?**

Closed the nearby town of Wittenoom. It by the very implementation of the Contaminated Sites Act 2003 (site No 11860) dispossessed the Banjima people of their homeland. Told to not visit or live in the Contamination area. No action has been taken to protect the rights of Banjima people’s exposure to toxics.

1. **Are there any national health assessments or studies that your country conducts to measure the rate of toxic exposure that Indigenous peoples do experience?**

No.

1. **Does your country provide any services to Indigenous peoples and individual persons exposed to toxics, such as health care, education, etc.?**

Yes, public healthcare.

1. **Do Indigenous peoples and individuals in your country have a constitutional or legal right against the exposure of toxics on their persons or their traditional lands and territories, or are there any environmental laws/policies that require environmental remediation?**

Yes. Native Title Rights under the Federal Native Title Act 1993.

1. **What are the available remedies for Indigenous peoples and individuals exposed to toxics that have experienced damages (in the form of land, health, livelihood, etc.), and what are the challenges to obtaining these remedies in your country?**

There are no remedies available for mesothelioma or asbestosis, merely health management as the illnesses progress.

1. **Is traditional Indigenous knowledge and medicine available in their communities to treat people exposed to toxics?**

Not for mesothelioma or other asbestos related diseases.

\*\*\*\*\*