

**Questionnaire to Indigenous peoples and civil society**

**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 their 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 infringes 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. **Is your Indigenous community (or one that you represent) 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 you are being exposed to, the degree of government/company consultation and consent to relevant activities, as well as any efforts made by the government/company to provide effective remedies.**

This questionnaire is submitted jointly by CETIM and Secoya, two organizations that advocate for the promotion of indigenous people’s rights, and those of the Yanomami people in particular.

The Yanomami are one of the biggest, relatively isolated indigenous peoples in South America, with an estimated population of 32,000 in 2021.

Since 1992, illegal gold panning in the protected Yanomami territory is commonplace. Mercury, frequently used for these operations, is discharged into rivers, poisoning the population.

For instance, in 2016, studies were carried out and showed alarming rates of mercury poisoning among the Yanomami. A test on hair samples from 19 communities in the region was conducted by the Brazilian Health Foundation Fiocruz, in collaboration with the Hutukara Yanomami Association, the Socio-Environmental Institute of Brazil, and the Yekuana Association (APYB). The results of the study are alarming: more than 90% of the indigenous populations are severely contaminated with blood mercury levels, above the tolerated average.

This mercury poisoning also leads to a problem in feeding the population, since the entire food chain is contaminated by the river water, which both the Yanomami and the fish, -constituting an important food resource- consume.

The basins of at least four rivers of the Yanomami indigenous land (Mucajai, Uraicoera, Catrimani, and Parima) are among the most affected by mercury pollution. The miners took over Porto do Arame, located on the Uraricoera River, a strategic point in the Yanomami indigenous land, as it is the means of access to the territory. The miners even began to control the flow of this place.

Secondly, the pollution caused by the use of mercury for illegal gold mining is a factor influencing infant mortality, which is already very high in the Yanomami community. Children are particularly vulnerable, because they suffer from malnutrition and diseases such as malaria and pneumonia. In effect, the Yanomami’s territory is home to the world’s highest infant mortality rate, with 133 deaths per 1,000 births.

Illegal gold mining and the resulting mercury pollution of the rivers are also responsible for the alarming malnutrition of the children of the Yanomami villages, from 60% in one community to almost 80% in another, according to Oswaldo Cruz Foundation. This research institution emphasizes that the mercury levels in women and children -due to the pollution of the rivers- are one of the causes.

Similarly, the government is not putting measures in place to prohibit the access of the protected indigenous territory to illegal gold diggers. Worse, the government of Jair Bolsonaro wants to legalize this gold panning in the Yanomami territory with a bill (191/2020) authorizing mining in indigenous lands.

The Federal Public Prosecutor challenges this posture, demonstrating that there was no prior consultation of the affected indigenous peoples, in clear disrespect and violation of the principles of the Federal Constitution and ILO Convention 169 on Indigenous and Tribal Peoples.

Similarly, the Articulation of Indigenous Peoples of Brazil also issued a technical note stating that the project is non-conventional in nature, as it violates the right to free, prior, and informed consultation of indigenous peoples, but also its contradictory character concerning the constitutional legal hermeneutic of Article 231 of the FC/1988.

At the same time, the bill 5490/20, which establishes the National Plan for the Eradication of Mercury Contamination, including preventive measures and measures of control and social assistance to contaminated people is being analysed in the Chamber of Deputies, but there is no guarantee that this bill will be implemented, nor that it will be sufficient.

1. **What are the adverse impacts of toxic and hazardous waste on your Indigenous community’s (or the Indigenous peoples you represent) collective and individual rights, such as your rights to lands, resources, culture, health, livelihood, political and economic involvement, etc.?**

The release of mercury by illegal gold miners into rivers represents a violation of the territory of the Yanomami, which was recognized and demarcated in 1990 to protect it from whichever intrusion, including illegal gold miners. In 1992, the federal police carried out a series of operations against the invasion of the miners endangering the survival of the natives. However, the lack of a protection and inspection plan for the country's largest indigenous land has allowed illegal miners to organize and operate in networks of criminal organizations, stimulated by the rise of gold and cassiterite in the international gold market. The Committee on Human Rights and Minorities, the Committee on the Environment and Sustainable Development, and the Committee on Public Security and Combating Organized Crime of the Chamber of Deputies held, on November 26, 2019, a public hearing to discuss the role of the State in the fight against organized crime that operates in the extraction of gold on Yanomami indigenous lands and its consequences. Despite this, illegal gold mining continues and extends to the Yanomami lands.

Likewise, there is an almost total absence of state presence among the Yanomami and no structured educational assistance before the arrival of the Salesian Mission and the Service and Cooperation Association with the Yanomami (Secoya) in the region.

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

The government does not put in place measures to consult the Yanomami population and violates its own Federal Constitution in this regard.

People were only informed of the risks of this mercury pollution by the action of associations such as Secoya.

1. **Is the company responsible for producing the toxics and hazardous waste implementing dialogue with regards to those substances and their consequences with your community?**

There is currently an associate of organized crime between the mining fronts and drug trafficking recently involved in the operation of illegal mining operations.

There is no established contact between the community and the corporates: there is even an exponential increase in violence between these two groups. In particular, the gold miners asked Yanomami families to hand over young girls for sex for food. In June 2020, for example, two indigenous Yanomami were murdered by gold diggers in the Parima River region. Similarly, in February 2021, an attack by the Helipi community was recorded in the Uraricoera River region of Roraima, resulting in the death of a gold-digger and a severely injured Yanomami. In April, there was an exchange of fire between the two groups in the same region. In May 2021, another attack was recorded in the village of Palimiú, in the same area of the Uraricoera River. The same year, a young Yanomami from the Aiari community was brutally raped and stabbed by a gold digger in the municipality of Santa Isabel do Rio Negro-AM, on the lower Cauaburis. Finally, just recently, in April 2022, a 12-year-old Yanomami girl from the Aracaçá community was abducted, raped, and murdered in the Waikás region.

This climate of terror thus established does not allow the establishment of a dialogue.

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

On 14 March 2018, the Roraima Indigenous Council denounced the attempt to legalize gold panning in protected territories in a letter prepared during the 47th General Assembly of Indigenous Peoples of Roraima, at the Lake Caracaranã Regional Center, where more than 3,000 indigenous people expressed their rejection of mining in Yanomami territory.

The Yanomami community is also implementing awareness campaigns about their cause or peaceful demonstrations: In April 2022, indigenous peoples demonstrated in Brasília against the legalization of mineral exploration on their lands that President Bolsonaro is trying to introduce.

A petition was also launched calling on the Brazilian government to force the gold miners to leave the territory with the campaign “#ForaGarimpoForaCovid”.

As we speak, the representatives of the community have organized a campaign in six European countries to make its situation known, with the organization of conferences, political articulations and contacts with the press to try to change this reality.

Finally, we are preparing a referral for several UN Special Rapporteurs to report on violations of the rights of the Yanomami community.

The community is not seeking compensation but wants the violation of its rights to stop.

1. **What are the most significant challenges to eliminating exposure to toxics in your community?**

To protect the Yanomami community, the priority would be to prohibit access to the territory to illegal gold diggers, with the effective implementation of a protection and inspection plan. To protect the Yanomami community, the priority would be to remove urgently all invading prospectors from the Yanomami land and to prohibit their access with the effective implementation of a protection and inspection plan and territorial surveillance. Today, the territory has only three controllers from the Brazilian Institute of Environment and Renewable Natural Resources and less than 10 controllers from the National Indian Foundation (Funai) to ensure its protection. A civil action of the Federal Public Prosecutor's Office in Roraima was launched in 2021, demanding that the Federal Government improve the structure of these bodies, but the latter has not yet taken place.

Then, it is necessary to oppose the legalization of mining in this territory, encouraged by President Jair Bolsonaro.

Once the threats have been removed, a process for cleaning up the rivers should finally be put in place.

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?**

There is currently no education, awareness or sensitization campaign in Brazil regarding mercury pollution. Despite being a signatory country to the Minamata Convention on Mercury (COP1), Brazil still does not have a mercury emissions monitoring system. The Minamata Convention aims to protect human health and the environment from anthropogenic emissions and releases of mercury.

Even worse, the health care system implemented by the Indigenous Health Secretariat-SESAI through the Yanomami and Ye kuana Special Sanitary District is collapsing, which motivated, since November 2021, formal complaints from the Federal Public Ministry of the States of Roraima and Amazonas with recommendations related to improving management, implementation of several health programs, as well as the organization of health services.

It is also important to note that Brazil is not a producer of mercury and, therefore, there are many loopholes in the authorities' control of illegal mercury entering the country, often through falsified imports for industrial purposes.

As if that were not enough, the health workers who were present in the Yanomami territory are now fleeing it, driven by professional insecurity in the face of the constant threats caused by the terrorist system created by illegal gold diggers.

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

As stated earlier, the Brazilian government has not taken any measures to protect this indigenous peoples : only civil society associations, such as Secoya or the ISA, joined forces to help Yanomami and Ye kuana people and seek to give visibility to this very serious problem and seek national and international support in this perspective.

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?**

The Brazilian government has not conducted any assessment or study to measure the level of exposure to toxic substances in Yanomami populations. The only studies that have been done independently are non-governmental initiatives.

In 2016, studies were carried out and showed alarming rates of mercury poisoning among the Yanomami. A test on hair samples from 19 communities in the region was conducted by the Brazilian Health Foundation Fiocruz, in collaboration with the Hutukara Yanomami Association, the Socio-Environmental Institute of Brazil, and the Yekuana Association (APYB). The results of the study are alarming: more than 90% of the indigenous populations are severely contaminated with blood mercury levels, above the tolerated average.

A recent study conducted between 2018 and 2022 by the Federal University of Amazonas, in partnership with other institutions, including Secoya, also tried to measure the presence of mercury in suspended material from tributaries that cross the Rio Negro from the Yanomami territory, and revealed highly worrying preliminary results.

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

The situation of generalized insecurity imposed by the increasing circulation of armed gold diggers in the different regions of the territory Yanomami causes fear and inconvenience for the health professionals who abandon their post, as was recorded in Palimiu, Roraima, jeopardizing the care that could be provided.

The communities also complain about the diversion of drugs reserved for indigenous populations for the gold diggers' benefit.

The government has not taken any further action concerning health care or education.

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?**

First, and as early as 1990, the Yanomami territory was demarcated to protect it from illegal gold diggers. However, this protection is still not efficient.

Legally, the health of indigenous peoples in Brazil is ensured by a subsystem inserted in the Single Health System (SUS) linked to the Ministry of Health. A right that must be guaranteed in an intercultural manner as stipulated in the so-called "Arouca Law, No. 2019-2020" that added Chapter V to Law No. 8080/1990, which regulates public health as established by the Federal Constitution and establishes the SUS. Chapter V, in turn, constitutes the indigenous health care subsystem within the SUS.

This law can be seen as the regulatory framework for the protection of indigenous people in Brazil.

The principle of universal access to health actions and services is provided for in Article 196 of the Federal Constitution and in point I of Article 7 of Law 8 080/90. The interconnected principle of equality in the actions of promotion, protection and restoration of health, is also provided for in art. 198 of the Constitution and in point IV of art. 7 of law no. 080/90.

The principle of comprehensive care is expressly enshrined in article 198, point II, of the Federal Constitution of 1988. However, its content is determined by art. 7 of Law no. 8,080/90 "as an articulated and continuous set of preventive and curative, individual and collective actions and services, necessary for each case at all levels of complexity of the system" (BRASIL, 1990).

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?**

At the national level, the Yanomami can request justice of the national law. Questions about their lands are the responsibility of the State. Any failure to protect these lands is then the responsibility of the State of Brazil.

There is also the Funai, which is a federal agency that is responsible for the protection of lands and protects the interests of indigenous peoples, therefore their lands. However, the FUNAI was emptied of its police force, dismantled and transferred to the Ministry of Agriculture where it is without any possibilities to meet its institutional objectives. The current president of Funai is part of the policy of President Jair Bolsonaro, which leads to a degradation of this body and serves the communities.

At the regional level, the Inter-American Court of Human Rights protects in its jurisprudence the territorial rights of indigenous peoples, based on the Inter-American Convention on Human Rights.

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

Yanomami medicine is traditional medicine, adapted to a semi-nomadic and isolated way of life. Nevertheless, the catastrophic upheavals brought to the community by the gold miners, who came from different regions and countries, cannot be treated by this type of medicine. For example, in 2020, the Garimpeiros spread the Covid-19 virus on indigenous territory. In 2021, COVID-19 cases increased by 250% among Yanomami in 3 months, according to the Hutukara Association. In January 2021, 10 Yanomami children died from COVID-19, fueling fears about the disproportionate impact of the coronavirus on vulnerable indigenous peoples in the Brazilian Amazon. Public health experts warned that the coronavirus could wreak havoc on indigenous groups in an area where infectious diseases such as measles, smallpox, and flu viruses have decimated these communities.

Thus, it is easy to conclude that concerning mercury poisonings and pollution, which are already difficult to treat by occidental medicine, There is no knowledge within traditional indigenous medicine to treat people exposed to these toxic substances.

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