

**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 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.

**Submission**

This submission is filed by the government of the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, in the United States (<https://ftbelknap.org/>). The Fort Belknap Reservation of Montana is home to the federally recognized Gros Ventre and Assiniboine Tribes. For additional information about the Fort Belknap Indian Community or these responses to this survey, please contact President Jeffrey Stiffarm, at jeffrey.stiffarm@ftbelknap.org, or attorney for the Fort Belknap Indian Community, Daniel Belcourt, danbelcourt@aol.com.

**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.**

The Fort Belknap Reservation (“Reservation”) was established and set aside for the use of the Gros Ventre and Assiniboine Tribes (“Tribes”) by an Act of Congress in 1888. At that time, the United States assured the Tribes that they would retain rights to all water necessary to fulfill the purposes of the Reservation, including waters originating in the Little Rocky Mountains that Tribal members used for irrigation, domestic supplies, and other purposes.

The original Reservation included the Little Rocky Mountains, which to this day are the headwaters for much of our water resources. The Little Rocky Mountains are considered sacred by Tribal members, and were traditionally used by the Tribes for hunting, fishing, cultural, and spiritual purposes. This land, and especially the Little Rockies, are the foundation of our cultural practices, including fasting, prayer, and spiritual communion as well as home to many of our sacred sites and cultural practices.

In the 1880s, the federal government pressured the Tribes to cede gold-bearing areas of the Reservation to the United States. Congress carved out the Little Rocky Mountains from the Reservation in 1896. In the late 1970s, new mining technologies and a sharp rise in the price of gold resulted in the development of open pit mining operations at the Zortman-Landusky mines in the Little Rockies that operated under federal government-approved Plans of Operations from 1981-2003. The mines used cyanide solution to extract microscopic particles of gold from the ore. The mining complex covered over 1,200 acres. Surrounded on three sides by the Reservation, the Zortman-Landusky mines sit at the headwaters for many creeks that eventually flow through the Reservation.

The Tribes have been directly affected by hard rock mining atrocities and to this day, suffer the effects and are having to react and remediate the damage. Heap leaching at the Zortman-Landusky mines exposed significant areas of rock containing sulfides to water and air, which resulted in acid mine drainage. Among other impacts, mining operations diverted stream flows away from the Reservation and polluted multiple streams running onto the Reservation. In fact, the Tribes are facing permanent surface and groundwater contamination and continue to suffer from multiple devastating and lasting harms to the Tribes’ beneficial uses, including impairment of drinking water, fish and wildlife habitat, recreation, and agricultural and industrial uses. Acid mine drainage has likewise resulted in public health risks and continues to threaten the Tribes’ powwow grounds, ceremonial and sacred sites, and other areas of cultural significance.

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.?**

Acid mine drainage continues to threaten the Tribes’ powwow grounds, ceremonial sites, sacred sites, and other areas of cultural significance. Future mining at the site threatens to further desecrate sacred tribal land, including the potential to disturb the graves of relatives and ancestors of Tribal members. The Little Rockies are considered sacred by Tribal members and are at the center of many of our cultural practices, including fasting, prayer, and spiritual communion as well as home to many of our sacred sites and cultural practices.

As noted, the Tribes face permanent surface and groundwater contamination and continue to suffer from multiple devastating and lasting harms to the Tribes’ beneficial uses, including impairment of drinking water, fish and wildlife habitat, recreation, and agricultural, and industrial uses. Additionally, acid mine drainage results in ongoing public health risks, threatening the health and welfare of tribal members.

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?**

Current federal law does not allow for Free, Prior and Informed Consent (formally known as FPIC) prior to the approval of any project affecting the lands, territories, or other resources of Indigenous peoples. The Tribes support a system that requires FPIC for mining activities that would adversely affect tribal resources.

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?**

In our experience, private mining interests have focused on avoiding and denying responsibility for their actions, including Pegasus Mining, which operated the Zortman-Landusky mines until the company declared bankruptcy in the late 1990s, abandoned the contaminated mine site, and shirked its responsibility to reclaim and clean up the site. Thereafter, in the early 2000s, the mine was designated a special site, for reclamation and remediation under and United States law known informally as CERCLA. State of Montana and federal agencies contributed tens of millions of dollars to reclamation and water treatment at the site. The water treatment plants cost $2-3 million a year to treat acid mine drainage that will continue in perpetuity.

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?**

Yes, our Tribes have participated in administrative processes and litigation to protect our Tribal communities and water resources from acid mine drainage and other contamination from past hard rock mining. Moreover, mining interests continue to target the area. Just last year, we were forced to challenge the issuance of a mining exploration license upstream from the Reservation to a mining company that was recently cited for exploring and mining without a permit. And while the federal government has temporarily closed certain federal public lands in the Little Rockies to new mining, a recent 2-day lapse in that protection resulted in several new mining claims being staked within the Zortman Landusky Reclamation Area – jeopardizing the enormous investment in existing and ongoing reclamation work. This is a public safety threat of the highest magnitude. We must and will remain vigilant to protect our land and our people from the harmful impacts of hard rock mining. I should add we spend significant time and resources working to protect our communities and our natural and cultural resources despite insufficient public safety funding from the federal government.

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

The most significant challenges are lack of funding and resources to address and/or eliminate toxics in Indigenous communities and the lack of a mandatory, meaningful process for consulting with Tribes around the activities that create toxic and hazardous waste exposure in the first place. The Fort Belknap Indian Community is underfunded in nearly every area of tribal governance, from law enforcement and health care to education and housing. Our Tribes spend significant time and resources working to protect our communities and our natural and cultural resources despite insufficient public safety funding from the federal Bureau of Indian Affairs. Moreover, tribal consultation has been essentially meaningless. The Zortman-Landusky Mine was permitted despite opposition from the Tribes and received approval in the past for multiple expansions, even after severe acid mine drainage developed, multiple cyanide spills occurred, and cultural resources were harmed. The consultation process is treated as a box-checking exercise, rather than a meaningful engagement at all stages of the permitting process.

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?**

Neither the federal government nor the responsible mining companies provide community education of this kind.

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

We are not aware of any specific actions taken to protect the rights of Indigenous persons exposed 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, to our understanding there are no such national health assessments to measure the rate of toxic exposure that Indigenous peoples experience.

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

As citizens of a federally recognized tribe, members of the Fort Belknap Indian Community do receive certain health and education benefits through the federal government. However, the Indian Health Services (IHS), the federal agency responsible for providing health care, is severely underfunded. In the 2018 the U.S. Commission on Civil Rights released its briefing report “Broken Promises: Continuing Federal Funding Shortfall for Native Americans” concluding that the U.S. continues to fail to adequately address the well-being of Native Americans over the last two centuries. The IHS funding is inequitable, and IHS is chronically underfunded, covering only a fraction of Native American health care needs although such health care is required by the federal government’s unique trust responsibility to American Indian and Alaska Native people. In 2016 IHS health care expenditures per Native person were a meager $2,834 versus $9,990 per person for federal spending on health care nationwide. Importantly, these are general education and health programs. To our knowledge there are no specific health programs to provide services to Indigenous peoples and persons exposed to toxics.

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?**

While there are federal and state laws of general application that relate to these issues, Indigenous peoples and individuals do not have specific constitutional or legal rights regarding toxic exposure.

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 such institutional remedies apart from using the judicial system on a case-by-case basis, with private litigation involving significant time, expense, and uncertainty. Further, these are not Indigenous-specific remedies, and they do not take into account Indigenous peoples’ specific rights.

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

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