Dr. Marcos A. Orellana, Special Rapporteur on toxics and human rights
OHCHR-UNOG

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**Re: Submission to the Call for Input on the Impact of Toxics on Indigenous Peoples to inform the report on “The impact of toxics on Indigenous Peoples” to be presented at the 77th Sess. Of the U.N. General Assembly**

For more information, please contact Anpo Jenson, IITC Environmental Health Research Specialist, at +(605) 454-9867, or email: anpo@treatycouncil.org; Summer Blaze Aubrey, IITC Staff Attorney for Human Rights, at +(509) 823-6951, or email: summer@treatycouncil.org.

IITC has the following recommendations and contributions:

* Local Communities be treated as a separate entity from Indigenous Peoples, and they should not be conflated in any context, particularly by UNFCCC and the Convention on Biological Diversity.
* Request that the Special Rapporteur on toxics and human rights endorse amending the FAO Code of Conduct on Pesticides to include the right to Free, Prior and Informed Consent of Indigenous Peoples.
* Request that the Special Rapporteur endorse and uphold the position stated by the UNSRIP regarding Free, Prior and Informed Consent in his own work.
* Uphold and advocate for the right to Free, Prior and Informed Consent in the Special Rapporteur’s interactions with the U.N. Chemical and Environmental Conventions.

There are ongoing attempts by some States and U.N. Environmental Convention bodies and processes to diminish the unique legal status and standing of Indigenous Peoples as “Peoples” and the recognition of our rights as affirmed in the U.N. Declaration on the Rights of Indigenous Peoples, both within the U.N. System and in our ancestral homelands.

Both the UNFCCC Local Communities and Indigenous Peoples Platform and the work of Indigenous Peoples in the Convention on Biological Diversity have been used to promote or justify the idea that Local Communities and Indigenous Peoples should be considered as one entity or be linked in the work of these bodies. This continues despite the objections of Indigenous Peoples who refuse to allow the recognition of their rights and legal status as Peoples to be diminished or undermined by such a conflation.

It must be noted that the name of the LICPP was decided at UNFCCC COP 21 in Paris by State Parties without the input of Indigenous Peoples. In fact, “Local Communities” are not a defined or organized constituency at the UNFCCC and are therefore not members of the LCIPP’s Facilitative Working Group to date. Indigenous Peoples at the UNFPCC have made it clear that attempts to diminish our rights as Peoples in responses to the Climate Crisis in this way will not be accepted. The International Indigenous Peoples Forum on Climate Change (IIPFCC) otherwise known as the Indigenous Peoples’ caucus at the UNFCCC, developed a formal response on this matter. The collective statement representing Indigenous Peoples from all seven regions was presented to the Chair of the UNFCCC SBSTA, Tosi Mpanu-Mpanu, on May 26, 2020. It called the attempt to conflate Indigenous Peoples and Local Communities as a “false equivalency” and stated:

“To be clear, we support the participation of local communities in the LCIPP on the basis of their ‘self-representation and self-mobilization.’ However, we do not support the slow and incremental erosion of the interrelated, interdependent and indivisible rights of Indigenous Peoples affirmed in the comprehensive international human rights instrument entitled *United Nations Declaration on the Rights of Indigenous Peoples*.”

This matter is currently under intense discussion in the International Indigenous Peoples Forum on Biodiversity, which was organized to work at the U.N. Convention on Biological Diversity before the UN Declaration was adopted. The IITC continues to affirm the right and responsibility of local communities to define and organize themselves through then own distinct forms of participation at the CBD and in other U.N. Environmental and Chemical Convention bodies, but distinct from the processes developed over decades for the participation of Indigenous Peoples.

This issue is not just a theoretical concern. It has far-reaching implications and impacts for Indigenous Peoples in other international processes addressing environmental toxics where we are struggling to have our rights and concerns considered. Last month, at the 4th Minamata Convention on Mercury Conference of the Parties held in Bali from March 21 – 25, 2022, a large South America country attempted to subvert the rights to land and FPIC of Indigenous Peoples in that country by designating gold miners planning to encroach on Indigenous Peoples’ territories as “local communities” with comparable rights to carry out mining on the ancestral and traditional territories of the Indigenous Peoples of that country.

In response to the concerns expressed on this matter by Indigenous Peoples attending that COP, U.N. Special Rapporteur on the Rights of Indigenous Peoples, Jose Francisco Cali Tzay, made the following statement on March 24, 2022, which was quoted in our final intervention to that body:

Indigenous Peoples have been a distinct constituency at the United Nations since 1977.  They were recognized as a one of the stand-alone Major Groups with their own voice and representation in UN bodies addressing environment and sustainable development at the UN Earth Summit in 1992.  With the adoption of the UN Declaration on the Rights of Indigenous Peoples by the UN General Assembly in 2007, their inherent rights were affirmed as the international minimum standard.  Therefore we cannot accept any attempts to diminish the outcomes of this historic trajectory or undermine their status and standing by combining them or equating with non-Indigenous entities such as minorities, vulnerable groups or local communities.  Such attempts, whether by States or UN bodies themselves, is not acceptable and will be challenged by Indigenous Peoples and those mandated to defend their rights.

Moreover, Indigenous Peoples in the United States, Canada, and Alaska face continued access to water crises. Despite residing in these so-called “developed” countries, many Indigenous Peoples in these countries, especially those in remote and/or rural areas, do not have access to clean, running, or potable water. If there is running water, there are “water boil advisories” that have lasted decades and even when followed do not make the water safe to drink.

**Oceti Sakowin**

Indigenous Peoples in these countries are also directly impacted by water pollution and contamination caused by past, current and ongoing imposed development on and near their lands and water sources, such as rivers and ground water tables, without the use of free, prior and informed consent.

For example, the Oglala Lakota (with a population of approximately 30,000) reside on the Pine Ridge Indian Reservation in South Dakota, United States and is recorded to be the poorest county in the United States. Approximately 80% of tribal citizens are unemployed and average $8,678 per capita income. There is an extreme shortage of housing on the Reservation where more than additional 2,500 houses are needed to address such a crisis. There are as many as 18 family members living in single trailers between 600 and 1,300 sq. feet.

The Lakota have the lowest life expectancy of any group in the United States. In a 2017 study, the average life expectancy for a Lakota person was recorded to be 46 years, 33 years less than the average American. By comparison, in Haiti, considered to be the poorest country in the hemisphere, the average life expectancy is 47 years old. This is also lower than for Sudan, India, and a number of other “developing” counties.

The Reservation is extremely rural and lacks access to adequate healthcare, experiences severe food deserts and lacks access to clean potable running water. Pine Ridge currently experiences the highest rates of alcoholism, diabetes, and heart disease. According to a study published in 2017 by the Red Cross using Indian Health Service data “Lakota Indians die at higher rates than other Americans from alcoholism (552% higher), diabetes (800% higher) all American Indians (182% higher), infant mortality (300% higher), unintentional injuries (138% higher), homicide (83% higher), suicide (74% higher) teenage suicide rate is (150% higher), cervical cancer (500% higher), and tuberculosis (800% higher).”

Approximately 33% of Tribal members live without running water or electricity. Water use on the Reservation is highly contaminated. In public drinking water supplies on the Pine Ridge Indian Reservation, mercury is recorded to be 8 times above accepted EPA limit. Most of the surface waters analyzed and described in a 2020 study provided by Dr. LaGarry claims, “Mní Wičhóni intake from the Missouri River and the Mní Wičhóni tap water at Potato Creek, closely approach, equal, or exceed the EPA MCL for mercury.” Mercury is known to be an extremely fatal neurotoxin which can lead to renal failure and has continued debilitating effects on the nervous system. Mercury is also known to bioaccumulate in animals and childbearing mothers, ultimately leading to irreversible intergenerational impacts such as infertility, spontaneous abortion, and congenital deficits or abnormalities.

South Dakota has been mined for uranium and gold since the late 1800’s. Today open pits and un-reclaimed mines continue to infiltrate water systems and harm life. In the recent 2020 study, The Lakota People's Law Project tested surface waters at 16 different locations across the span of the Pine Ridge Reservation and parts of western South Dakota. 14 of the 16 sites were contaminated with heavy toxins and metals. Copper, magnesium, manganese, mercury, molybdenum, sulfur, and strontium were found at about accepted EPA maximum contaminant levels (MCL). The drinking water on the Reservation has 10 times the amount of copper. This amount of copper poses threats to children and individuals with metabolic disorders. Mercury at different municipal drinking water sites has 8x the mercury level. There are no safe amounts of mercury intake and poses additional intergenerational threats to the human body. Strontium is also present at these sites and can cause birth defects if accumulated in the time. Molybdenum tested at 0.0497 mg/L which is still below the EPA MCL at 0.08 mg/L. However, with children continuously swimming and with long term exposure will have adverse health effects such as impaired copper metabolism and deficiency in humans.

Furthermore, water supplies across the state of South Dakota are contaminated with uranium and exceed the EPA maximum contaminant level for mercury and uranium. Additionally, 5 other toxic metals are near the EPA health advisory levels for children weighing 22 pounds. Currently, there are 13 pending Black Hills mining permits pending all in which are on Treaty territory and will drain down towards Oceti Sakowin Reservations. Under the 1868 and 1851 Fort Laramie Treaties healthcare, housing, and protection of land and water rights are protected and recognized rights. According to these recent reports, the Treaties are being continuously violated and the public health crisis continues unattended.

**Historical Mining of Mercury in the Kuskokwim Watershed**

Evidence from the US Geological Survey and other published studies shows that there are elevated levels of mercury in water, sediments and fish (such as pike and burbot) downstream from the former mercury mines that operated from the 1930s until the early 1970s. Many of the mercury mines such as the Red Devil Mine, have not been properly remediated and continue to be a source of mercury to the watershed. Fish of the Kuskokwim are essential for the Yupik and Athabascan people of the region as part of their traditional diet and culture.

**Current Large Scale Metals Mining is a Major Source of Mercury in Alaska**

* According to the EPA Toxics Release Inventory (TRI), metals mines in Alaska generated more than 450,000 pounds of mercury in 2018 and more than 435,000 pounds in 2020. These emissions are unregulated. The TRI likely underestimates emissions because the data base is made up of industry self-reported data.
* Red Dog Mine, located in northwest Alaska and the world’s largest lead-zinc mine, released 424,980 pounds of mercury alone in 2020.
* The proposed Donlin Creek Mine in the Kuskokwim River watershed would be a significant source of mercury in a region that has elevated levels of mercury from past mercury mining, resulting in a 40% increase in mercury deposition to surface waters near the mine.

Moreover, Alaska is a place of great strategic importance to the US military. Alaska has more than 700 former and currently used defense sites that are contaminating the lands, waters, and traditional foods of Indigenous peoples.

Our community-based research (see references for our publications) on Sivuqaq shows elevated levels of mercury in the fish downstream from the formerly used defense site at Northeast Cape (NEC). Mercury contamination of fish at NEC is documented in a recent paper (Jordan-Ward et al. 2022). The Yupik people suffer health disparities associated with the military contamination that also includes PCBs, PAHs, pesticides, and other heavy metals, including cancers, thyroid disease, diabetes, heart disease, birth defects, low birthweight babies, premature births, stillbirths, miscarriages and other reproductive health problems, developmental and learning disabilities.

* Coal mined in Alaska and much of it exported to Asia, although there are several coal-fired power plants in Alaska that are significant sources of mercury and other hazardous air pollutant
* Air pollution travels from Asia to Alaska on prevailing atmospheric currents. The “Brown Cloud” carries mercury and other air pollutants.
* Mercury builds up in the food web.
* Indigenous peoples are exposed to mercury in contaminated fish and other traditional foods such as marine mammals.

**Arctic Warming is Causing Massive Releases of Mercury from Permafrost**

* The Arctic is warming three times as fast as the rest of the world. Melting of Arctic ice, glaciers, and permafrost is releasing sequestered chemicals, including mercury and other persistent and toxic chemicals.
* With current emissions levels of greenhouse gases, permafrost could shrink by between 30 and 99 percent by 2100.
* Permafrost contains massive quantities of mercury that are released with permafrost melting. Permafrost soils are the largest reservoir of mercury on the planet, storing nearly twice as much mercury as all other soils, the ocean and the atmosphere combined.
* A recent study found approximately 793 gigagrams, or more than 15 million gallons, of mercury is frozen in northern permafrost soil. That is roughly 10 times the amount of all human-caused mercury emissions over the last 30 years, based on emissions estimates from 2016. Reference: Schuster, P. F. et al. (2018). Permafrost stores a globally significant amount of mercury. Geophysical Research Letters, 45, 1463–1471.

**USE OF MERCURY IN INDIGENOUS COMMUNITIES OF THE COCO RIVER (WANGKI) IN NICARAGUA**

The Nicaraguan government has ratified the Minamata Convention and as of 2021 has begun cleaning up mercury in traditionally mining areas. However, Indigenous communities located on the banks of the Rio Coco or Wangki, have experienced in recent years an increase in mining exploitation both in previously abandoned mining sites or with little productivity and on the banks of the river in the dry season months. The gold is sold in Honduras and Nicaragua, mainly as exchange for food products.

The organized women of the communities conducted research in 2018 and identified health impacts, such as bone pain, abdominal pain, respiratory problems, eye problems, and digestive system problems. They have also identified an increase in cases of abortions. Other problems are the increase in alcohol and drug consumption, since "they exchange gold for drugs with Hondurans.”

The situation has impacted on community cultural life and the reduction of community and territorial traditional governance practices. The women recommend strengthening community governance standards, expansion of mercury-contaminated cleanup measures, and promotion of mercury-free artisanal gold mining techniques.