



Study on the Right to Health and Indigenous Peoples with a Focus on Children and Youth by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)
Submission Summary to the EMRIP Expert Group Meeting, Montreal Canada, February 21 – 22, 2016 from the International Indian Treaty Council (IITC) /Consejo Internacional de Tratados Indios (CITI) (Non-Governmental Organization in General Consultative Status to the United Nations Economic and Social Council)

Submission Summary

Environmental Health is the recognition by Indigenous Peoples that environmental toxins and contamination directly impact our health, development and well-being. The relationship to the environment and the direct link with human health is undeniable and has been presented consistently for many years in a number of UN bodies.

Faith Gemmill, Gwich'in, Arctic Village Alaska, presenting for the International Indian Treaty Council (IITC) to the United Nations Working Group on Indigenous Populations, Geneva July 31, 1996 stated:

“From a traditional perspective, the health of our Peoples cannot be separated from the health of our environment, the practice of our spirituality and the expression of our inherent right to self-determination, upon which the mental, physical and social health of our communities is based.”

For this Study IITC underscores the direct relationship between the environment and holistic intergenerational health. This link is affirmed in Indigenous Peoples' testimonies and Declarations, scientific studies, and has become increasingly recognized by United Nations (UN) Bodies. This includes the UN Human Rights Council through various studies and the establishment of Rapporteurs¹ whose mandates are based on this link.

IITC's written submission for this Study will review in greater detail the international legal framework affirming the right to health for Indigenous Peoples including the Convention on the Rights of the Child, recommendations of UN Treaty bodies, the Treaty Right to health and the UN Declaration on the Rights of Indigenous Peoples. It will document violations of the right to health caused by environmental contamination, including examples of environmental violence impacting, in particular, the reproductive health of Indigenous women and girls as well as infant and child health.

¹ For example, Mr. Baskut Tuncak, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Mr. Léo Heller, Special Rapporteur on the human right to safe drinking water and sanitation; Mr. John Knox Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; noting also that the Special Rapporteur on the situation of human rights defenders has recognized the importance for Indigenous Peoples of environmental human rights defenders. See also the studies of the Office of the High Commissioner for Human Rights, including the OHCHR Study on the relationship between climate change and human rights (2009) and the Analytical study on the impacts of climate change on the enjoyment of the right to health (ongoing).



Indigenous Peoples live in some of the most remote areas in the world: the deserts, mountains, forests and Arctic tundra. Indigenous families subsist off the land and waters through farming, herding, hunting, fishing and gathering for their main food supplies. Many of these regions are heavily exposed to toxic contaminants as a result of mining and extractive industries as well as industrial agriculture and “green revolution” programs which rely heavily on the use of toxic pesticides. Many chemicals (“Persistent Organic Pollutants” or POPs, the subject of the UN *Stockholm Convention*) persist in the environment and are transported through the environment, in particular to the Arctic and Northern climates, heavily contaminating Indigenous lands and foods far from the points of production and use.

The impacts caused by environmental toxics to Indigenous women, girls and unborn generations include severe and irreversible developmental disabilities, reproductive impairment, untold physical and emotional pain and suffering and death. The production, use, dumping, and general proliferation of environmental toxics adversely affect the collective and individual rights of Indigenous Peoples, and Indigenous women and children specifically, to free prior and informed consent, health, well-being, culture, development, food and subsistence. The Rights to Health and Culture for Indigenous Peoples are closely linked to the Right to Food and Subsistence. It is well documented that environmental toxins have a serious impact on traditional foods, creating a false and forced choice for Indigenous Peoples, in particular, pregnant and nursing mothers, to give up eating their traditional foods to protect their unborn children and babies or to consume contaminated traditional foods. Human breast milk, our first traditional food source, is highly susceptible to environmental contaminants.

A core challenge is that national laws as well as UN multilateral environmental agreements, have failed to recognize or respect the links between environmental contaminants such as pesticides, mercury and POPs, and human rights including the rights to health and rights of the child. An example of this glaring inconsistency is the UN *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* which permits States to export pesticides and other chemicals that have been banned for use in their own countries as a result of their known detrimental health impacts including reproductive cancers and birth defects. This practice by the United States has been called “immoral” by the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and has been termed “environmental violence” by Indigenous women in International Declarations² because of its deliberate, intentional and informed nature and the resulting enormous suffering, illness and deaths.

A key contribution to the legal and normative framework for the Right to Environmental Health is Article 24 of the UN Convention on the Rights of the Child which calls upon State parties “to combat disease and malnutrition... including through the provision of adequate nutritious foods and clean drinking- water, **taking into consideration the dangers and risks of environmental pollution;**

² Including the Second International Indigenous Women’s Environmental and Reproductive Health Symposium (April 2012) and Lima Declaration of the World Conference of Indigenous Women (Progress and challenges regarding the future we want) (October 2013).



Another core underpinning is Article 29 of the UN Declaration on the Rights of Indigenous Peoples.³

Since 2006, IITC has submitted over 80 community testimonies documenting the human rights impacts of environmental contamination with a special emphasis on the health of women and children, to a number United Nations Treaty Bodies. These include:

- The UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes;
- The UN Special Rapporteur on the rights of Indigenous Peoples;
- The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- The UN Special Rapporteur on the right to food;
- Various sessions of the UN Permanent Forum on Indigenous Issues as well as two relevant UNPFII Expert Group Meetings;
- The UN Working Group on the issue of human rights and transnational corporations and other business enterprises;
- The UN *Stockholm Convention on Persistent Organic Pollutants* Conference of the Parties;
- The UN *Minamata Convention on Mercury*;
- The UN Committee on the Elimination of Racial Discrimination;
- The UN Human Rights Council (Universal Periodic Review); and
- The UN Committee on the Rights of the Child.

As a result, we are seeing the terms “environmental health”, “environmental racism” and “environmental violence” increasingly recognized in the recommendations and reports of UN special procedures, bodies and mechanisms.

The IITC submitted 39 testimonies documenting birth defects, cancers and other severe impacts on maternal and children’s health in Yaqui Indigenous communities in Sonora Mexico caused by the indiscriminate application of highly toxic pesticides, including those that are banned for use in the US but are exported by that county to Mexico, for the 69th session of the Committee on the Rights of the Child’s country review of Mexico in

³ *Article 29 UN Declaration on the Rights of Indigenous Peoples*: 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. 3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.



May 2015. As a result, the CRC's Concluding Observations⁴ recognized for the first time the term "Environmental Health" in reference to the rights affirmed in Article 24 on Children's and Maternal Health, and presented strong recommendations regarding halting the practice by Mexico of allowing the importation and use pesticides that have been banned by the exporting country.

It should be noted that the Paris Agreement adopted by the 21st Conference of the Parties of the UN Framework Convention on Climate Change represents only the second time that the term "Indigenous Peoples" has been included without qualification in any legally-binding UN Treaty, and is the first time it has been included in a UN Environmental Treaty⁵. This represents an important advance in that regard.

IITC will make a full written submission for the EMRIP Study on the Rights to Health of Indigenous Peoples by the end of February, providing further details and documentation addressing the theme of Environmental Health.

For this Expert Group Meeting and the development of the Study to be presented at the EMRIP's 9th session in July 2016 Session and submitted to the UN Human Rights Council and its member States, we respectfully call upon the EMRIP to include the following recommendations, calling upon the UN Human Rights Council to:

1. Recognize Environmental Health as an essential aspect of the Right to Health for Indigenous Peoples that impacts, in particular, children's, maternal and reproductive health, in accordance with the concluding recommendation of the UN Committee on the Rights of the Child regarding Mexico (June 8, 2015);
2. Recognize that the Treaty Right to Health, Treaty Rights to Land and Water, Treaty Right to Food and to Free, Prior and Informed Consent are important components of the legal framework for respecting and upholding the rights to health of Indigenous Peoples;
3. Support the call by the 13th session of the UN Permanent Forum on Indigenous Issues to conduct a legal review of UN Basel, Rotterdam and Stockholm Conventions, in particular the Rotterdam Convention to ensure that they are in conformity with the UN human rights standards, including the Right to Free Prior and Informed Consent as affirmed by Article 29 of the UN Declaration on the Rights of indigenous Peoples, and the Right to Health and traditional health practices as affirmed by Article 24;
4. Implement recommendation for redress and remedy for Indigenous Peoples, communities and individuals whose health and other rights have been violated by environmental degradation, environmental contamination and environmental violence, including through recommendations of the

⁴ CRC/C/MEX/CO/4-5 Committee on the Rights of the Child Concluding observations on the combined fourth and fifth periodic reports of Mexico

⁵ The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) also includes the term "Indigenous Peoples" without qualification



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UN Treaty Bodies, UN Special Rapporteurs, the Working Group on Business and Human Rights and through a strengthened mandate for the EMRIP.

Thank you.