

Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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9 February 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolution 45/17.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **discussions in the German Federal Parliament on the adoption of a national law that prohibits the export of pesticides which do not have an approval or authorization in the European Union (EU) and/or Germany.**¹

In this regard, I welcome the initiatives taken by civil society on this matter, as well as the motion by a group of parliamentarians² requesting to ban the export of dangerous pesticides, to strengthen the implementation of international conventions to protect against the adverse consequences of pesticides, and to make binding the provisions of the International Code of Conduct on Pesticide Management. In light of the informative meeting of the parliamentary committee on economic cooperation and development of 13 January 2021, and the upcoming meeting on the parliamentarians' motion that will take place on 11 February 2021, I also welcome and endorse the recommendations included in said motion, which encourage the Government to implement the following recommendations:

- to issue a binding regulation prohibiting the export of pesticide active ingredients, intermediates and pesticide formulations that do not have an approval or authorization in the EU and/or Germany due to environmental and health reasons;

¹ The term "pesticides" here refers to herbicides, fungicides, rodenticides and other chemicals used in agriculture and food processing to kill living organisms

² <https://dip21.bundestag.de/dip21/btd/19/239/1923988.pdf>

His Excellency
Mr. Heiko Maas
Minister for Foreign Affairs

- to support a similar measure at the EU level;
- to pursue stricter regulation at the global level, such as an international agreement on the life cycle management of pesticides, including highly hazardous pesticides (HHPs);
- to transform the voluntary commitments in the International Code of Conduct of Pesticide Management into binding regulations;
- to engage at the international level and within the context of relevant international fora, to guarantee an effective binding regulation on the pesticide trade, with the aim, among others, to establish an independent monitoring system on the use of pesticides and the resulting adverse health and environmental consequences in countries of the Global South.

As highlighted on various occasions by this mandate, pesticides present serious risks for human health and environment at a local and global scale (see, for example, A/HRC/34/48). Also, pesticide residues often remain in food, drinking water, air, dust and rain, posing additional health risks for the entire population.

The practice of exporting hazardous pesticides, which are banned due to environmental or health reasons, to poorer countries creates double standards that allow the trade and use of prohibited substances in parts of the world where regulations are less stringent, externalising the health and environmental impacts on the most vulnerable.

In this regard, I wish to stress to Your Excellency's Government that States can, and should take individual action to put an end to the abhorrent double standards resulting from the export of banned highly hazardous pesticides. Some countries in Europe³ have already recognized this alarming issue and approved laws prohibiting the production, storage and export of pesticides that are banned in the EU for environmental and health reasons, with the rationale that restrictions to entrepreneurial freedom are justifiable given the "damage to human health and the environment". These developments reveal that the legislation of the European Union does not pose obstacles for Member States to prohibit the export of banned pesticides.⁴

At the European level, the European Commission is taking important steps to prohibit the export of banned pesticides. For example, its [Chemicals Strategy for Sustainability](#)⁵ contemplates an export ban on hazardous chemicals that are banned in the EU.⁶ Furthermore, the Commission's communication on the European Green Deal

³ <https://www.legifrance.gouv.fr/download/pdf?id=m7COyAtqezmpl8yN9AuaRs1EHFQ2DgWXsjxXY-a5RFQ=>

⁴ Germany, as an EU Member state, is bound to EU regulation which is directly applicable law in the Member States, such as [REGULATION \(EC\) No 1107/2009](#)⁴ and [Directive 2009/128/EC](#)⁴, which is implemented in Germany by the German Plant Protection Act, as well as global agreements, such as the Rotterdam Convention on prior informed Consent, the Stockholm Convention on Persistent Organic Pollutants, and the Montreal Protocol on Substances that Deplete the Ozone Layer.

⁵ <https://ec.europa.eu/environment/pdf/chemicals/2020/10/Strategy.pdf>

⁶ In particular, the European Commission states to "ensure that hazardous chemicals banned in the European Union are not produced for export", and under the [REFIT evaluation⁶ of the Pesticides and MRLs \(Maximum residues Level\) Regulations](#) to "use all its diplomacy, trade policy and development support instruments" to promote a global phase-out of pesticides that are no longer approved in the EU.

contemplates plans to reduce risks from chemical pesticides. In this connection, the Commission has stated that, “the EU will use all its diplomacy, trade policy and development support instruments to promote the phasing out, as far as possible, of the use of pesticides no longer approved in the EU and to promote low-risk substances and alternatives to pesticides globally.”⁷

Germany has long been at the forefront of strengthening environmental protection to protect human rights against the irresponsible conduct of some business actors and their toxic products. Such commitment is reflected, for example, in Germany’s early acceptance and implementation of the Basel Convention’s ban amendment, and by the fact that Germany will host the Fifth session of the International Conference on Chemicals Management (ICCM5). Germany has also played a leading role in advancing the strategic vision and plans of the EU on environmental policies.

In this light, the adoption by Germany of a law banning the export of dangerous pesticides would signal leadership at the EU and international levels, provide an important example of good practice to other European countries, and offer a new legal basis to protect the rights of workers, consumers, and local communities adversely impacted by dangerous pesticides.

Building upon these considerations, I wish to underline that double environmental standards, as currently foreseen at the global level through the exports of pesticides or other toxic substances banned at the national level, exacerbate environmental injustice and constitute discriminatory practices that violate international human rights and environmental standards. Such practices prevent the full and equal enjoyment of the human rights of everyone.

In particular, these discriminatory practices undermine the right to a life with dignity,⁸ the right to the highest attainable standard of health⁹, the right to bodily integrity, the right to information, the right to science, and the right to a healthy environment.

This mandate’s latest thematic report to the General Assembly (A/75/290) highlighted that the practice of wealthy States exporting banned toxic chemicals to poorer nations lacking the capacity to control the risks is a deplorable example of environmental racism and injustice.¹⁰ It further stated that “the ability to manufacture and export toxic substances banned from use domestically is one, albeit large, element of how States have institutionalized externalities through discriminatory national laws and an outdated system of global governance for chemicals and wastes. Wealthier nations often create double standards that allow the trade and use of prohibited

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0208&from=EN> See also; “The Commission will continue funding Better Training for Safer Food (BTFS) in non-EU countries to inform about the EU Regulations on pesticides, decrease the divergence in farming practices and to promote more selective and less toxic substances as alternatives to older and more toxic substances.; In addition, the Commission will look at the possibility to promote the use of certain development funds to support e.g. Andean and Central American countries that have requested EU support to help them reduce the use of pesticides in fruit production.”

⁸ See International Covenant on Civil and Political Rights, Article 6; Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life.

⁹ See International Covenant on Economic, Social and Cultural Rights, article 12; Committee on Economic, Social and Cultural Rights, general comment No. 24 para. 11, para. 51.

substances in parts of the world where regulations are less stringent, externalizing the health and environmental impacts on the most vulnerable.”

These concerns have been reinforced by the Committee on the Rights of the Child, which has expressed its deep concern about “the import and use of pesticides or chemicals banned or restricted for use in third countries” and recommended to “prohibit the import and use of any pesticides or chemicals the use of which has been banned or restricted in exporting countries.”¹¹

The fact that the people who suffer from exposure to the exported highly hazardous pesticides live outside the exporting State’s borders is no excuse for its failure to take adequate measures of protection of their human rights, including a ban on the export of domestically banned pesticides. The Committee on the Economic, Social and Cultural Rights pointed out that the “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control,¹² especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective” (General Comment 24 (2017)).¹³

Many of the individuals that suffer the exploitation and discrimination resulting from exposure to highly hazardous pesticides work in the fields of the Global South. The Human Rights Council has recognized, in its resolution [A/HRC/RES/42/21](#),¹⁴ that States have a duty and corresponding responsibility to prevent the exposure of workers to hazardous substances, including pesticides. These duties and responsibilities extend across borders. It is further recognized that the best way to prevent such exposure is to eliminate the hazard posed by highly hazardous pesticides.

At the same time, as the Special Rapporteur on the right to food has made clear, it is a myth that pesticides are necessary to feed the world and that their adverse effects on health and biodiversity are somehow a cost that modern society has to bear.¹⁵

In light of these considerations, it is my responsibility, in accordance with the mandate given to me by the Human Rights Council, to address the information brought to my attention. In this regard and in light of the considerations expressed above, I respectfully urge your Excellency’s Government to implement the recommendations articulated in the above-mentioned motion and to provide my mandate with information on progress achieved in this regard:

1. adopt a law prohibiting the export of pesticide active ingredients, intermediates and pesticide formulations that do not have an approval or

¹¹ Committee on the Rights of the Child, Concluding observations on the fourth and fifth periodic reports of Mexico CRC/C/MEX/CO/4-5 (3 July 2015) paras. 51 and 52.

¹² This includes human rights abuses abroad by enterprises domiciled in their territory and/or subject to their jurisdiction (i.e., enterprises incorporated under their laws or having their registered office, central administration or principal place of business within their territory).

¹³ International Covenant on Economic, Social and Cultural Rights, article 12; Committee on Economic, Social and Cultural Rights, general comment No. 24 para. 11, para. 51.

¹⁴ See also Principles on human rights and the protection of workers from exposure to toxic substances, A/HRC/42/41.

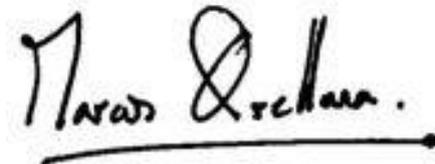
¹⁵ See A/HRC/34/48, para. 2, cited in A/74/480, para. 70 (“Dependence on hazardous pesticides is a short-term solution that undermines the right to food”).

authorization in the EU and/or Germany due to environmental and health reasons;

2. actively promote the implementation of similarly binding measures at the EU and international levels; and,
3. transform the voluntary commitments in the Code of Conduct of Pesticide Management into binding regulations;

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink that reads "Marcos Orellana." The signature is written in a cursive style and is underlined with a horizontal line.

Marcos A. Orellana

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes