

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

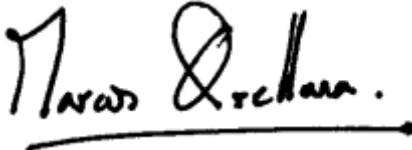
19 February 2021

Dear Ms. Rivera,
Dear Ms. Williams,

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, pursuant to Human Rights Council resolutions [45/17](#). According to this resolution, the Human Rights Council invites the mandate “to report to the Human Rights Council in accordance with its programme of work and annually to the General Assembly” and “to continue to provide detailed, up-to-date information on the adverse consequences for the full enjoyment of human rights of managing and disposing of hazardous substances and wastes, in an unlawful manner...”

On this occasion I would like to share with you a document (attached) comprising my comments and suggestions to the draft High Level Declaration of the International Conference on Chemicals Management (ICCM-5). I am aware that the ICCM-5 hosting meeting has been postponed due to the pandemic situation, yet I continue to follow closely the work of the drafting group and other dedicated working groups. I hope the comments which I share will be taken into consideration, namely for expanding the human rights angle of the High Level Declaration.

Should you have any questions, please do not hesitate to contact Lilit Nikoghosyan and Sara Cavallo, Human Rights Officers, supporting my mandate at the Office of the High Commissioner for Human Rights (+41-22-917-9936 or +41-22-917-9950, lnikoghosyan@ohchr.org, scavallo@ohchr.org).



Marcos A. Orellana

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

Ms. Angela Rivera
Ms. Kay Williams
Informal drafting group co-facilitators of the
High Level Declaration of the International Conference on
Chemicals Management (ICCM-5)



Comments by the Special Rapporteur on toxics and human rights ICCM-5 and its High Level Declaration

In the face of the international community' failure to achieve the 2020 goal articulated in the Johannesburg Summit on Sustainable Development, the UN Special Rapporteur on Toxics and Human Rights believes the Fifth Session of the International Conference on Chemicals Management (ICCM-5) is a major milestone to confront the serious global chemicals and waste crisis. A structural change in approach, one based on human rights, is needed to avoid the adverse consequences of chemicals and wastes on humanity and the planet.

The sound management of chemicals and wastes, including pollutants, toxic industrial chemicals, and pesticides, should focus on prevention of exposure to hazardous substances. Human rights standards and norms should be integrated into all levels of policymaking concerning the management of chemicals throughout their life cycle.

The following elements are distinctive of a rights-based approach:

Participation: Every citizen has the right to take part in the conduct of public affairs, including in relation to decision making on toxics.

Transparency: Public frameworks for collecting, measuring, monitoring, reporting and verifying information on hazards and exposure levels are necessary for evaluating and analysing health implications and accountability.

Accountability: States must ensure access to justice and provide effective remedies and restitution to victims of exposure to hazardous chemicals and wastes. Accountability cannot be achieved without effective remedies for human rights violations.

Populations at risk: Those most vulnerable in society require special measures of protection: children, low income communities, persons with disabilities, older persons, indigenous peoples, migrants and minorities, workers in hazardous industries, all the while taking into account gender-specific risks.

A rights-based approach is premised on the reaffirmation of rights, the realization of which may be adversely impacted by irresponsible management of chemicals and wastes practices, including the:

Right to a Life with Dignity: The right to life does not only protect against the deliberate taking of life. It also protects everyone from exposure to toxics and wastes that compromise a life of dignity.

Right to Health: Everyone has the right to be protected from toxic chemicals and wastes. A toxic-free environment is an underlying determinant of the right to health.

Right to information: States are duty-bound to generate, collect, assess and update information on toxics and wastes; and to communicate such information to the public.

Right to physical and mental integrity: Everyone has the right to autonomy and self-determination over their own body. Unconsented exposure to toxics is a physical intrusion.

Right to a toxic free environment: A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights.

Right to science: States are obliged to respect the integrity of the scientific processes. States should make use of the best available scientific evidence in decision-making on toxics.

Right to effective remedies: Victims of human rights violations resulting from exposure to chemicals and wastes have the right to appropriate and effective remedies.

A rights-based approach should lay the foundation for the vision of ICCM-5's HLD. In the 2006 Dubai Declaration adopted by ICCM-1, States committed to respecting human rights and fundamental freedoms. ICCM-5 should not regress but build on the Dubai Declaration and further strengthen human rights protections. The current draft, however, is far from the mark:

- The draft fails to raise alarm about the global toxics emergency. The HLD should highlight ***how the lifecycle of chemicals and waste has caused a planetary toxics crisis***.
- The draft is premised on the idea of minimizing harm and uses expressions such as “the safest way possible.” However, this is incompatible with a rights based approach, as ***minimizing harm implies that some people will be hurt***. Instead, the HLD should focus on prevention of exposure to toxics and substitution of hazardous products.
- The draft inherits previous linear thinking. Instead, it should ***address the lifecycle impacts of chemicals and wastes*** and shift its ambition toward a circular economy.
- The draft assumes that more chemicals are better for society. But this is far from being a given fact, as ***more chemicals can compromise human welfare***. The Declaration should be anchored on the affirmation of a toxic free environment.
- The draft ***alters the precautionary approach by introducing a threshold of high risk***. Instead, the Declaration should affirm the centrality of the precautionary principle, without restricting its application with a threshold of risk.
- The draft emphasizes national level implementation, while it should also contemplate the ***strengthening of international laws to address gaps and serious issues of concern***, such as highly hazardous pesticides.

The draft fails to adequately elaborate on business responsibilities. Instead, the HLD should ***specify the elements of human rights due diligence by businesses***.

In conclusion

A human rights-based approach is essential for a post-2020 chemicals and waste strategy that is effective, legitimate and contributes to the realization of human rights.

While the HLD drafters are at the forefront of raising awareness about the planetary toxics emergency, the current HLD draft falls short of articulating a vision grounded on human rights protections. Inspiring the HLD's vision on a human rights based approach is key to avoiding a repeat of the failed global 2020 goal.

The international community needs ICCM-5 to deliver. A successful ICCM-5 will help achieve the ambitious targets set by the Sustainable Development Goals and shift the global agenda for the sound management of chemicals and wastes towards circular economies.

States should adopt a human rights-based approach to ICCM-5 in order to secure a toxic free environment for all and prevent human rights abuses resulting from toxic chemicals and wastes.