



Suggestions of International Indian Treaty Council

2013 United Nations Forum on Business and Human Rights, Submitted to the Working Group on the issue of human rights and transnational Corporation and other business entities

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Summary

The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central, and South America, the Caribbean and the Pacific working for self-determination and the recognition and protection of human rights, treaties, traditional cultures and sacred lands. IITC was founded in 1974 to serve as an international voice and advocate for Indigenous Peoples. In 1977 IITC became the first Indigenous organization to receive Consultative Status with the United Nations Economic and Social Council. In 2011 was the first Indigenous organization to be upgraded to “General Consultative Status” in recognition of its wide range of work in a number of UN bodies and processes.



Connected to the Earth Series, Shaun Hedican, Ojibway (with permission of the artist)

IITC was pleased to contribute recommendations to the Special Representative of the Secretary General Mr. John Ruggie on the issue of human rights and transnational corporations and other business enterprises during the development of what became the guiding principles adopted by the UN Human Rights Council in 2011. We are also pleased to submit suggestions on topics, panels and modalities as requested for the second annual Forum on Business and Human Rights to be held in Geneva on 3-4 December 2013.

IITC’s first suggestion proposes a focus on the State Duty to Protect and the Corporate Responsibility to Respect with regards to the duty of States to prevent the corporations they license from negatively impacting the enjoyment of human rights of Indigenous Peoples in other countries, and to hold them accountable. This includes consideration of the extension of national jurisdiction further to various UN treaties, conventions and other standard setting instruments, using such examples as the *International Convention on the Elimination of*

Racial Discrimination treaty monitoring body (the Committee on the Elimination of Racial Discrimination) and the *UN Declaration on the Rights of Indigenous Peoples*.

Our second suggestion proposes a focus on a specific industry sector, the pesticides industry, to demonstrate the intersection between pillars one, two and three of the Guiding Principles. We will provide information and a case study regarding the human rights impacts of pesticides, including those which are produced in the United States that are banned, subject to restriction or registration for import and export under national and international laws.

Suggestion 1: The Duty to Protect and the Corporate Responsibility to Respect: State obligations to prevent corporations they license from negatively impacting the enjoyment of human rights of Indigenous Peoples in other countries, and hold them accountable

While the extension of national jurisdiction abroad has remained somewhat limited in the past to issues such as anti-corruption, environmental protection and anti-terrorism, it is our submission that treaty monitoring bodies are increasingly drawing attention to the issue of extraterritoriality respecting business and human rights in their conclusions and recommendations based on the implementation of UN treaties, conventions and standard setting instruments. Furthermore, we also submit that customary international law is informed by the interpretation of such bodies and the multiple intersections between treaties and standard setting instruments related to human rights and the rights of Indigenous Peoples.

Extraterritoriality and the intersection of the Duty to Protect and the Corporate Responsibility to Respect has in fact been highlighted in numerous human rights mechanisms and international “soft law.” The committee monitoring the *International Covenant on Economic, Social and Cultural Rights* issued General Recommendation 15, recommended that states parties “should” take steps to prevent their own “citizens and companies” from violating rights in other countries, particularly in relation to food, water and health. The International Labour Organization *Declaration on the Fundamental Principles and Rights at Work* commits its member states to respect and promote principles and rights in four categories, including the elimination of discrimination, regardless of whether or not those member states have ratified the relevant ILO Conventions – this would include ILO *Convention 169 on Indigenous and Tribal Peoples*, the fundamental principle of which is non-discrimination. The Organization for Economic Cooperation and Development *Guidelines for Multinational Enterprises* recommended as a general principle that firms “respect the human rights of those affected by their activities consistent with the host government’s obligations and commitments,” which includes international standards that the host state recognizes.

The *United Nation Declaration on the Rights of Indigenous Peoples*, Article 29.2, affirms that:

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.

In this regard, while the *UN Declaration on the Rights of Indigenous Peoples* is not binding in the same manner as treaties, it does have diverse legal effects including:

1. Domestic courts may use the UN Declaration to interpret human rights;
2. UN and regional treaty bodies may use it to interpret international human rights instruments
3. The UN Declaration contains provisions that reflect existing customary international law (CIL)
4. The UN Declaration may contribute to the formation of new CILⁱ

Principle 12 of the Guiding Principles makes it clear that the responsibility of corporations to respect refers to internationally recognized human rights - the Declaration is currently a consensus universally accepted human rights instrument since no state in the world formally objects to it, which reinforces its legal effect.ⁱⁱ The *Declaration on the Rights of Indigenous Peoples* was adopted by the General Assembly on Thursday 13 September 2007, by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine). All four states who voted against have since reversed their positions and endorsed the UN Declaration, and some of the states who abstained have also since endorsed including most recently, Colombia. During the Durban Review Conference in April 2009, 182 States from all regions of the world reached consensus on an outcome document in which they “*Welcome[d]* the adoption of the UN Declaration on the rights of indigenous peoples which has a positive impact on the protection of victims and, in this context, urge[d] States to take all necessary measures to implement the rights of indigenous peoples in accordance with international human rights instruments without discrimination...”ⁱⁱⁱ

Finally and most importantly for the substantive purposes of this submission, we draw the attention of the Working Group to the conclusions and recommendations of the Committee on the Elimination of Racial Discrimination (CERD) over the past 6 years, with the particular example of the reviews of Canada in 2007 and 2012 and the United States in 2008. Notably, the CERD specifically called on Canada to **prevent** mining corporations it

licenses from violating the human rights of Indigenous Peoples in other countries and to **hold them accountable**.

CERD Reviews of Canada (2007, 2012)

In 2007, the CERD issued the following recommendation to Canada in its Concluding Observations following Canada's review (CERD/C/CAN/CO/18):^{iv}

The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts 2. 1(d)d), 4 (a) and 5(e)).

In light of article 2.1 (d) and article 4 (a) and (b) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada.

In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.

This groundbreaking recommendation to Canada was made as a result of testimonies, resolutions and statements from Indigenous Peoples in the United States and Guatemala, which were included in the Joint Shadow Report submitted by the International Indian Treaty Council and the Confederacy of Treaty 6 First Nations. Their submissions presented a pattern of human rights violations, including rights to traditional lands and resources, subsistence, health and free prior and informed consent by Canadian mining corporations operating in their traditional homelands.

Unfortunately, Canada did not provide the requested information on the effects of activities by Canadian corporations, or on the steps it has taken in this regard in its next periodic report to the CERD which was reviewed in February. Information submitted by the International Indian Treaty Council by Indigenous Peoples in the United States, Mexico and Guatemala, including some of those who had submitted information for the CERD's

review in 2007, clearly indicates that Canada has failed to implement the 2007 CERD recommendation. In fact, some of these situations had deteriorated even further since that time. The specific case studies and examples presented in the Joint Indigenous Peoples Shadow report to the CERD at its 70th Session^v are included in Annex 1, attached to this submission of Suggestions.

As a result of this information submitted by Indigenous Peoples in the United States, Guatemala and Mexico regarding the activities of Canadian mining companies operating in their traditional territories, the CERD's Concluding Observations to Canada in 2012 at its 80th Session, CERD/C/CAN/CO/19-20, reiterated Canada's obligations in this regard:

14. While noting that the State party has enacted a Corporate Responsibility Strategy, the Committee is concerned that the State has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples outside Canada, in particular in mining activities (art. 5).

The Committee recommends that the State party take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable.

CERD Review of the United States (2008)

A joint Indigenous Peoples shadow report compiled and submitted by the IITC to the CERD for the US periodic review which took place in March 2008 specifically documented the human rights impacts on Indigenous Peoples, specific Yaqui Indian communities in Sonora, of the export of banned pesticides by the US to Mexico.

In response, the CERD issued the following recommendation to the US, following up on a similar recommendation to the Canadian government during its periodic review the previous year (March 2007):

“30. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the right to land, health, living environment and the way of life of indigenous peoples living in these regions.

In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.”^{vi}

The issue of Mexico’s continuing *import* and use of dangerous and banned pesticides and their use in agricultural area of Mexico as impacting Indigenous communities (Yaqui and Huichol) was also submitted by IITC and addressed in the recommendations of the UPR review of Mexico by the UN Human Rights Council in September 2008.

The case study addressing the human rights impacts of toxic pesticides on Indigenous Peoples in Rio Yaqui, Sonora Mexico was presented more recently by the International Indian Treaty Council and the Native Village of Savoonga, St. Lawrence Island Alaska (USA) to the United Nations Permanent Forum on Indigenous Issues Expert Group Meeting “*Combating Violence Against Indigenous Women and Girls*”, January 18 – 20, 2012, United Nations Headquarters. Relevant excerpts, including community testimonies from this submission titled “Indigenous Women and Environmental Violence” are included as Annex 2, attached.

Suggestion 2: For a specific industry sector demonstrating the intersection between pillars one, two and three of the Guiding Principles, IITC proposes the pesticides industry, including a case study (enclosed) regarding the human rights impacts of pesticides produced by and exported from the United States which are subject to restriction and registration for import and export under international law

“Just because something is not illegal, it may still be immoral. Allowing the export of products recognized to be harmful is immoral.”

- ***UN Special Rapporteur on Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Ms. Fatma-Zohra Ouhachi-Vesely on her first official country visit to the United States, 2001***

In 2001, the Special Rapporteur on Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Ms. Fatma-Zohra Ouhachi-Vesely visited the United States. She found that the United States allowed the manufacture and exportation of pesticides that were banned for use in the United States to other, primarily developing, countries. She cited a report on the alarming levels of this exportation:

“United States Customs records reveal that 3.2 billion pounds of pesticide products were exported in 1997-2000, an average rate of 45 tons per hour. Nearly 65 million pounds of the exported pesticides were either forbidden or severely restricted in the United States [...]. In the 1997-1999 periods, shipments of banned products were found in Customs Records [...] 57 per cent of these products were shipped to a destination in the developing world. Nearly half of the remaining 43 per cent were shipped to ports in Belgium and the Netherlands. Though it is not possible to make a final determination from available data, it is likely that the final destinations of a large number of these shipments were also developing countries.”^{vii}

The same report further stated that:

“[B]etween 1996-2000, the United States exported nearly 1.1 billion pounds of pesticides that have been identified as known or suspected carcinogens, an average rate of almost 16 tons per hour [...].”^{viii}

These figures have particular importance in regard to girls and boys in developing countries. According to the International Labor Organization, 65 to 90 per cent of the children estimated to be working in Africa (80 million), Asia (152 million) and Latin America (17 million) are working in agriculture. Evidence that children have heightened susceptibility to the carcinogenic effects of pesticides has even greater significance for developing countries. There, children live and work in conditions that involve almost continuous exposure, ranging from contact in fields to contaminated water, pesticide-contaminated clothing, and storage of pesticides in homes.

A report based on US Government Custom Service Records, “*Pesticide Exports from U.S. Ports, 2001–2003*” states that:

“Analysis of U.S. Custom Service records for 2001-2003 indicates that nearly 1.7 billion pounds of pesticide products were exported from U.S. ports, a rate >32 tons/hour. Exports included >27 million pounds of pesticides whose use is forbidden in the United States. WHO Class 1a and 1b pesticides were exported at an average rate of >16 tons/day. Pesticide exports included >500,000 pounds of known or suspected carcinogens, with most going to developing

countries; pesticides associated with endocrine disruption were exported at an average rate of >100 tons/day.”^{ix}

IITC submitted a *Freedom of Information Act* (FOIA) request in March of 2012, and received a response from the US Environmental Protection Agency in July of 2012. The EPA provided a list of 32 chemicals, pesticides and severely hazardous pesticides. Of those listed, 10 that are listed as “un-registered” on the Rotterdam Convention list are being produced in the United States by 24 companies who operate 28 facilities in 23 states in the US. This shocking information includes the production and export of endosulfan, which was added to the Stockholm Convention list in 2011.

The United Nations Declaration on the Rights of Indigenous Peoples as well as CERD General Recommendation XXIII requires the Free Prior Informed Consent by Indigenous Peoples who are exposed and detrimentally affected by exposure these highly toxic substances. The IITC has received extensive documentation from many such communities, in particular in Mexico and Guatemala, affirming that this is, in fact, not the case.

During her visit to the United States Mme. Vesely also met with government officials, reporting that “US officials told me that pesticides banned in the United States but exported cannot be regulated if there is a demand overseas, because of free-trade agreements.”^x The Rapporteur, Ms. Vesely justifiably found that the US policy is based upon, among other unacceptable premises, “... on an untenable premise that pesticides deemed unacceptable for the residents and environment of the United States are somehow acceptable in other countries. Clearly, countries such as the US often choose to offer their citizens a higher degree of protection than they insure for others in other countries and fail to monitor the human rights impacts of this practice by US corporations. One of the most common reasons for doing so is to acknowledge different levels of economic and social development among States. However this disparity is difficult to justify in respect of pesticides found to be so dangerous that they are banned from sale or use.”^{xi}

As one farm worker who is a member of a Yaqui community in Mexico expressed in a meeting with the US’s Environmental Protection Agency in the San Diego, California USA in 2001, commenting on the US’s policy of banning pesticides for use in the US but still permitting their production for export, “Why are the lives of our Yaqui children in Mexico worth less than the lives of your children here in the US?”

There are a great many difficulties in tracing the use abroad of banned pesticides manufactured in the US. In Mexico and Guatemala, for example, there is no labeling of origin or content of pesticides. They are given names like “Veloz” (speedy), or “Ninja” in

Guatemala. As the Special Rapporteur pointed out, "Even if something is marked 'poison' it tends to be shipped in large amounts, and then transferred to smaller containers without proper labeling for local sale and use. And the people actually using the products often cannot read anyway."^{xiii}

In an investigation conducted by the International Indian Treaty Council in Sonora, Mexico, on Indigenous Yaqui ancestral lands received testimony from an indigenous agricultural worker who was told by the agricultural companies involved in aerial spraying to bury large pesticide canisters because they knew that the pesticide was banned. As stated above, many Yaqui family members, farm workers and midwives and mothers have presented testimonies about increasing levels of birth defects, cancers and deaths due to toxic exposure from indiscriminate aerial spraying, storage and use of highly toxic pesticides in communities and unsafe working conditions with no safely precautions or information about the dangers provided.

The IITC is especially aggrieved to report the deaths of many children in this community who were born with severe birth defects due to exposure, directly or via maternal exposure, to toxic pesticides. One of the most difficult to report is the death on April 11th, 2013 of two-year old Juan Antonio Rodriguz Coronado shown below (left) with his grandmother in Vicam Rio Yaqui Sonora in January 2013. Also pictured is his medical report diagnosing him as born with cirrhosis of the liver. His family home is on the flight path of airplanes spraying pesticides overhead, including in the residential areas where he lived. Testimony was presented by his grandmother to IITC in January 2013 including his dismal medical prognosis that if a liver transplant could not be obtained almost immediately, which was not possible for this family with few resources, his case was terminal.

Another tragic case is that of Cristian Molina, born with multiple birth defects after his mother was exposed to toxic pesticides working without protection while a 17 pregnant field worker. Cristian was never able to walk and his growth was permanently stunted. He passed away as a result of his birth defects at age 13 on March 15th, 2008. He is shown below (right) with his mother at age 12 in May 2006. A family member Mrs. Carla Arena Verdia presented the following testimony regarding Cristain and a number of other cases of children born with birth defects in this high-pesticides use area to IITC in 2005. This testimony as well news of Cristian's death was forwarded to the Special Rapporteur the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights Mr. Okechkwu Ibeanu, along with many other community testimonies.

“It is my experience that this isn’t the only case. In fact, there are several similar problems, such as the boy Cristian. His parents were working in the fields, on account of which Cristian was born with a deformity. His body hasn’t developed yet. He is now 11 years old and his parents live in the countryside, in El Pescado, the landing place for the planes that fumigate our lands. That is why we are asking for more support to make progress on problems with the chemicals that are so harmful to us.”



The export of banned and dangerous toxics from the “developed/industrialized” to the “developing” countries continues, with impacted Indigenous and other communities at the bottom end unformed, sickened and killed. It should be noted with concern that the production and export of banned pesticides by the US is permitted under federal law (the *Federal Insecticide, Fungicide, and Rodenticide Act*, FIFRA) as well as under the *International Rotterdam Convention*, as long as the receiving country is informed of this status. Unfortunately no one informs the Indigenous communities “on the ground” who suffer grave and often deadly human rights consequences.

Holding the US and US-based Corporations Accountable

“The agrochemical industry is valued at over \$42 billion and operates with impunity while, according to the World Bank over 355,000 people die from pesticide poisoning every year.”^{xiii}

On December 3rd 2011, 27 years later after the Bhopal disaster caused by the release of toxic pesticides from the Union Carbide factory in Bhopal India killed over 25,000 people, the Permanent Peoples Tribunal convened in Bangalore India with an international panel of 5 judges. Based on testimonies and statements about health and other human rights violations caused by pesticides from communities around the world, including Indigenous

communities from Alaska, Mexico, Peru and elsewhere, the Tribunal delivered a scathing indictment of the pesticide industry. It focused on the “Big 6” agrochemical giants, the Multi-national Corporations (MNC’s) Monsanto, Syngenta, Dow, DuPont, Bayer, and BASF (Dow bought Union Carbide in 2001).

Blame for the agrochemical industry’s human rights abuses was also assigned to the three States where these corporations are headquartered—the United States, Switzerland, and Germany. As stated in the PPT’s findings, these countries “*failed to comply with their internationally accepted responsibility to promote and protect human rights, especially of vulnerable populations.*”

Other findings included:

“The Tribunal makes the following declaration of responsibility for the six indicted MNCs and three Governments in particular and further also declares the responsibilities of all States, international organizations, UN Specialist Agencies, all other institutions of global governance.”

“As Concerns The Indicted Six Corporations (BASF, Bayer, Dow Chemical, Dupont, Monsanto:

-- The Tribunal finds on all evidence presented before it the six MNCs responsible for gross, widespread and systematic violations of the right to health and life, economic, social and cultural rights, as well as of civil and political rights, and women and children’s’ rights.

-- The Tribunal also finds these corporations responsible for their systematic conduct resulting in violation of indigenous peoples’ human rights and other entitlements.

[As Concerns The Three Specifically Indicted States:]

“The United States of America (USA), the Swiss Confederation (Switzerland) and the Federal Republic of Germany (Germany) have failed to comply with their internationally accepted responsibility to promote and protect human rights, especially of vulnerable populations and their specific customary and treaty obligations in the sphere of environment protection...”^{xiv}

The Permanent Peoples Tribunal was convened by Non-Governmental organizations and its findings are considered non-binding upon the States and corporations in question. However similar conclusions were reached by a legally binding UN Treaty Monitoring body process, the UN Committee on the Elimination of Racial Discrimination, in its Concluding Observations for the periodic review of the United States that took place in February 2008. The International Indian Treaty Council coordinated a joint Indigenous Peoples shadow

report which includes testimony and documentation addressing the human rights impact of the production and export of toxic pesticides, including tons of pesticides banned for use in the US due to ample proof of severe health impacts including cancers and birth defects.

Clearly, United States policies and laws as well as International Conventions allowing banned pesticides to be manufactured and exported by US based corporations are immoral and wrong, and violate the human rights of the impacted Indigenous communities where they are applied without their free, prior and informed consent, and also where they travel as a result of global transport. As Mme. Ouachi-Veseley stated in her report to the Commission of Human Rights, “[i]n particular, the right to life, the right to health, the right to found a family, the right to a private life are most commonly violated by the effects of pesticide use.”^{xv}

The National Congress of American Indians also affirmed the human rights impacts on Indigenous Peoples of the export of banned pesticides by the United States and US based corporations in a resolution adopted by consensus at its annual conference in November 2007:

“WHEREAS, the production, export and unmonitored use of banned, prohibited and dangerous toxics including pesticides violates a range of human rights for Indigenous Peoples around the world including the Rights of the Child, Right to Health, Food Security, Development Life, Physical Integrity, Free Prior Informed Consent, Cultural Rights, the Right to be Free from all Forms of Racism and Racial Discrimination and the Right of All Peoples not to be Deprived of Their Own Means of Subsistence.”^{xvi}

This NCAI resolution also called for a formal Hearing by the United States Senate to further address this matter.

Conclusion

The IITC and our affiliates look forward to the opportunity to present additional information to the Working Group on these important issues which so profoundly and urgently impact the human rights of Indigenous peoples which are directly relevant to the three pillars of the Guiding Principles (protect, respect and redress).

Finally, we have included as Annex 3 our recommendations for further consideration by the Working Group of the relevant human rights framework for addressing the impacts of environmental toxins including pesticides, and other contaminating activities such as mining in Indigenous communities.

We thank the Working Group for its consideration of the matters presented in this submission, and the recommendations we have presented for discussion at the Forum in November 2013.

ANNEX 1

Examples provided for the Committee on the Elimination of Racial Discrimination Review of Canada and Transnational Corporations Registered in Canada whose Activities Negatively Impact the Enjoyment of Rights of Indigenous Peoples in Territories Outside Canada

Excerpted from the submission to the 80th Session of the Committee on the Elimination of Racial Discrimination Review of Canada, Joint Report by the International Indian Treaty Council, Confederacy of Treaty 6 First Nations, the First Nations Summit, Dene Nation and Assembly of First Nations Regional Office (Northwest Territories), Assembly of First Nations, Union of British Columbia Indian Chiefs, Samson Cree Nation, Ermineskin Cree Nation, Native Women's Association of Canada, Indigenous World Association, Treaty 4 First Nations.

For example, the Western Shoshone in Nevada, USA have continued to suffer the impacts of mining carried out by Barrick Gold Corporation, based in Toronto Canada. Barrick is the largest gold producer in the world, with operations on several continents. Of particular concern to the Western Shoshone has been the destruction and desecration of the sacred mountain Mt. Tenabo where a massive open pit gold mine is continuing to move forward despite their clear and consistent opposition.

The US and Canada as well as the CERD have been informed of the violations of freedom of religion and cultural practice, free prior and informed consent and other human rights resulting from Barrick's mining operations in Western Shoshone territories.

As Western Shoshone grandmother Joyce McDade stated at a protest by the Western Shoshone on January 18th 2009, "Denabo has special significance for Western Shoshone, it means the writing on the rocks walls of the mountain put there by our Creator. We go to pray to our Creator to give us strength to keep us going. How can we pray to our creator when the place is being blown up?"

Barrick has been engaged in gold mining operations in Western Shoshone Treaty Territory known as Nevada USA since 1965, producing massive environmental and cultural destruction. In November 2008, nearly two years after the CERD issued the recommendation to Canada regarding preventing human rights violations by Canadian Corporations, Barrick carried out a massive clear cut of pine trees to make way for a huge open pit gold mine known as the Cortez Hills Expansion Project. This took place on one side of Mt. Tenabo, a mountain in the centre of a sacred area called Newe Sogobia by the Western Shoshone used for sweat lodges and other ceremonies, as well as traditional food and medicinal plant gathering. Western Shoshone Elder Carrie Dann who visited the site

after these pine trees (an important source of the traditional food called pinon nuts) were clear cut and viewed the destruction including piles of uprooted trees and unfenced polluted ponds. She called it a “war zone against the trees by the Barrick Gold Company”.

In a written statement submitted to the International Indian Treaty Council on January 9th 2012, Larson Bill of the Western Shoshone Defense Project affirmed that this struggle is continuing and that no improvement has yet been seen in the behavior of Barrick Gold corporation. Nor has the government of Canada taken any apparent steps to curtail these activities. He asserts that “this company has refused to accept its social responsibility to protect Indigenous Peoples’ land, sacred areas, water, and air pollution.”

Mr. Bill further states that: “On November 12, 2010 Canada supported the United Nations Declaration on the Rights of Indigenous Peoples. In doing so, Canada reaffirmed its commitment to promoting and protecting the rights of Indigenous Peoples at home and *abroad*. Shoshone Nation has not seen or heard any movement by Canada or their companies to properly address their Social responsibilities to the affected communities of the Shoshone People. Under the shadow of the U.S. policies and laws, the Canadian mines will continue to overlook the sacred connection of the Shoshone People to their lands and all living things upon it”.

The CERD has received considerable documentation on the violations of the land and Treaty Rights of the Western Shoshone vis-a-vis the United States. However, the actions of Barrick Gold as a Canadian mining company operating on Western Shoshone traditional and Treaty lands are of direct relevance to the CERD’s recommendation regarding Canada and Canada’s obligations in this regard.

The International Indian Treaty Council also received considerable information and documentation from Indigenous Peoples, communities and organizations in Guatemala who continue to be impacted by the activities of Goldcorp’s Marlin 1 Mine, operated in Guatemala by Goldcorp subsidiary Montana Explorada de Guatemala S.A. Goldcorp is the 2nd largest gold mining company in the world and is based in Vancouver Canada. Its shareholders include the Canada Pension Plan Investment Board, a federal Crown corporation.



Photo Credit: Sipacapa and San Miguel Ixtahuacan, San Marcos Guatemala; This is an aerial shot of the mining company's operations, which cause destruction of biodiversity, contamination of water by cyanide, natural resources, etc..

Marlin 1 open pit strip mine, which uses highly toxic sodium cyanide for ore extraction, is located in the Indigenous municipalities of Sipacapa and San Miguel Ixtahuacán and has been the focus of controversy and opposition by local communities since it was established in 2004.

The nearby Mayan Indigenous communities report contamination of ground water affecting food production, chronic illnesses among the children, persistent skin diseases and liver cancers, forced displacement of families and political repression of protesters. Communities have consistently expressed strong opposition through a number of formal and well-documented referendums which have been consistently ignored and disregarded by both the Guatemalan and Canadian governments.



Photo Credit: Sipacapa and San Miguel Ixtahuacan, San Marcos Guatemala; This is a photo of a child with disease of the skin, similar to many women and children who live in proximity to the area of gold and silver exploitation.

An update on this situation submitted to the International Indian Treaty Council on January 6th 2011 by the Centro Pluricultural para la Democracia (the Multi-cultural Center for Democracy based in Quetzaltenango Guatemala) states that “*Despite the recommendations of United Nations bodies such as the ILO and the CERD, the company continues operating and occasioning adverse impacts on the life of the communities and Indigenous Peoples in Guatemala.*” It further states that:

- a. *The Montana company is continuing its active operations, thus violating the rights of the Indigenous Peoples established in Convention 169 of the International Labor Organization, principally Articles 6 and 15 of the convention, regarding prior, informed Consultation with the participation of the affected communities and peoples.*
- b. *In Sipacapa and San Miguel Ixtahuacán, the rights to consultation and to Free, Prior and Informed Consent continue to be violated, since the indigenous Maya Mam and Sipakapense communities have never been consulted as to whether they are in agreement with the mining activity in their territories. Neither was there a process of providing real, prior, and informed information to the population of Sipacapa and San Miguel Ixtahuacán by the Marlin Mine.*
- c. *Under the influence and with the engagement of the Montana Company, the Constitutionality Court, in its Judgment issued in May 2007, declared that the consultation conducted by the communities indigenous of Sipacapa in the year 2005 was unconstitutional and without validity; arguing that consultation is the responsibility of the central government.*
- d. *Currently the adverse impacts continue to affect the life of the communities, principally in the form of destruction of the environment, contamination of rivers, and dermatological diseases.*
- e. *The Montana company has not complied with the recommendations of the ILO and of the CERD to suspend the mining exploitation in San Miguel Ixtahuacán until such time as the right to consultation and the Free and Prior Consent of the communities and Indigenous Peoples has been accomplished, in order to decide whether to continue the mining activity in their territories.*
- f. *The Montana company has not complied with the Precautionary Measures issued by the Inter-American Commission on Human Rights on 20 May 2010 in favor of 18 communities of Sipacapa and San Miguel Ixtahuacán. These precautionary measures request the suspension of the mining exploitation in said municipalities as one of the fundamental protection measures for the life of the affected communities.*

- g. *Currently, arrest warrants are outstanding against eight women and 4 men who are leaders of San Miguel Ixtahuacán. These warrants were requested by the Montana company based on denunciations made by that same company to the Guatemalan courts.*
- h. *The company continues to use large quantities of sodium cyanide to extract the gold from the rocks. Use of sodium cyanide has been prohibited in other countries of the world, principally in certain European countries.*

The IITC received information for the 2012 Joint Shadow Report submitted to the CERD from other communities and organizations in Guatemala, including the Council of Peoples of Western Guatemala (Consejo de los Pueblos de Occidente - CPO) and the San Miguel Defense Front (Frente de Defensa Migueleño, Ixtahuacán, San Marcos, Guatemala). They confirm the summary presented by the CPD, highlighting in particular the denial of free prior and informed consent and the repression of human rights leaders in the impacted communities. These statements have been translated and enclosed as additional attachments.

The Guatemalan government said in 2010 that it plans a suspension of Goldcorp's Marlin 1 mine to allow a full investigation of the health, environmental, and human rights impacts as called for by a number of international and regional human rights bodies and experts, including the CERD. The case is included in this submission to provide an update of the detailed information submitted by communities in Guatemala for the CERD's review of Canada in 2007. It presents another clear and continuing example of the failure by Canada to implement the CERD's recommendation with regards to Goldcorp's activities as a Canadian mining company operating with impunity in Guatemala.

Another recent example of community opposition to Canadian mining company's activities and resulting repression occurred in Oaxaca, Mexico on January 18th 2012. It was confirmed that one Zapoteca Indigenous man died and at least one woman was wounded when a group of municipal police officers and other armed men reportedly opened fire on a group of community members in the municipality of San José del Progreso, Ocotlán. The community members had gathered to protest construction of a pipeline proposed by the mining company Cuzcatlán to channel community ground water for use by a controversial mine.

Cuzcatlán is a subsidiary of the Canadian mining company Fortuna Silver Mines, Inc. with corporate headquarters in Vancouver British Columbia. Cuzcatlan received a government permit to build the pipeline despite strong community opposition. Community members maintain that the mining permit should not have been issued by the government because

they had not been consulted and their free, prior and informed consent had not been obtained. A blockade of the road to the mine by community members in April 2009 received international attention. Community members report ongoing conflicts as a result of the mine, which began its operations in San Jose del Progreso in 2007. Fortuna also operates a mine in the southern highlands of Arequipa, Peru.

The following statement was received by the IITC from Saul Vicente Vasquez, Indigenous expert member of the UN Permanent Forum on Indigenous Issues (UNPFII) from Oaxaca Mexico, expressing his concern on behalf of the UNPFII:

“Saúl Vicente Vázquez, member of the United Nations Permanent Forum on Indigenous Issues, hereby states his concern over the lamentable, violent occurrences of this past January 18 [2012] in the community of San José del Progreso, in which Abigail Vázquez Sánchez was wounded and Bernardo Méndez Vázquez lost his life the following day, January 19, on account of wounds incurred in that same incident. Both of these persons were members of the Coordinator of United Peoples of the Valley of Ocotlán (“la Coordinadora de Pueblos Unidos del Valle de Ocotlán, COPUVO).

The communiqué of the CPUVO indicates that “Municipal police and persons dressed in civilian clothing, alleged to be employees of the Mayor, Alberto Mauro Sánchez, started shooting point blank, critically wounding Bernardo and Abigail”.

Saúl Vicente Vázquez hereby indicates that the members of the CPUVO had stated to him a few days earlier, during an interview with him his role a member of the Permanent Forum, that “the Cuzcatlán mining company, an affiliate of the Canadian mining company Fortuna Silver, maintains a paramilitary group in the community, and the mining company’s installations are guarded by the state police.” They indicated that they had thus requested a hearing with the governor of the State of Oaxaca in order to have this situation investigated; to demand that the mining concession be canceled and that the community’s agrarian problem be solved; and to discuss problems at a municipal level and demand the recall of the municipal councilman due to the poor governance climate.

This situation was related by the representative of the Permanent Forum to the Human Rights Commission of the Government of the State of Oaxaca.

The Permanent Forum states its concern, given that at a meeting held days earlier with the Department of the Economy, the authorities indicated that to date there is no provision in the law under which to potentially cancel the mining concessions, yet in the meantime, the conflicts are growing.

These incidents strike the attention of the Permanent Forum. They furthermore call for the Mexican government to thoroughly investigate what occurred and punish those responsible for these lamentable

occurrences. It is also requested that the current mining law be revised in order to contemplate the rights of Indigenous Peoples to Consultation and to free, prior and informed consent, and that talks be opened between the representatives of the CPUVO and the state government. --- Saul Vicente Vasquez, January 20, 2012.”

The ongoing and pervasive human rights violations produced by these and other mining activities and other forms of extractive industries in Indigenous Peoples' lands without their free prior and informed consent, including those carried out by Canadian mining companies in various parts of the world, are matters of ongoing international concern. UN Special Rapporteur on the Rights of Indigenous Peoples concluded that resource extraction and other major development projects in or near Indigenous territories constitutes “one of the most significant sources of abuse of the rights of Indigenous Peoples worldwide.”^{xvii} In addition, the UN Expert Mechanism on the Rights of Indigenous Peoples prepared a Study on Indigenous Peoples and the Right to Participate in Decision-Making with a Focus on Extractive Industries for its 5th session in July 2012 presented to the UN Human Rights Council.

The Government of Canada continues to actively promote resource extraction around the world with little apparent concern to prevent the corporations it licenses from violating its international human rights obligations including those under the ICERD. Regarding the activities of Canadian mining corporations in other countries, Canada consistently relies on national laws and mechanisms in the host country, and fails to carry out its own obligations under international human rights standards. These include provisions regarding State obligations to ensure free prior and informed consent as called for by General Recommendation XXIII of the CERD and a number of provisions of the United Nations *Declaration on the Rights of Indigenous Peoples, inter alia*, Articles 10, 12, 20, 29, 32, and 37.]

ANNEX 2

Case Studies: Environmental Toxics, United States Policy and their Impacts on Women and Girls in Indigenous Communities Outside the United States

Excerpted from the submission by the International Indian Treaty Council and the Native Village of Savoonga, St. Lawrence Island Alaska (USA) to the United Nations Permanent Forum on Indigenous Issues Expert Group Meeting “Combating Violence Against Indigenous Women and Girls”, January 18 – 20, 2012

A. Rio Yaqui, Sonora Mexico: Threats to women’s, girl’s and future generations’ health and development

In 1997, Dr. Elizabeth Guillette, a scientist from the University of Arizona carried out a study of the health effects of industrial agricultural pesticides in the homelands of the Yaqui Indians in Sonora, Mexico,^{xviii} a few hours south of the US/Mexico border. Yaqui Indigenous communities in the agricultural areas have been exposed to frequent aerial and ground spraying of pesticides since the government’s implementation of the “Green Revolution” in the late 1940’s. For some, their only source of water is contaminated irrigation canals.

In addition to the impacts of pesticides sprayed from airplanes affecting the entire community, Yaqui farm workers who are not provided by growers with any protective gear in the fields. Workers unintentionally carry poisons home in pesticides-soaked clothing and skin, unknowingly spreading the contamination to their families. The maternal health of Yaqui women working in the fields or living nearby, or whose husbands bring the contamination home on their clothing, is particularly impacted. Dr. Guillette’s study documented the resulting high levels of pesticides found in the cord blood of newborns and in mother’s milk (see table below).

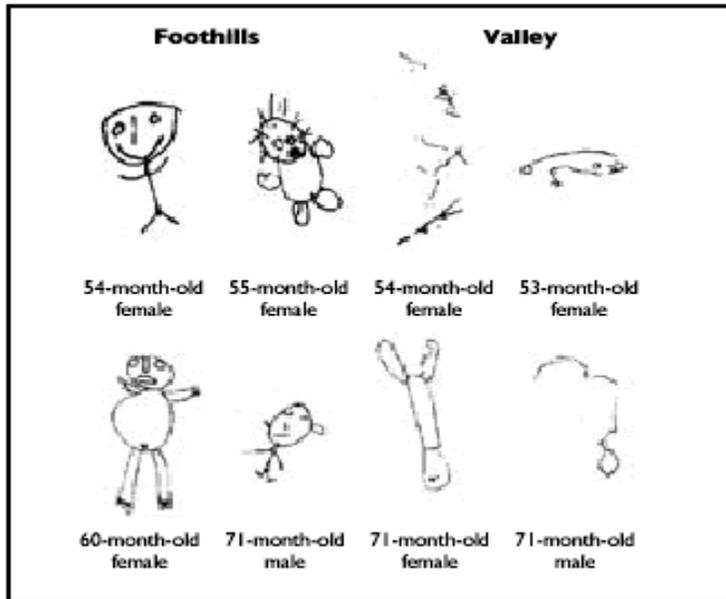
Table 1: Mean concentrations in the cord blood at time of birth and in mother's milk one month post partum from women, Pueblo Yaqui, Sonora, Mexico.
Data from Garcia and Meza, 1991^{xix}

| Pesticide | Cord Blood (ppm) | Milk (ppm corrected for fat) |
|------------|------------------|------------------------------|
| N | 19 | 20 |
| a-HCH | 0.030 ± 0.03 | 0.8599 ± 2.75 |
| b-HCH | 0 | 0.3791 ± 1.08 |
| Lindane | 0.084 ± 0.06 | 0.6710 ± 0.59* |
| D-HCH | 0.0039 ± 0.1 | 0.4432 ± 0.84 |
| Heptachlor | 0 | 1.269 ± 1.65* |
| BHC | 0.003 ± 0.002 | 0.6270 ± 0.66* |
| Aldrin | 0 | 0.2363 ± 0.59* |
| Dieldrin | 0.159 ± 0.12 | 0.0487 ± 0.08 |
| Endrin | 0.022 ± 0.02 | 0.5238 ± 1.1* |
| p,p'-DDE | 0.03 ± 0.03 | 6.31 ± 5.9 |
| ∑DDE | 0.0434 | 6.52* |

**All exceed FAO/OMS established limits*

This study also found birth defects, learning and development disabilities, leukemia and other severe health problems in Yaqui children. Combined with personal testimonies from community members collected over years, it also provides strong and compelling evidence of the detrimental impacts of pesticide exposure on the development of exposed Yaqui

children. The comparison of Yaqui children in the valley (where pesticide use is heavy) with Yaqui children in the foothills of the Sierra Madre Occidental mountains (where pesticide and insecticide use is minimal to none) showed dramatic differences in motor skills—eye-hand coordination and balance. It showed marked developmental differences included in cognitive skills which were observed in recall, simple problem solving and ability to draw simple stick figures of people:



Her study also found that Valley children had significantly less stamina and hand-eye coordination, poorer short-term memory and were less adept at drawing a person (right) than were children in the foothills (left) where traditional methods of intercropping control pests in gardens and insecticides are rarely used.^{xx}

Of particular significance to the issues addressed at this EGM is a follow-up study carried out by Dr. Elizabeth Guillette et al examining impacts of in utero pesticides exposure on breast development among girls in Rio Yaqui Sonora Mexico, “**Altered Breast Development in Young Girls from an Agricultural Environment**” published in 2006.

This second study was designed to test the hypothesis that abnormal breast development was caused by in utero exposure to agricultural chemicals with endocrine action. The principal difference between the two groups of girls studied was parental exposure to agricultural chemicals which are known to cause endocrine disruption in utero. The study noted that “Various pesticides, mainly organophosphates and organochlorines, were used extensively in the agricultural areas of the Yaqui Valley near the time of the girls’ birth (1992–1994), and many of these compounds are known to cross the placenta. A study of

newborn children from the Yaqui Valley performed close to the period these children were conceived reported elevated pesticide levels, with cord blood values of lindane, heptachlor, benzene hexachloride, aldrin, and endrin all exceeding World Health Organization established limits (International Programme on Chemical Safety 2005)^{xxi}

This study was carried through medical examinations (with parental permission) of 50 girls ages 8 – 10 and noted an accelerated rate of breast size development (fatty tissue) in the girls from the high-pesticide use agricultural (valley) areas where their mothers had been exposed to greater levels of pesticides during pregnancy as compared to the girls in the foothill regions where exposure was minimal. Of particular concern to the scientists was the relative lack of and/or abnormal mammary gland development noted in the girls from valley communities, which could have an impact on lactation (breast feeding) later in life as well as a potential links to breast cancer. This first-of-its-kind study (as per Dr. Guillette) examining the relationship between human breast development and environmental contaminants is a unique and alarming confirmation of the impacts of pesticides exposure on the health and development of Indigenous women and girls.

Since 2002, the IITC's "**North-South Indigenous Network against Pesticides Project**" collected and submitted over 50 testimonies from Yaqui community members in Sonora Mexico documenting cancer and leukemia, other illnesses, birth defects and deaths including many from mothers, community midwives and healers ("curanderas"). These community testimonies have been submitted consistently to the UN Rapporteurs on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Right to Food and Rights of Indigenous Peoples. However, this issue has yet to be addressed as a specific area for in depth investigation by any of the UN mandate holders.

Following are translations into English of two of the most recent testimonies submitted to IITC by Yaqui community mothers and a midwife addressing women's and girl's health impacts, which have not as yet been submitted to any other UN body:

Mrs. Flor Reyna Osuna, (mother of the young woman)

Young woman, Flor Osuna García.

Jesús Gonzales, (midwife)

Interviewer: Francisco Villegas Paredes

DECEMBER 15, 2011.

Mrs. Flor Reyna, the mother of a young woman who was born with deformities. Currently the young woman is 30 years old and is 1.20 meters [3'11"] tall. She says that when her daughter was born, the child's body was WATERY and JELLY-LIKE. The girl, due to her scant growth, is unable to move her legs. She can only move her arms. Her vital organs are atrophied. Studies conducted on her reveal that the girl developed deformities while in her mother's womb.

The physicians, as an important conclusion of the studies conducted, consider that the young woman's housing location, on the periphery of agricultural lands and exposed to spraying with agrochemicals, quickly leads to CONGENITAL DISEASES. Also, some biochemists specializing in clinical analysis have analyzed certain products. As a result they have reached important conclusions: mixtures of two or more chemicals applied in inhabited areas also lead to CANCERS.

The midwife, Jesús made the following comments: These deformities are the product of tumors produced by chemicals when young women are exposed to their application while working in the field without personal safety measures or other similar protection.

*Mrs. Xóchitl Valdés, (mother of the girl)
Girl: Mariana López Valdés
Interviewer: Francisco Villegas Paredes
DECEMBER 20, 2011.*

The girl's mother, Mrs. Mariana López Valdés stated that her pregnancy was very delicate. She was constantly going to the doctor. Even some midwives told her that her girl was not developing well. When the girl was born, she had deformities on her face, principally to her lips. She also stated that the girl's grandfather, Mr. Manuel Valdés works in agriculture and would generally leave chemical residues behind at his house. Some doctors told him, based on studies conducted on the girl that the agro-chemicals are having a direct effect.

The contact she had with the residues while still young caused deformations to some parts of her body when she was a fetus. The girl is alive. She is 1 year 6 months old and her deformities are growing.

The testimonies of these Indigenous women translated from Yaqui into Spanish and then into English, are tragically typical in the highly-impacted Yaqui communities of Sonora Mexico.

B. California, USA

“Indigenous women are life givers, life sustainers and culture holders. Our bodies are sacred places that must be protected, honored and kept free of harmful contaminants in order for the new generations of our Nations to be born strong and healthy.”^{xxii}

Data on health impacts of pesticides and the particular danger to maternal health and unborn generations is also well-documented in other regions, including in “developed” countries. For example, results of a 12 year study by the University of California and other agencies of over 600 mothers and their children in the California’s Central Valley exposed to pesticides during pregnancy was published in December 2010. The study confirmed that that at age 2, the children of mothers who had the highest levels of organophosphate metabolites in their blood had the lowest levels of mental development in the group. They also had the most cases of pervasive developmental disorders. Prenatal exposure to pesticides has been consistently linked to ADHD and other developmental defects as well as cancers in children such as leukemia.^{xxiii}

This work, led by University of California Public Health Professor Brenda Eskenazi, served as a model for a recently launched National Children’s Study by the National Institutes of Health (USA), which seeks to examine the effects of the environment on 100,000 children, tracking them from before birth until age 21.

It is apparent that the continuing tragic impacts of pesticides on Indigenous women, girls, babies including coming generations is finally beginning to generate greater attention among scientists and policy makers.

Indigenous women in California and elsewhere have stressed the cultural effects of pesticides, which are closely related to health impacts of Indigenous women, and produce a double impact. Traditional cultural activities carried out specifically by Indigenous women, which include food gathering, preparation and production as well as the activities related to the creation of traditional cultural items and art forms, create additional exposure to environmental toxins. The following testimony was presented by Monique Sonoquie, Chumash, of the Traditional California Indian Basket Weavers and Indigenous Youth Foundation at the Native Forum preceding the North America Indigenous Peoples preparatory session for UPFII10, March 18th 2011, in Arcata California:

“Pesticides are particularly dangerous to traditional native basket weavers. The Forest Service, Caltrans, governmental agencies, as well as the general public spray pesticides without thought to the natural environment, plants and animals, as well as those of us that work in the forests, parks, rivers,

lakes, and oceans. Weavers are affected when gathering in areas sprayed with pesticides, we are constantly at risk as we breathe in, handle and ingest these toxins as we gather, weave and split reeds with our teeth. These pesticides also affect the life and quality of the plants, making them less bug resistant, more fragile, smaller and harder to find, as well as food sources for animals, and traditional medicines for practitioners”

Indigenous women have also expressed concerns regarding the developmental and neurological impacts of neurotoxins such as mercury, many pesticides and industrial chemicals, on the long-term ability of Indigenous peoples to retain and pass on their complex cultural systems which include oral histories, stories, songs language and ceremonies to the next generations. This is a primary responsibility of Indigenous women for girls and young women throughout their learning years, and for young children of both sexes.

It is clear is that the use toxic pesticides in these and other regions causes widespread suffering, injury and death, specifically impacting Indigenous women and girls on a level that constitutes “environmental violence” with a pattern of pervasive and brutal human rights violations that remain, by and large, unchallenged.

ANNEX 3

The Human Rights Framework Addressing Pesticides and other Environmental Toxins
Excerpted from the submission by the International Indian Treaty Council and the Native Village of Savoonga, St. Lawrence Island Alaska (USA) to the United Nations Permanent Forum on Indigenous Issues Expert Group Meeting “Combating Violence Against Indigenous Women and Girls”, January 18 – 20, 2012, United Nations Headquarters.

A. The United Nations Declaration on the Rights of Indigenous Peoples

“The protection of our health, lands, resources including air and water, languages, cultures, traditional foods and subsistence, sovereignty and self-determination, and the transmission of our traditional knowledge and teachings to our future generations are inherent and inalienable human rights. These rights are affirmed in the UN Declaration on the Rights of Indigenous Peoples and other international standards, and must be upheld, respected and fully implemented.”^{xxiv}

A central factor of the proliferation of environmental toxics is the conscious and deliberate nature of their production, marketing, export, permitting and release by corporations and State agencies despite their well-known and well documented risks and impacts. Identifying the disproportionate and often devastating impacts on Indigenous women as "environmental violence" for which the US and the corporations it licenses can be held accountable is an even newer concept.

The ongoing resistance of States including the United State to the mainstreaming of human rights into national law and international environmental standard-setting processes may be directly related to their resistance to consider accountability mechanisms for the egregious and ongoing violations of human rights resulting from the deliberate production, sale and use of toxic substances with well-known and well-documented harmful effects on human health and development.

The *United Nations Declaration on the Rights of Indigenous Peoples* in its preamble affirms the principle of non-discrimination as well as the rights of Indigenous People to maintain their traditional economic, cultural and subsistence activities, protect their health and exercise free prior informed consent regarding decisions and activities affecting them, including the release of environmental toxics in their lands. These rights are directly threatened and violated, both on an individual and collective level, by US policies and corporate activities which promote, allow and impose unsustainable economic development, including resource extraction and industrial agriculture.

A number of Preambular paragraphs and Articles of the *UN Declaration on the Rights of Indigenous Peoples* directly address the rights of Indigenous Peoples, and Indigenous women, as well as State obligations to take both preventative and restorative action. These include:

- Article 3 - Right to Self-Determination
- Article 7 – the Right to Life, physical and mental integrity and the security of person; right to live as distinct Peoples
- Article 8 - Right to not be subjected to destruction of culture
- Article 13 - Right to revitalize, use, develop and transmit histories, languages and oral traditions to future generations
- Article 19 – Free Prior and Informed Consent regarding legislative and administrative measures by states
- Article 20 - Right to be secure in subsistence and development
- Article 21 – Right to the improvement of their economic and social conditions, including, inter alia, health
- Article 22 - Attention to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities
- Article 24 - Right to the highest attainable standard of health and the conservation of vital plants and animals
- Article 25 – Right to maintain spiritual relationships to land and resources for future generations
- Article 26 – Right to traditional lands, territories and resources
- Article 29 - Right to conservation and protection of the environment and productive capacity of lands, territories and resources; right to free prior and informed consent regarding hazardous materials and the obligations of States to take action to restore the health of the Indigenous Peoples affected
- Article 31 - Right to maintain, control, protect and develop cultural heritage, traditional knowledge and cultural expressions including genetic resources, seeds and medicines

- Article 32 - Right to determine and develop priorities and strategies for development including the right to free, prior and informed consent
- Article 37 – Treaty Rights
- Article 42 - Obligation for implementation and follow-up by States and UN agencies and processes

Article 29, paragraphs 2 and 3 are of particular relevance in affirming the rights of Indigenous Peoples and the related obligations of the United States as a supporter of the UNDRIP:

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.

Additional relevant rights to which the US is also obligated and which are now underscored and further clarified by the UNDRIP include:

B. The International Covenant on Civil and Political Rights (ICCPR)

Article 27 of the ICCPR states:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

General Comment 23 of the Human Rights Committee is meant to serve as guidance to the States in their compliance with Article 27:

“With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous Peoples. That right may include such traditional activities as fishing or hunting, and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions that affect them.”^{3XXV}

B. The International Covenant on Civil and Political Rights

“...In no case may a people be deprived of its own means of subsistence.” -- Article 1, ICCPR

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. They are often forced to choose between the cultural and nutritional value of their traditional foods and subsistence way of life, and the health and development of their unborn children, as well as their ability to have children at all.

In 1997 the United Nations Rapporteur on the Right to Food, Jean Zeigler responded to a submission by the International Indian Treaty Council on behalf of Indigenous Tribes and Peoples in Northern California addressing mercury contamination and St. Lawrence Island, Alaska regarding military toxics and the impacts of this contamination on their traditional subsistence foods.

“The Special Rapporteur believes that the contamination of indigenous peoples’ land and water affecting their livelihood (traditional fishing) may contribute to a violation of the Government’s obligation to respect the right to food.”^{xxvi}

C. The United Nations Committee on the Elimination of Racial Discrimination (CERD)

Of particular relevance to the human rights framework pertaining to the theme and concerns of Indigenous Peoples in the US regarding environmental contaminants is General Recommendation No. XXIII on Indigenous Peoples, adopted by the 51st session of UN Committee on the Elimination on Racial Discrimination.^{xxvii}

General recommendation XXIII, Paragraph 4 states as follows:

4. The Committee calls in particular upon States parties to:

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.

(e) Ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and to practice their languages.

F. The Universal Declaration of Human Rights (1948) firmly establishes that health and well-being are human rights, and also recognizes that “Motherhood and childhood are entitled to special care and assistance”^{xxviii}

G. One of the 5 objectives for the Plan of Action for the 2nd International Decade the Worlds Indigenous Peoples adopted by the UN General Assembly in January 2005 is “is *“promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent”*. This objective is of direct relevance in challenging activities related to environmental contamination which violate Indigenous Peoples’ human rights, and provides a framework and criteria by which effective solutions and responses can be developed in full partnership with Indigenous Peoples.

H. Nation to Nation Treaties between States and Indigenous Nations and the consensual relationships they are based on, if honored, respected and put into practice by all Parties, can be the foundation and model for respectful partnerships addressing this and a range of other issues. This is true, in particular, when there is an urgent need for joint and or/shared decision-making in order to correct current injustices, respond to critical violations and redress historic and ongoing wrongs.

The following and other preambular paragraphs, along with Articles 3, 18, 19, 27, 28, 32, 37 and 40, inter alia, of the UN Declaration on the Rights of Indigenous Peoples make important contributions to a human rights framework incorporating Treaty rights and relationships based on FPIC and full participation in decision-making:

“Considering also those treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States”

Indigenous Peoples have also affirmed the “**Treaty Right to Health**” as a legally binding and sacred obligation of the Colonial governments, including the British Crown, which entered into Treaties with Indigenous Nations:

“That the medicine chest clause binds the federal government to provide medicines and all that is required to maintain proper health.”^{xxix}

Endnotes

- ⁱ Paul Joffe, Legal Counsel, Grand Council of the Crees (Eyou Istchee), Consultation Webinar Presentation on the Exposure Draft of the UN Declaration on the Rights of Indigenous Peoples Business Reference Guide, April 9, 2013 hosted by the United Nations Global Compact
- ⁱⁱ *Supra* note 1
- ⁱⁱⁱ UN Office of the High Commissioner for Human Rights, *Outcome document of the Durban Review Conference*, 24 April 2009, para. 73
- ^{iv} <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>
- ^v <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/IITC.pdf>
- ^{vi} Concluding Observations of the UN Committee on the Elimination of Racial Discrimination, United States of America [CERD/C/USA/CO/6 May 8th 2008]
- ^{vii} Carl Smith, “Pesticide Exports from US ports, 1997-2000”, vol. 7 *International Journal of Occupational and Environmental Health* (2001), 266-274.
- ^{viii} *Ibid*
- ^{ix} Pesticide Exports from U.S. Ports, 2001–2003 Carl Smith, Kathleen Kerr, Md, Ava Sadripour, Esq. *International Journal of Occupational and Environmental Health*, Vol. 14/No. 3, JUL/SEP 2008
- ^x U.N. Deems Export of Banned Pesticides Immoral, U.S. Newswire, 202-347-2770/ 12/17 16:09
- ^{xi} Special Rapporteur on Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Ms. Fatma-Zohra Ouhachi-Vesely, Mission to the United States, UN Doc. E/CN.4/2003/56/Add.1.
- ^{xii} U.N. Deems Export of Banned Pesticides Immoral, U.S. Newswire, 202-347-2770/ 12/17 16:09,
- ^{xiii} Pesticides Action Network North America, January 10th, 2012
- ^{xiv} *Draft Findings And Recommendations, Permanent People's Tribunal On Agrochemical Transnational Corporations*, Bangalore, India, 3-6 December 2011
- ^{xv} Special Rapporteur on Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Ms. Fatma-Zohra Ouhachi-Vesely, Mission to the United States, UN Doc. E/CN.4/2003/56/Add.1, para 39.
- ^{xvi} National Congress of American Indians Resolution #DEN-07-050, “Impacts on the Contamination of Subsistence Food Resources, Health, Human Rights and Development of Tribes and Indigenous Communities
- ^{xvii} Human Rights Council. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries operating within or near indigenous territories*. 11 July 2011. A/HRC/18/35. Para. 82.
- ^{xviii} “An Anthropological Approach to the Evaluation of Children Exposed to Pesticides in Mexico”, Elizabeth A. Guillette, María Mercedes Meza M. Maria Guadalupe Aquilar A, Alma Delia Soto A., and Idalia Enedina Garcia C., Bureau of Applied Research in Anthropology, University of Arizona, Tucson, AZ, U.S.A. and Direccion de Investigacion y Estudios de Postgrado, Instituto Tecnológico de Sonora, Cd. Obregón, Sonora Mexico, published in *Environmental Health Perspectives Volume 106, Number 6, June 1998*
- ^{xix} *Ibid*.
- ^{xx} *Ibid*.
- ^{xxi} “Altered Breast Development in Young Girls from an Agricultural Environment” by Elizabeth A. Guillette, Craig Conard, Fernando Lares, Maria Guadalupe Aguilar, John McLachlan, and Louis J. Guillette Jr.
- ^{xxii} “The Declaration for Health, Life and Defense of Our Land, Rights and Future Generations”, *International Indigenous Women's Environmental and Reproductive Health Symposium*, Alamo, CA in June 30 – July 1, 2010 [E/C.19/2011/CRP. 9
- ^{xxiii} “Study by the Center for Health Assessment of Mothers and Children of Salinas, a joint project of UC Berkeley, the Natividad Medical Center, Clinica de Salud Del Valle de Salinas and other community organizations, December 2010.
- ^{xxiv} *Ibid*

^{xxv} General Recommendation No. 23, the rights of minorities (article 27), CCPR/C/21/Rev.1/Add.5, 08/04/1994

^{xxvi} UN Special Rapporteur on the Right to Food Jean Ziegler, report to the 4th session of the UN Human Rights Council [A/HRC/4/30/Add.1, 18 May 2007]

^{xxvii} CERD, the Treaty Monitoring Body for the International Convention on the Elimination of All Forms of Racial Discrimination, ICERD, adopted August 18th, 2007

^{xxviii} Article 25

^{xxix} “Treaty Right to Health” resolution adopted by the Chiefs in Treaty No. 6, No. 7 and No. 8, March 16-17, 2005, reaffirmed at the International Indian Treaty Council Conference, Ermineskin Cree Nation, Alberta Canada (Treaty No. 6 Territory) August 7th 2005