

International Indian Treaty Council



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Study and advice on the right to health and indigenous peoples, with a focus on children and youth.

Written Submission of International Indian Treaty Council: Right to Environmental Health

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I. Introduction

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

For the past several years, the International Indian Treaty Council has undertaken to raise awareness about the concept and term environmental health, emphasizing environmental toxics and the impacts on Indigenous women and girls. 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.

The severe and ongoing harm caused by environmental toxics to Indigenous women, girls and unborn generations include severe and undeniable impacts such as developmental disabilities, reproductive impairment, untold physical and emotional pain and suffering and even death. The production, use, dumping, and general proliferation of environmental toxics adversely effect the collective and individual rights of Indigenous Peoples, and Indigenous women and children specifically, to free prior and informed consent, health, well-being, culture, development, food and subsistence.

The major theme of this submission revolves around the right to environmental health and its linkages within the human right to health. For Indigenous Peoples, our right to health cannot be realized without environment. It is significant that many of the rights described under the UN Declaration on the Rights of Indigenous Peoples are tied to our lands, territories and resources – health, education, treaties, our spiritual traditions, histories and philosophies, cultures, knowledge and traditional practices amongst many others. The rights set out in the UN Declaration must be understood as a whole, inter-related and mutually reinforcing. We cannot achieve the highest attainable standard of health without culture, language, Indigenous knowledge, and traditional practices. We cannot exercise our rights to culture, language and traditional practices without our lands, territories and resources. Everything we are as peoples is tied to a healthy environment.

IITC has worked for decades on the issue of environmental health, including the co-creation of the concept of environmental violence, which is a term that has gained recognition and use within the United Nations system. Environmental violence has been used as a descriptor and term to capture situations wherein human rights impacts of industrial/extractives development, manufacture/use/distribution/disposal of hazardous pesticides and chemicals, and other similar developments impacting human rights to health and life are well known and well documented; and where continued impacts are deliberate, intentional and motivated by economic factors.¹

¹ See generally the submission of International Indian Treaty Council and Native Village of Savoonga (Alaska) to the UN Permanent Forum on Indigenous Issues Expert Group Meeting on “Combating Violence Against Indigenous Women and Girls.” This paper can be downloaded in its entirety from the UN Permanent Web Site under documents submitted for the Expert Group Meeting via http://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf

The right to environmental health has been also recognized and upheld by the United Nations system, in particular through our efforts under the Convention on the Rights of the Child, which has had ripple effects throughout the UN system.

2015 marked a watershed moment for IITC, after our submission of an Indigenous Alternative Report to the Committee on the Rights of the Child periodic review of Mexico. Our Indigenous Alternative Report contained 39 testimonies and peer-reviewed scientific studies documenting the impacts of pesticides on children and families in the Rio Yaqui, Sonora region of Mexico. Our Indigenous Alternative Report outlined how the import and use of pesticides which have been banned or restricted in the exporting country, including highly hazardous pesticides, presents a significant harm to Indigenous children and families in Mexico who are exposed to these toxics.

In response to our submission, the Committee recognized, for the first time, the term “environmental health” as a right of Indigenous children protected by the Convention on the Rights of the Child, and presented strong recommendations calling on Mexico to halt the importation and use pesticides that have been banned by the exporting country.²

Since this historic moment, the UN system has engaged in significant follow up activities. In 2016, the Committee on the Rights of the Child will hold a Day of General Discussion on Children’s Rights and the Environment, including addressing the impact of environmental harm on children’s rights; the role of children as agents of change in the environmental context; state obligations of the rights of the child in relation to a safe, clean, healthy and sustainable environment; and the role of the business sector.³ There is also a significant study underway on the *Rights of the Child and Hazardous Substances and Wastes* by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.⁴

It is our submission that the final version of the EMRIP “Study and advice on the right to health and indigenous peoples, with a focus on children and youth” must include the category of environmental health.

II. Legal Framework

When the foundational human rights treaties were negotiated, links between human rights and environmental problems had not yet been made clear. However, the *Universal Declaration of Human Rights* includes the rights to life and health. The right to a healthy environment is implicit but essential to achieve the highest attainable standard of health. The UN Declaration on the Rights of Indigenous Peoples was one of the first human rights instruments to explicitly recognize this in connection to identity and the right to exist.

We know that the most explicit reference to health is found in the International Covenant on Economic Social and Cultural Rights (ICESCR), which states:

² CRC/C/MEX/CO/4-5, 8 June 2015 at paras.51 & 52

³ For more information: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx>.

⁴ To be presented at the 33rd Session of the UN Human Rights Council, September 2016

- Article 12 (1) The States Parties to the present Covenant recognize the right to the enjoyment of the highest attainable standard of physical and mental health.
- (2) The steps to be taken by the States Parties in the present Covenant to achieve the full realization of this right shall include those necessary for...
- (b) The improvement of all aspects of environmental and industrial hygiene.

This Article must be interpreted as referring to environmental health, including preventing or reducing environmental risks that harm or threaten to harm human health.

The UN Committee on Economic, Social and Cultural Rights has asserted that the right to health “includes, *inter alia*,...the requirement to secure an adequate supply of safe and potable water and basic sanitation; to prevent and reduce the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.”⁵ The Committee went on to note that states violate their duty to protect the right to health if they fail to “enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.”⁶

The Convention on the Rights of the Child, as part of children’s right to health, guarantees “the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution” as well as the closely interrelated issues of maternal and prenatal health.⁷ It also requires that children’s education include “the development of respect for the natural environment.”⁸ General Comment 11 on the Rights of Indigenous Children stipulates that: “States should take all reasonable measures to ensure that indigenous children, families and their communities receive information and education on issues relating to health and preventive care such as ... environmental sanitation and the dangers of pesticides and herbicides.”

The Convention on the Elimination of All Forms of Discrimination Against Women also suggests that a minimum level of environmental health and quality is a basic human right. CEDAW requires that governments ensure that women “enjoy adequate living conditions, particularly in relation to... sanitation, electricity and water supply.”⁹

Customary international law, evidenced by state practice and *opinio juris*, has many examples of endorsement of the right to a healthy environment.

This includes the outcome document of Rio +20, the Future We Want, in which states committed to “...promot[ing] sustainable development policies that support ... a safe and healthy living environment for all, particularly children, youth, women and the elderly and disabled.... We are convinced that action on the social and environmental determinants of health, both for the poor and the vulnerable

⁵ UN Committee on Economic, Social and Cultural Rights General Comment 14 Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to the Highest Attainable Standard of Health (E/C.12/2000/4) at para 15.

⁶ *Ibid* at para 51.

⁷ Article 24 (2) (c), Convention on the Rights of the Child

⁸ *Ibid* Article 29

⁹ Convention on the Elimination of All Forms of Discrimination Against Women, Article 14 (2) (h)

and for the entire population, is important to create inclusive, equitable, economically productive and healthy societies.... We reaffirm our aim to achieve, by 2020, the sound management of chemicals throughout their life cycle and of hazardous waste in ways that lead to minimization of significant adverse effects on human health and the environment..."¹⁰

Furthermore, the 2030 Development Agenda, finalized through a resolution at the UN General Assembly, referenced health and environment within the first page of the outcome document *Transforming Our World (2015)*: "We are determined to ... ensure that all human beings can fulfill their potential in dignity and equality and in a healthy environment."¹¹ Under Goal 3, to ensure healthy lives and promote well-being for all at all ages, Target 3.9: "By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination."¹² Goal 12, to ensure sustainable consumption and production patterns, Target 12.4 states: "By 2020, achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, in accordance with agreed international frameworks, and significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment."

The Indigenous Peoples Major Group (IPMG) for the SDG process has called for provisions to reduce carbon-based energy production, sustainable alternatives and safeguard Indigenous Peoples' rights, livelihoods, food systems, traditional knowledge and practices as well as diverse partnerships to address climate change on all levels. International Indian Treaty Council is a member of the Indigenous Peoples Major Group and has extensive knowledge and resources to offer regarding the development of the Global Goals.

The Global Goals recognize the importance of Indigenous Peoples in the course of the new Agenda:

23. People who are vulnerable must be empowered. Those whose needs are reflected in the Agenda include all children, youth, persons with disabilities (of whom more than 80 per cent live in poverty), people living with HIV/AIDS, older persons, **indigenous peoples**, refugees and internally displaced persons and migrants. (emphasis added)

It is clear that states have recently taken on strong commitments regarding environmental health and in particular management of chemicals, toxics and wastes.

The other side of the coin is that corporations, transnationals and national business entities also play a role. The UN system has begun the work of understanding what the obligations of the private sector are when it comes to protecting human rights in this context, and for the purposes of this submission, the right to health.

The Guiding Principles on Business and Human Rights set out the state duty to protect human rights, including human rights abuses within their jurisdiction by third parties including business enterprises. The corporate duty to respect human rights means that business enterprises should avoid infringing

¹⁰ Resolution of the UN General Assembly, A/RES/66/288 at paras 134, 139 and 213.

¹¹ A/69/L/85

¹² Ibid.

on the human rights of others, including their right to health, and corporations should address human rights impacts with which they are involved. Finally, as a part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure, through judicial, administrative legislative or other means, that when abuses occur in their jurisdiction, those affected have access to effective remedy. The Working Group on the issue of human rights and transnational corporations and other business enterprises conducted their first thematic study on Indigenous Peoples in 2013, stating:

Given the specificities of adverse impacts on indigenous peoples, generic Environmental, Social and Health impact assessments may not be sufficient to fully identify and address potential human rights risks, especially with regard to their collective rights to land, resources and self-determination contained in UNDRIP. Indigenous peoples' rights can be adversely impacted by acts of commission and omission. There may also be unintended consequences that may not be easily identified from standard impact assessments.

Therefore, the requirement of meaningful consultation with indigenous peoples in the human rights due diligence process may be particularly important to enable business enterprises to identify the full range of actual and potential impacts, particularly to identify and address gender differentiated impacts. Business enterprises should ensure that impact assessment processes provide for an evidence-based and gender disaggregated review of socio-anthropological issues, pertaining to any adverse impacts on indigenous peoples living in project affected areas. Further, business enterprises should ensure that impact assessments are robust enough to detect differentiated impacts on possible vulnerable groups who may sustain greater adverse impacts from the same operation due to political, economic or social marginalization within the indigenous community.¹³ (*emphasis added*)

This may be interpreted as stating that the impacts of business operations must be understood as inclusive of those who are more vulnerable within Indigenous peoples communities such as mothers, women, youth and children.

Since 2001, IITC has submitted over 80 cases documenting environmental contamination and impacts on land and subsistence living, with a special emphasis on women and children, to a number United Nations Treaty Bodies.

These include the UN Rapporteurs on Toxics, Rights of Indigenous Peoples, Right to Health and Right to Food; various sessions and two Expert Group Meetings of the UN Permanent Forum on Indigenous Issues; the UN Working Group on Human Rights Transnational Corporations and other Business Enterprises; the UN Stockholm Convention on Persistent Organic Pollutants Conference of the Parties; the United Nations Minamata Treaty on Mercury, the UN Committee on the Elimination of Racial Discrimination (for its Periodic review of the United States in 2008 and 2014); the United Nations Permanent Forum Expert Group Meetings in 2012 and 2014, the Commission on Human Rights and the UN Human Rights Council (Universal Periodic Reviews of United States and Mexico), the Committee on the Rights of the Child (for its 2015 Review of Mexico) amongst others.

¹³ A/68/279 at para. 31.

The fundamental link between human rights and environmental contamination is a relatively new and evolving concept in the UN system. It has yet to be fully recognized and effectively integrated in international Conventions and processes throughout the United Nations system, in particular in the United Nations Environmental Programme (UNEP). Many States continue to resist addressing this fundamental inter-relationship despite the fact that a number of existing international human rights norms and standards provide a clear and compelling case for doing so.

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

On September 13th 2007, history was made when the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples. The Declaration now provides a universal framework and sets out the minimum standard for recognizing Indigenous Peoples' rights including lands rights, treaties, cultural rights and free prior and informed consent in UN member states, which are very applicable and relevant in regards to environmental health.

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

At the time of its adoption, it became the first time in history environmental rights are recognized in conjunction with the health of Indigenous Peoples, marking a huge leap forward in what has been a long fight to demonstrate the interconnectedness of the environment and fundamental human rights.

While the UN Declaration marked a breakthrough for Indigenous Peoples in some respects, it is apparent that the recent global initiatives to address climate change, sustainable development and environmental standard setting remain to fully address implementation of the UN Declaration. While such targeted initiatives and international support structures exist, and Indigenous Peoples are recognized as stakeholders in various multilateral processes, implementation of the UN Declaration within the UN system is uneven or non-existent.

Constituency and major group status has been secured in some fora, but in practice the voices of Indigenous Peoples are too easily ignored and overruled. Without capacity building amongst Indigenous Peoples, a lack of representation does little to integrate Indigenous perspectives into the mainstream of major decisions regarding environment and health. Indigenous Peoples continue to be marginalized and there is still a large implementation gap, with the rights of Indigenous Peoples still frequently ignored or watered down despite significant progress.

It has been challenging to bring a human rights lens, and more importantly an Indigenous rights lens to the work carried out under UN environmental standard setting, climate change and sustainable development initiatives.

Indigenous Peoples have therefore also sought recognition and implementation of the UN Declaration, in particular the issue of environmental health, through the various treaty-monitoring bodies and special procedures of the United Nations Human Rights system.

B. The International Convention on the Rights of the Child and General Comment 11

The 1989 UN Convention on the Rights of the Child is the guiding legal framework for the development and implementation of legislation and policies respecting the rights of children in 194 countries. This treaty has contributed to universalizing the rights of children at a global and a regional level. It has impacted domestic legal systems within states parties through legislation and jurisprudence, and has also impacted international jurisprudence. Regional human rights courts like the Inter-American Court of Human Rights reference the Convention on the Rights of the Child as the relevant legal framework in cases where children's interests are at stake.

The Convention on the Rights of the Child is the first international human rights treaty or agreement to clearly address the rights of Indigenous children. Indigenous children have all the rights set out in the Convention, such as general rights to education, health, to be registered at birth and to be protected from violence, abuse and exploitation. However, because Indigenous children also have their own cultures and histories, Indigenous children have the right to learn, use and practice their own languages, customs and spirituality within their own peoples:

Article 30

*In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or **who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.** (emphasis added)*

The Convention specifies that governments should ensure that Indigenous children have access to information that is relevant and important for their well-being. The media (TV, radio, digital and print) should be encouraged to provide this information in Indigenous languages (see Article 17 of the Convention). The Convention further states that education should help all children in key areas of development and respect for rights described elsewhere under international law:

Article 29

1. States Parties agree that the education of the child shall be directed to:

*(a) The development of the child's personality, talents and **mental and physical abilities** to their fullest potential;*

*(b) The development of **respect for human rights and fundamental freedoms**, and for the principles enshrined in the Charter of the United Nations;*

*(c) The development of **respect for the child's parents, his or her own cultural identity, language and values**, for the national values of the country in which the child is living, the country from which he or she may originate, and **for civilizations different from his or her own**;*

*(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and **persons of indigenous origin**;*

*(e) The development of **respect for the natural environment.***

(emphasis added)

The Committee on the Rights of the Child has elaborated upon the rights of Indigenous children in particular through the General Comment No. 11 (2009). The role of the General Comment is to provide states parties to the Convention with clarification on how to implement their obligations. It is also an important interpretive document for the UN system as a whole regarding how to understand the jurisprudence of the Committee on the Rights of the Child and its application in different bodies of the UN system. Since the General Comment was completed after the UN Declaration on the Rights of Indigenous Peoples was passed by the General Assembly, the UN Declaration is described as being part of a rights-based approach to Indigenous children under the Convention.

General Comment No.11 urges states parties to take special measures to ensure the Indigenous children are not discriminated against enjoying the highest attainable standard of health, and further that states have a positive duty to ensure equal access to health services for Indigenous children. In the General Comment, the Committee also tries to ensure that states understand that services must also be culturally sensitive with due regard to rights under the UN Declaration to traditional medicines. Ensuring that environmental health is protected for Indigenous children therefore must be understood through the lens of culture and non-discrimination.

Finally, the states parties to the Convention on the Rights of the Child are encouraged to seek technical cooperation from UN entities in strengthening their relations with Indigenous peoples. The work of EMRIP in this regard is important.

C. Committee on the Rights of the Child Concluding Observations: Mexico

As referenced in the introduction to this paper, the Committee on the Rights of the Child recently made history after releasing their official report from the 69th Session held in May of 2015 following a periodic review of Mexico's compliance as a State Party to the Convention. The Committee recognized and used the term "environmental health" in response to violations of the rights of Yaqui Indigenous children in Sonora caused by the use of highly restricted and banned pesticides.

IITC's written submission to the CRC included 39 testimonies specific to children and mothers of the Yaqui territory in Sonora, Mexico. Since the late 1940's this area was targeted by the so-called "green revolution" promoting heavy use of chemical pesticides and fertilizers as well as hybrid strains of commercial corn and other food crops to replace traditional seeds and cultivation methods. Rural Indigenous Peoples depend on the health of the natural environment to sustain their traditional food systems and sources (farming, hunting, fishing and gathering) and are therefore severely impacted by environmental contaminants including agro-chemicals. Indigenous communities also use traditional plant and animal medicines as part of their cultural identities, healing and ceremonial practices. When these are contaminated, Indigenous cultures as well as overall community health are impacted.

Increasingly, national and international attention has become focused on the widespread environmental, health and human rights impacts of toxic pesticides and the national and international policies that continue to permit their production use, export and import. Indigenous Peoples also have recognized the need to build attention, promote sustainable agricultural practices, and limit the use of toxic pesticides in communities, nationally and internationally.

IITC's submission to the Committee on the Rights of the Child is an important part of this process.

The IITC submission called the attention of the Committee to Article 29 of the UN Declaration which stipulates 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" and ensure the implementation of "programmes for monitoring, maintaining and restoring the health" of the affected Indigenous Peoples. This submission focused on Mexico's import and use of pesticides which have been banned, unregistered or highly restricted in the United States, the European Union and other exporting countries due to their well-known deadly health impacts.

It should be noted with concern that the production and export of banned pesticides by other countries to Mexico is permitted under international law (the *Rotterdam Convention* discussed later in this submission), as long as the receiving country is informed of this status. Unfortunately no one informs the Indigenous communities "on the ground" who suffer grave human rights consequences.

The import and use of pesticides which have been banned or restricted in the exporting country, including highly hazardous pesticides, presents a significant harm to Indigenous children and families in Mexico who are exposed to these toxics. IITC asked the Committee to question the manner in which Mexico reconciles this importation and use with its obligations under Article 24 of the *Convention on the Rights of the Child* and Article 29 of the United Nations *Declaration on the Rights of Indigenous Peoples*. Further, IITC asked: What actions are being taken by Mexico to assess, minimize or prevent the impacts of toxic contaminants on maternal and children's health in Indigenous and local communities such as the Yaqui Pueblos in Sonora? What medical services, compensation and redress are provided to victims?

Under the Stockholm Convention, reviewed elsewhere in this paper, Mexico has undertaken a National Action Plan (2008) to ensure compliance with the Convention. In its own National Action Plan, Mexico noted that 66% of agricultural workers in Sonora and similar regions are women and children who are vulnerable to the effects of POPs, Persistent Organic Pollutants. Domestic laws in Mexico lack organized information regarding formal inventories or assessments about exposure and risk of toxicants, and registries in Mexico do not go far enough in protecting human and environmental health. Finally, enforcement of existing domestic standards of protections in Mexico has not been proven in the cases of Indigenous Peoples, and the Yaqui in particular.

In the submission of IITC to the Committee on the Rights of the Child, four peer-reviewed scientific studies were provided regarding the experience of Yaqui children and mothers. The first Guillette (1997) Study detected high levels of multiple pesticides in the cord blood of newborns and in mothers' milk, and found severe learning and developmental disabilities as well as birth defects and cancer in Yaqui children living in high pesticide use areas, compared to children living in areas with less or no exposure.

A subsequent Guillette (2006) Study detected relative lack of and abnormal mammary development of girls in the Yaqui Valley compared to other areas with less or no exposure, impacting reproductive health.

In 2009, Trejo-Acevedo et al detected DDT (in 100% of sample) and Endosulfan (significant amounts) found in children in Rio Yaqui Valley, demonstrating the importance of a risk reduction program to decrease exposure.

Finally, Meza-Montenegro et al (2012) conducted a study demonstrating soil contamination and metals pollution posing a cumulative risk to children in the Yaqui Valley.

Perhaps the most important aspect of the submission the IITC to the Committee on the Rights of the Child were the community testimonies. These include accounts of deaths of community members, and tragically, children. A tragic case is that of Cristian Molina Garcia, born with multiple birth defects after his mother was exposed to toxic pesticides working without protection while a 17 year-old 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. His was the first, but far from the last case presented by the IITC to UN Special Procedures since that time.

Another very difficult death to report is the passing on April 11th, 2013 of two-year old Juan Antonio Rodriguez Coronado shown in a video testimony¹⁴ that is now a part of a new documentary “Circle of Poison” which was screened at the UN Permanent Forum on Indigenous Issues 15th Session in New York, 2016. His medical report diagnosed him as born with cirrhosis of the liver. His family home in Vicam Rio Yaqui is on the flight path of airplanes spraying pesticides overhead, including in the residential areas where he lived.

IITC’s delegation to the hearing of Mexico before the Committee on the Rights of the Child included IITC Executive Director Andrea Carmen, Francisco Villegas Paredes and traditional midwife Aurelia Espinoza Buitimea, all from the Yaqui Nation. Mr. Villegas and Mrs. Espinoza are members of the community organization *Jittoa Bat Nataka Weria* based in Vicam, Rio Yaqui, one of the most affected communities in the region.

“We are seeing increased birth defects, leukemia and other cancers in young children. Many babies don’t survive more than a few hours or days. Medical doctors and our healers and midwives confirm that the cause is storage and application of highly toxic pesticides near our homes, schools and communities, many of which we know are banned for use in the US and other countries. When the airplanes spray overhead there is no control of who is exposed. Yaqui workers are not provided with protective gear, places to wash or warnings about the dangers, and they in turn expose their families when their clothes become soaked with pesticides,” explained Mr. Villegas Paredes. “The Mexican Government is informed by law of the dangers when they import these toxic pesticides. They have an obligation to protect our children from exposure and to provide treatment, medical care and compensation to those who have already been affected.”

As a result of extensive research, community testimonies and our submission to the Committee on the Rights of the Child, Mexico has now agreed to engage in the implementation of the recommendations of the Committee on their periodic review.

¹⁴ Access video testimony Online: <https://www.youtube.com/watch?v=e8MU9enE8jo>

Paragraphs 51 and 52 of the Committee’s Concluding Observations to Mexico, presented under the subheading “**Environmental Health**”, were emphatic, strong and direct:

“...the State party has not taken sufficient measures to address air, water, soil and electromagnetic pollution, which gravely impact on children and maternal health. The import and use of pesticides or chemicals banned or restricted for use in third countries, which particularly affect indigenous children in the state of Sonora, is also a reason of deep concern.”

The CRC specifically recommended that Mexico:

- i. Assess the impact of air, water, soil and electromagnetic pollution on children and maternal health as a basis to design a well-resourced strategy at federal, state and local levels, in consultation with all communities and especially indigenous peoples, to remedy the situation and drastically decrease the exposure to pollutants;
- ii. Prohibit the import and use of any pesticides or chemicals that have been banned or restricted for use in exporting countries;
- iii. Further examine and adapt its legislative framework to ensure the legal accountability of business enterprises involved in activities having a negative impact on the environment, in the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights.

These recommendations are especially important given the on-going work of the International Indian Treaty Council to contribute to the generation of international jurisprudence and standard setting that puts an end to the proliferation of toxics and pesticides, and their devastating impacts on the lives of Indigenous Peoples – and many times, to their deaths. IITC has endeavored to not only take to task those states which have imported banned toxics, but also those who have manufactured them and exported them through loopholes in international law.

For example, the United States knowingly permits the production, storing, and transport and export of hazardous chemicals that impair the endocrine and immune systems, adversely affect neurodevelopment and reproduction, and cause disease including all forms of cancer. The US and the corporations it licenses deny “provable” impacts despite the clear evidence that these environmental toxics cause a range of serious, well documented impacts on the rights to health including harm to reproductive, health and fetal development which disproportionately affect Indigenous women, babies, children and the unborn.

On January 6, 2008 the Consolidated Indigenous Report titled “Racial Discrimination against Indigenous Peoples in the United States”¹⁵ was submitted by the International Indian Treaty Council (IITC) and 30 other Indigenous Peoples and organizations for the review of the United States by the 72nd Session of the UN Committee on the Elimination of Racial Discrimination (CERD). The CERD has said following this review and again under the more recent review the US in 2014, that the US “[t]ake appropriate measures to prevent the activities of transnational corporations registered in the State

15 Committee on the Elimination of Racial Discrimination, Examination of the United States 4th, 5th, and 6th Periodic Reports, April, 2007, Consolidated Indigenous Shadow Report, download full text at: http://cdn5.iitc.org/wp-content/uploads/CERD_US_Indigenous_Shadow_Report.pdf?536f4b

party which could have adverse effects on the enjoyment of human rights by local populations in other countries, especially by indigenous peoples and minorities” regarding the export of banned pesticides.

As such, in thinking about obligations and accountabilities with regard to ensuring a healthy environment, it is important to consider varied roles of states in contributing to contamination, climate change and achieving justice for Indigenous Peoples.

D. Treaty Right to Health:

Throughout the regions with which International Indian Treaty Council works, including the Americas, the Caribbean and the Pacific, there are treaties between Indigenous Peoples and the settler societies. There are many examples of historic treaties which set out a right to health for Indigenous Peoples such as Treaty No. 6 in Canada, and the Fort Laramie Treaty in the United States. The role of the Treaties in understanding and implementing the right to health of Indigenous Peoples must be emphasized by the Expert Mechanism on the Rights of Indigenous Peoples in their final Study.

Dr. Miguel Alphonso Martinez (1999) Special Rapporteur, Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations E/CN.4/Sub.2/1999/20 concluded that treaties negotiated in North America and elsewhere are international treaties, and that Indigenous Nations are subjects of international law; and that such treaties need to be honoured by the original signatory nations and their successors.

The United Nations has held Expert Seminars on Treaties, Agreements and Other Constructive Arrangements (2003 (Geneva), 2006 (Maskwacis) and 2012 (Geneva)) calling for the spirit and intent of treaties, as understood by Indigenous Peoples, to be honoured and respected. Furthermore, the conclusions and recommendations of the Seminars included a recommendation that the Office of the High Commissioner on Human Rights play a role in providing technical assistance where necessary to ensure the appropriate implementation of Treaties.

The preamble of the UN Declaration on the Rights of Indigenous Peoples states that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between Indigenous Peoples and states. Article 37, amongst other Articles, of the UN Declaration affirms the treaty rights of Indigenous Peoples:

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Most recently, a major development in international law occurred when, at its 46th General Assembly June 13-15, 2016, the Organization of American States adopted the American Declaration on the

Rights of Indigenous Peoples.¹⁶ Paragraph 6 of Article XVIII on protecting the environment states that Indigenous Peoples have the right to be protected against the introduction of, abandonment, dispersion, transit, indiscriminate use or deposit of any harmful substance that could negatively affect Indigenous communities, lands, territories and resources.

Article XXIII, on Treaties, agreements and other constructive arrangements states that:

1. Indigenous peoples have the right to the recognition, observance, and enforcement of the treaties, agreements and other constructive arrangements concluded with states and their successors in accordance with their true spirit and intent, in good faith, and to have the same be respected and honored by the States. States shall give due consideration to the understanding of the Indigenous Peoples in regards to treaties, agreements and other constructive arrangements.

When disputes cannot be resolved between the parties in relation to such treaties, agreements and other constructive arrangements, these shall be submitted to competent bodies, including regional and international bodies, by the States or indigenous peoples concerned.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements

Treaties must be understood as a part of the legal and interpretive framework for environmental health, and the rights of Indigenous Peoples to be protected from contamination and the proliferation of chemicals and toxics that alter their ability to exercise basic rights of existence, transmission of culture and language, as well as more functional rights such as their ability to engage in traditional life-ways including hunting, fishing and gathering of traditional medicines. If traditional food and medicines have been contaminated or are unreachable due to destruction or loss of Indigenous knowledge and language systems, this constitutes a breach not only of international law but of the terms of many treaties, agreements and other constructive arrangements between Indigenous Peoples and states.

E. The Stockholm Convention on Persistent Organic Pollutants

The Stockholm Convention was adopted by States from around the world in 2001 and entered into force on May 17, 2004. The objective of the Stockholm Convention is to protect human health and the environment from persistent organic pollutants (POPs).

POPs are toxic chemicals that remain intact in the environment for long periods of time, become widely distributed geographically, resist degradation, accumulate in the fatty tissue of humans and wildlife and have adverse effects on human health or the environment. POPs can be introduced into humans through the food chain, and consequently, most are passed on from mother to child across the placenta and through breast milk. POPs can be transported great distances, and subsequently deposited in the oceans and freshwater bodies of colder climates. Because POPs release, distribution and degradation is dependent on environmental conditions, climate change and increasing climate

¹⁶ GT/DADIN/doc.334/08 rev.12

variability is having the impact of affecting POPs contamination through changes in emission sources, including permafrost melting, transport processes and routes of degradation. In fact, as permafrost in the north melts at an exponential rate, so POPs which were formerly trapped in that permafrost are now being re-released into global transport corridors impacting humans, wildlife and environment.¹⁷

POPs have a disproportionate impact on Indigenous Peoples in the north due to a diet and cultures that rely on foods harvested from the surrounding environment. Indigenous Peoples whose traditional foods include marine mammals with a high fat content like seal, narwhal whale, walrus and polar bear are especially at risk. Previously, it was thought that those Indigenous peoples whose diets are based on freshwater fish and land wildlife such as caribou and moose were at less risk. This was mainly due to the idea that since these animals have less fat and less exposure to POPs through food chains, that this would limit the impact of POPs. However, certain perfluorinated substances, such as PFOS (Perfluorooctane sulfonic acid) accumulate better in proteins of the liver and blood rather than fatty tissue. So this means that Indigenous Peoples farther away from the Arctic circle will be as impacted by POPs as those in the far north.

Since POPs cycle through environment and are globally transported great distances, their management requires international cooperation.

By ratifying the Stockholm Convention, parties agreed to the management and control of POPs through a series of specific measures. Currently, the Convention includes 176 State parties that agree to work together toward global elimination of the world's most dangerous chemicals. The Stockholm Convention is a "living" treaty that includes provisions to add new chemicals that meet scientific criteria for persistence, long-range transport, adverse effects, and bioaccumulation. The new POPs listed under the annexes of the Convention include pesticides, industrial chemicals (including flame retardants) and unintentionally produced chemicals. Those POPs listed under Annex A require parties to eliminate all production and use of that listed substance (except where exemptions have been claimed); POPs listed under Annex B allow production and use of a listed POP only for certain "acceptable purposes" in accordance with specific exemptions; and finally, those listed under Annex C requires parties to reduce unintentional releases through implementation of best available techniques (BAT) and to promote best environmental practices (BEP).

In addition, each party to the Stockholm Convention is required, under Article 7 of the Convention, to develop a National Implementation Plan (NIP) demonstrating how it will implement its obligations under the Convention. It is up to each party as to how or if they engage Indigenous Peoples in the formulation and implementation of their NIPs.

The Preamble of the Convention recognizes serious health concerns including "*particular impacts upon women and children and, through them, upon future generations;*" and that "*Arctic ecosystems and indigenous communities are particularly at risk because of the biomagnification of persistent organic pollutants and that contamination of their traditional foods is a public health issue.*" Because exposure to even low levels of POPs can harm human health and development, the Convention is strongly based on the Precautionary Principle.

¹⁷ See section IV (C) "Climate Change" of this Submission for further details and citations.

However major challenges remain. The chemical industry remains a strong political force in this process, exerting constant and well-funded pressure on States to avoid or delay adding new chemicals. Despite the recognition of impacts on health of women, children and Indigenous Peoples in the Convention's preamble, human rights including the rights of Indigenous Peoples most often take a back seat to industry concerns or are not addressed at all in the States' deliberations.

Also, there is no formal mechanism for the participation of Indigenous Peoples in the implementation of the Convention. This continues to be a key demand of Indigenous Peoples participating in this process, along with unqualified recognition of human rights.

F. Minamata Convention on Mercury

The Minamata Convention is the first new global treaty on environment and health adopted for almost a decade.

It is also significant in that it was the first treaty to be completed after the adoption of the UN Declaration on the Rights of Indigenous Peoples. Unfortunately, in the negotiation processes leading up to its adoption, states did not achieve consensus on the inclusion of Indigenous Peoples in the operative text of the treaty, and more importantly did not reference the UN Declaration on the Rights of Indigenous Peoples specifically in any part of the text of the treaty. The only reference is found in preambular paragraph number 6, as follows:

*Noting the particular vulnerabilities of Arctic ecosystems and **indigenous communities** because of the biomagnification of mercury and contamination of traditional foods, and concerned about indigenous communities more generally with respect to the effects of mercury,*

As you can see in this paragraph, states refused to use the phrase "Indigenous Peoples" and would refer only to "indigenous communities" which in view of the International Indian Treaty Council, was a significant step backwards in the implementation and realization of the rights set out in the UN Declaration on the Rights of Indigenous Peoples.

As with POPs, Indigenous Peoples are disproportionately impacted by mercury contamination.

Mercury, a highly toxic heavy metal, is recognized as posing a global threat to human health and the environment. It has a range of severe health impacts, including damage to the central nervous system, thyroid, kidneys, lungs, immune system, eyes, gums and skin. Victims can suffer from memory loss or language impairment, and brain damage cannot be reversed. In fact, the treaty itself was named after the place where thousands of people were poisoned by mercury-tainted industrial wastewater in the mid-20th century in Japan, leading to symptoms that came to be known as Minamata disease.¹⁸ There are many more examples of similar situations amongst Indigenous Peoples, one being Grassy Narrows First Nation in Canada, who have been suffering the impacts of mercury contamination, poisoning and Minamata disease for literally decades (50+ years) without respite or remediation.

¹⁸ See Factsheet: "Minamata Convention on Mercury at a glance" April 2016, available online at www.minamataconvention.org

There is no “safe” level of exposure to mercury, and it is transported globally in much the same way that POPs are, so that mercury contamination accumulates even in remote locations. The nature of transport and transboundary effects required international cooperation, leading to the negotiation and drafting of the Minamata Convention.¹⁹

The Minamata Convention is intended to protect human health and the environment from man made emissions and releases. Some examples include gold mining and extractive industries, incinerators, PVC production, electrical switches, light bulbs, batteries, vaccines, paints, jewellery, pharmaceuticals, and even dental amalgams.

The Minamata Convention has four main categories, the first of which is the operational articles, describing state parties obligations to reduce emissions and releases. The second category describes the support that will be available to parties in realizing the operational articles. The third category addresses information and awareness raising, and the fourth category detailed administrative matters.

For the purposes of this written submission, we draw your attention to the third category of information and awareness raising, which includes health aspects under Article 16:

1. Parties are encouraged to:

- (a) Promote the development and implementation of strategies and programmes to identify and protect populations at risk, particularly vulnerable populations, and which may include adopting science-based health guidelines relating to the exposure to mercury and mercury compounds, setting targets for mercury exposure reduction, where appropriate, and public education, with the participation of public health and other involved sectors;
- (b) Promote the development and implementation of science-based educational and preventive programmes on occupational exposure to mercury and mercury compounds;
- (c) Promote appropriate health-care services for prevention, treatment and care for populations affected by the exposure to mercury or mercury compounds; and
- (d) Establish and strengthen, as appropriate, the institutional and health professional capacities for the prevention, diagnosis, treatment and monitoring of health risks related to the exposure to mercury and mercury compounds.

2. The Conference of the Parties, in considering health-related issues or activities, should:

- (a) Consult and collaborate with the World Health Organization, the International Labour Organization and other relevant intergovernmental organizations, as appropriate; and
- (b) Promote cooperation and exchange of information with the World Health Organization, the International Labour Organization and other relevant intergovernmental organizations, as appropriate.

During negotiations leading up to the adoption of the Minamata Convention, the position of many states was that it was unnecessary to include explicit reference to Indigenous Peoples as it would be understood that Indigenous Peoples were a part of the phrases “populations at risk” and “vulnerable groups.”

¹⁹ Ibid.

It is our submission to the EMRIP on the Study on the Right to Health that the above Article 16 emphasizes the vital importance of (a) all states to ratify ILO Convention 169 in order to facilitate realization of the Indigenous right to health under the Minamata Convention; and (b) the importance of continuing to pressure the World Health Organization to significantly strengthen their role in the realization of the right to health of Indigenous Peoples. Without these measures, the application of Article 16 of the Minamata Convention could easily exclude Indigenous Peoples.

Finally, as with the Stockholm Convention, there is no formal mechanism in place for the ongoing participation and engagement of Indigenous Peoples under the Minamata Convention at this time. This is, however, another area in which EMRIP may exert influence in recommending the inclusion of such a mechanism for implementation purposes.

G. UNPFII recommendations:

Some recommendations that the UN Permanent Forum on Indigenous Issues has made regarding the topic of this submission come from the 13th session, calling for *“a legal review of United Nations chemical conventions, in particular the Rotterdam Convention, to ensure that they are in conformity with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities”*.²⁰

This was reiterated at the Expert Group Meeting on “Sexual health and reproductive rights: articles 21, 22(1), 23, and 24 of the United Nations Declaration on the Rights of Indigenous Peoples” held in January of 2014. The following recommendations were made by the UNPFII in response to the submissions of International Indian Treaty Council amongst many other Indigenous organizations and representatives:

62. Considering their impact on the sexual and reproductive health and rights of indigenous peoples, we call for a legal review of United Nations chemical conventions, in particular the **Rotterdam Convention**, to ensure that they are in conformity with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities.

63. States must halt the export and import of banned and unregistered pesticides from countries that prohibit their use in their own country as a case of environmental racism and environmental violence with proven and devastating impacts on reproductive and sexual health, in particular maternal and child health.

64. Relevant United Nations entities should conduct a study, in partnership with indigenous peoples’ organizations, that documents the linkage between environmental violence, including the operations of extractive industries, chemical pollution and the destruction of the indigenous habitat, and the sexual and reproductive health of indigenous peoples, as well as issues pertaining to sexual exploitation, trafficking of indigenous girls and sexual violence, with concrete recommendations on protection measures.

²⁰ Permanent Forum on Indigenous Issues Report on the thirteenth session (12-23 May 2014), [E/2014/43-E/C.19/2014/11](#), para. 16

The UN *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* permits States to export pesticides and other chemicals that are banned for use in their own countries as a result of their known detrimental health impacts including reproductive cancers and birth defects. This practice by the countries like United States has been called “immoral” by the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. It has been termed “environmental violence” by Indigenous women in various International Declarations because of its deliberate, intentional and informed nature and the resulting enormous suffering, illness and deaths, as demonstrated elsewhere in this paper.

The Rotterdam Convention is potentially an important tool to protect human health and the environment by controlling trade in hazardous chemicals and pesticides that meet the requirements of the Convention. However, as with the Stockholm Convention, there is no formal mechanism for the participation of Indigenous Peoples or to address the human rights abuses caused by the export of hazardous substances when they are used in the lands and territories of Indigenous Peoples without their free prior and informed consent. The Rotterdam Convention specifically allows for the export of pesticides and other chemicals that have been banned for use in the producing State as long as the receiving (importing) State is properly notified.

There is no provision to ensure that Indigenous Peoples are afforded the right of Free Prior Informed Consent as stipulated by Article 29 of the UN Declaration of the Rights of Indigenous Peoples and other human rights standards. Also, there is no formal process for consideration by State parties of the widespread, brutal human rights impacts caused by this practice, putting this UN Convention directly at odds with a number of existing UN human rights standards. It is our hope that the Expert Mechanism on the Rights of Indigenous Peoples lends its voice in calling for the implementation of the UNPFII recommendation for a legal review of the chemicals conventions, including Rotterdam, in the context of the UN Declaration on the Rights of Indigenous Peoples and other standards.

III. Indigenous Peoples’ Perspectives

“You destroy the womb; you destroy nations... this is the first sacred place is the place from whence you came.” – IITC Board Vice President and Chiefess of the Maori Nation Hinewirangi Kohu

“These imposed, deplorable conditions violate the right to health and reproductive justice of Indigenous Peoples, and affect the lives, health and development of our unborn and young children. They seriously threaten our survival as Peoples, cultures and Nations. They also violate our rights as Indigenous Peoples to subsistence, spiritual and cultural survival, self-determination and free, prior and informed consent (FPIC). As Indigenous Peoples, and as the defenders of our future generations, we have vocalized our opposition to these forms of contamination of our homelands, air and waters for generations in many different regions, but far too often we are ignored.” -- Excerpt from the 1st International Indigenous Women’s Symposiums, California, United States, 2010

Indigenous Peoples, in particular Indigenous women, have been consistently voicing their concerns regarding environmental health throughout a number of grassroots convenings, UN Treaty Bodies and UN Fora. These include UN Permanent Forum on Indigenous Issues (UNPFII) Expert Group Meetings (EGM) and annual sessions, the Committee on the Elimination of Racial Discrimination (CERD), the 1st and 2nd International Indigenous Women's Symposiums, the Committee on the Rights of the Child (CRC) and the World Conference on Indigenous Women.

Reference above in this submission, in 2012 there was a UNPFII EGM on "Combatting Violence Against Indigenous Women and Girls" whereat the International Indian Treaty Council (in conjunction with the Native Village of Savoonga in Alaska), submitted a paper titled "Indigenous Women and Environmental Violence, A Rights-based approach addressing impacts of Environmental Contamination on Indigenous Women, Girls and Future Generations."²¹ This paper presented the human rights framework affirming the rights of Indigenous Peoples, including Indigenous women and children, and providing the context for addressing human rights violations caused by the deliberate exposure by States and corporations to toxic contaminants including pesticides which are known to have devastating impacts on reproductive health. It provides the results of scientific studies and provides community testimonies to support these conclusions. It also documented the policies and practices of corporations and State governments which can be identified as "*environmental violence*" in this regard. This term and concept was recognized in the report of that EGM to the UNPFII 12th session as well as in the Lima Declaration from the World Conference of Indigenous Women in October 2013.²²

This submission of this paper was followed by an Indigenous Peoples statement at the 13th Session of the UNPFII in 2013 declaring, "There is no time for ongoing submissions of countless testimonies and studies. Women, babies and children are dying painfully without redress. Still births, miscarriages and birth defects are increasing. Our rights to reproductive and other forms of health are being violated in the most extreme way, and the human suffering is immeasurable"²³.

This idea was further upheld at the World Conference of Indigenous Women held in Lima, Peru, October 28-30, 2013. The conference declaration highlighted, "*There is an urgent need to implement the rights enshrined in the UN Declaration on the Rights of Indigenous Peoples. Indigenous women are active human rights defenders of all individual and collective human rights of our peoples. We often*

²¹ This paper can be downloaded in its entirety from the UN Permanent Web Site under documents submitted for the Expert Group Meeting via http://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf

²² Specifically, the Lima Declaration stated: "There is an urgent need to implement the rights enshrined in the UN Declaration on the Rights of Indigenous Peoples. Indigenous women are active human rights defenders of all individual and collective human rights of our peoples. We often bear the burden of social and **environmental harms arising from the consistent denial and violation of our human rights and the lack of implementation and accountability of States.** Indigenous women and girls experience multiple forms of discrimination, lack of access to education and health care, high rates of poverty, maternal and child mortality. We are subject to all forms of violence, such as domestic violence and sexual abuse, including in the contexts of trafficking, armed conflict, **environmental violence** and extractive industries." (emphasis added)

Online: http://www.un.org/en/ga/president/68/pdf/6132014Lima-Declaration_web.pdf

²³ United Nations Permanent Forum on Indigenous Issues, 13th Session, "Sexual Health and Reproductive Rights: Articles 21, 22 (1), 23 and 24 of the United Nations Declaration on the Rights of Indigenous Peoples" 14 May 2014, UN Headquarters New York.

bear the burden of social and environmental harms arising from the consistent denial and violation of our human rights and the lack of implementation and accountability of States". Indigenous women from all around the world are experiencing similar environmental and reproductive health impacts as a result of pesticide use, extractive industries and lack of corporate and State accountability which further highlights the urgent need to recognize the term and interconnectedness of environmental health.

A. Symposium Declarations:

Indigenous Peoples live in some of the most remote areas in the world: the deserts, mountains, forests and Arctic tundra. Indigenous families subsist off the land and waters through farming, herding, hunting, fishing and gathering for their main food supplies. Many of these regions are heavily exposed to toxic contaminants as a result of mining and extractive industries as well as industrial agriculture and "green revolution" programs which rely heavily on the use of toxic pesticides. Many chemicals are also transported atmospherically and through ocean currents, and heavily contaminate Indigenous lands and foods far from the points of production and use. To voice their concerns and strategize on how Indigenous women can work together to uphold the rights of Indigenous women, their reproductive health and the health of Mother Earth, Indigenous women from around the world gathered together to participate in two International Indigenous Women's Symposiums.

The 1st Symposium, held in Alamo, California in 2012 had participants from the North America, Latin America, Pacific, and Arctic and the Caribbean regions and summarized their environmental health impacts as follows:

Indigenous Peoples, and in particular women and children, are suffering the detrimental, devastating, multi- generational and deadly impacts of environmental toxins and contaminants that were unheard of in our communities prior to industrialization." These impacts include:

- *Contamination of mothers breast milk at 4 to 12 times the levels found in the mothers body tissue in some Indigenous communities;*
- *Elevated levels of contaminants such as POPs and heavy metals in infant cord blood; Disproportionate levels of reproductive system cancers of the breasts, ovaries, uterus, prostate and testicles, including in young people;*
- *Increasing numbers of miscarriages and stillbirths, and;*
- *High levels of sterility and infertility in contaminated communities.*

A second Symposium was held in April, 2012 in Chickaloon Village, Alaska, attended by 52 Indigenous women and girls from 5 regions of the world between the ages of 14 and 89. It produced the 2nd "Declaration for Health, Life and Defense of Our Land, Rights and Future Generation." The Declaration from the second Symposium included recommendations for states, Indigenous Peoples and the UN systems and international processes. For the purpose of this submission, the following recommendations are of particular relevance:

The recommendations for States and their Subsidiary Governments included:

- *Eliminate the production and use of pesticides, industrial chemicals and toxic by-products that disrupt the endocrine system, affect learning and neurological development, cause*

cancers and other illnesses, undermine women's reproductive and maternal health, contaminate lands, waters and traditional food sources and affect any aspect of the health and development of our future generations.

- *Implement programs to restore the health of Indigenous Peoples, including women and children who have been negatively impacted by environmental toxins, including their export and import in collaboration and coordination with the affected Indigenous Peoples including Indigenous women.*

The paper presented the human rights framework affirming the rights of Indigenous Peoples, including Indigenous women and youth, and providing the context for addressing human rights violations caused by the deliberate exposure by States and corporations to toxic contaminants including pesticides which are known to have devastating impacts on environmental and reproductive health.

More generally, IITC has convened Indigenous Peoples around issues of food sovereignty and food security, and how these relate to environmental health and environmental violence. For example, in July 2010 IITC co-coordinated a historic gathering in Vicente Guerrero, Tlaxcala Mexico, “Pueblos Indígenas Y Plaguicidas: Nuestra Tierra, Nuestros Derechos, Nuestro Futuro” (“Indigenous Peoples and Pesticides: Our land, our rights and our Future”). It was attended by over 60 Indigenous representatives of 9 Indigenous Nations and organizations. The Declaration from the conference called, among other recommendations, for the establishment of “pesticide free zones” and the organization of an Indigenous Peoples International Conference on Corn and traditional knowledge, which was held September 27 – 29, 2012 in Oaxaca Mexico. The Declaration of Santo Domingo Tomaltepec from that conference, attended by representatives of 48 Indigenous Peoples, communities and Nations from 6 countries and territories, reaffirmed the importance of establishing Indigenous Peoples’ food sovereignty zones free of pesticides, GMO’s and extractive industries. It also called for revitalizing traditional trade relationship and creating Indigenous Peoples’ Food Sovereignty Zones to promote, protect and exchange traditional methods, seeds, knowledge and sustainable, pesticide and GMO-free growing practices.

B. Lima Women’s Conference:

Indigenous women from the seven sociocultural regions of the world, met at the World Conference of Indigenous Women, ‘Progress and Challenges Regarding the Future We Want’ met in Lima, Peru, from October 28th to the 30th of 2013. The gathering included elders and youth, urban and rural, knowledge holders and healers and activists.

This final Declaration of this gathering was adopted by consensus and it calls for zero tolerance and denounces all forms violence against Indigenous women and girls who are subject to numerous forms of violence, such as domestic violence and sexual abuse, including in the contexts of trafficking, armed conflict, environmental violence and extractive industries. It highlights the importance of sexual and reproductive health and education for all ages and calls for zero tolerance for all forms of discrimination, and all forms of violence against Indigenous women and girls. You can see the full declaration at http://www.un.org/en/ga/president/68/pdf/6132014Lima-Declaration_web.pdf

IV. Highlighting Toxics, Mercury, Climate Change, Mining and the Right to Health

A. Toxics/Pesticides:

The particular health effects of toxic contaminants on Indigenous women are well documented, and are further affirmed through a range of testimonies from the communities most affected, some of which have been included in this paper. Multiple studies confirm that alarmingly high levels of toxics are found in Indigenous women's breast milk, placental cord blood, blood serum and body fat. Devastating impacts on maternal health include sterility, reproductive system cancers, decreased lactation and the inability to produce healthy children. Research also demonstrates the link between chemical exposures and intellectual and neurological development of children, impacting their ability to retain and pass on culture, ceremonies, stories, language, songs -- a primary concern of Indigenous women.

Endocrine disruptors mimic or block hormones, and at nearly infinitesimal amounts, these chemicals cause harm to the system responsible for development and healthy functioning of animals and human beings. The endocrine system regulates the body by sending signaling molecules and hormones into the bloodstream. Interfere with that process, as endocrine-disrupting chemicals do, and you get deadly diseases and birth defects.²⁴

Persistent organic pollutants (POPs) are long-lasting pesticides and industrial chemicals that bioaccumulate through the food web, are capable of long-range transport and are toxic to humans and wildlife.²⁵ The highly toxic organochlorine (OC) pesticides DDT, toxaphene, chlordane, endosulfan, and lindane, and other POPs such as PCBs have been found in human and animal tissue as well as human breast milk in the Arctic at levels several times higher than in the rest of the world. The levels keep rising long after certain of these substances have been banned. For instance, even though DDT agricultural uses have been banned for 30 years in the US, it is still accumulating in the Arctic in peregrine falcons, orcas, and human beings.

Through a well-known process known as "global distillation/ global transport," POPs travel northward and bioaccumulate in high quantities in the bodies of fish, marine mammals and other components of the traditional diets of the Indigenous Peoples in the Arctic. Prevailing ocean and wind currents bring contaminants to the Arctic where they are subsequently trapped by the cold climate. This process is often referred to as the "grasshopper effect," as chemicals repeatedly evaporate and condense while in their journey toward the Arctic. The Arctic is known as the ultimate sink because these contaminants concentrate in the cold environment and fat-based food web.

The Arctic is home to approximately half a million Indigenous Peoples, who face significant cultural, food security/subsistence and human health threats from global contaminants combined with climate change. The cost of store-bought food is almost six times higher for the same products in rural Alaska compared to other US states and the loss of subsistence foods causes an unbearable economic and nutritional hardship for Arctic Indigenous Peoples. It also undermines cultural practices handed down

²⁴ Vallianatos, E.G. *Poison Spring: The Secret History of Pollution and the EPA* (New York: Bloomsbury Press, 2014) at page 118

²⁵ Stockholm Convention on Persistent Organic Pollutants. Accessed November 2011: <http://chm.pops.int/Convention/ThePOPs/tabid/673/Default.aspx>

through generations, as Indigenous communities of the north are reliant on a traditional diet of foods from the land and ocean for their physical, cultural, and spiritual sustenance.

Specific impacts on women, children and maternal health are well documented. Disparities of health problems in the Alaskan Arctic include high levels of birth defects and neonatal deaths among Alaska Native infants that cannot be explained by the usual risk factors of maternal use of tobacco or alcohol. Data from the Alaska Birth Defects registry shows that the prevalence of birth defects in Alaska is twice as high as in the US as a whole and that Alaska Native infants have twice the risk of birth defects as white infants born in Alaska. Mothers residing in villages with high hazard ranking are 43% more likely to have a low birth weight baby, 45% more likely to give birth prematurely and more likely to have babies afflicted with intrauterine growth retardation.²⁶

B. Mercury

Mercury is highly toxic and creates serious threats to environmental and women's reproductive health. Mercury contaminates our air, water, lands and traditional foods, in particular the fish upon which so many Indigenous communities depend, producing serious health impacts for persons of all ages. But the gravest danger is to the health and development of our children. Exposure to mercury impairs the neurological development of infants, babies and children, including those still in those mothers' wombs.

In 2004, the US EPA estimated that over 600,000 babies born each year in the US may be at risk from neurological effects and learning disabilities as a result of prenatal exposure to mercury. Umbilical cord blood has been found to contain almost twice the level of mercury than that found in the mothers' blood, further increasing the risks to our unborn generations. *The most common exposure of humans to mercury is through eating contaminated fish, so children in Indigenous communities where fish are a primary traditional food source are at particularly high risk.*

Methylmercury is known to affect the neurological system of both the developing as well as the adult brain. Prenatal exposure can cause irreversible damage to the developing nervous system resulting in reduced IQ, abnormal muscle tone and losses in motor function and attention. Heart disease and high blood pressure have also been associated with methylmercury consumption as well as damaged immune systems kidney damage and reproductive effects.

As a mother accumulates mercury in her body she can pass it on to her unborn child. Babies can be exposed by consuming breast milk with high levels of mercury. Indigenous Peoples that rely primarily on fish for their physical, economic and cultural survival are at highest risk. Umbilical cord blood has been found to contain almost twice the level of mercury than that found in the mothers' blood, further increasing the risks to unborn generations.

Indigenous Women have taken a strong stand regarding the continued release of mercury into the international environment, the lack of political will by States to conduct effective cleanup of lands and waterways that are contaminated and the need for a strong international instrument on mercury guided by health and human rights concerns rather than priorities set by industry.

26 Gilbreath, S. and Philip Kass. 2006. Adverse birth outcomes associated with open dumpsites in Alaska Native villages. *American Journal of Epidemiology* 164(6):518-528.

The “Indigenous Mothers against Mercury Open Letter to National, State and regional Policy-Makers”, was finalized on May 18th 2011 and has received over 1000 signatures from Indigenous mothers around the world. It reiterates the health impacts of mercury as a neurotoxin which most severely damages the developing fetus. It reminds policy makers that this represents “*a violation of our human rights to health, cultural practices, Treaty rights, subsistence, Rights of the Child, and our Right to Free Prior and Informed Consent as recognized by the UN Declaration on the Rights of Indigenous Peoples and other international human rights instruments, norms and standards.*”²⁷

C. Climate Change

Indigenous peoples’ health status is severely affected by their living conditions, income levels, employment rates, access to safe water, sanitation, health services and food availability. Indigenous peoples are facing destruction to their lands, territories and resources, which are essential to their very survival. Other threats include climate change and environmental contamination (heavy metals, industrial gases and effluent wastes).²⁸

So far, the evolution of the climate change dialogue has been shaped by three basic components: science, technology and the capitalist economy. The intersection of these components has operated to effectively inhibit the ability of world actors (states, in particular) to achieve a substantial, progressive, and enforceable agreement on climate change.

This is due to a built-in tendency in the dominant society to develop *without limits*, which finds its authority in the assumption that the world is *infinite* in terms of resources and renewability. This approach also prioritizes human beings over the natural environment in terms of rights and recourse – effectively creating a hierarchy that falsely implies a singular value to the natural environment. This value may be characterized as an economic one, or one which views the natural environment as being there “for” human beings, of “utility” to human consumption or development.

Indigenous Peoples’ traditional teachings have long warned that if human beings fail to protect and care for Mother Earth and the natural world, the survival of humanity would be threatened. Today, increasingly severe impacts of climate change threaten ecosystems and food production around the world. In 2009, the United Nations (UN) Special Rapporteur on the Right to Food confirmed that “climate change constitutes the single most important threat to food security in the future.”

There are shocking examples of how the health of Indigenous Peoples is impacted by climate change, in particular by those Indigenous Peoples in vulnerable regions, such as coastal regions. Here is testimony from an Affiliate of IITC in the Terrebonne basin of Louisiana, United States:

- We have experienced a change in diet resulting from lack of plant resources due to increased salinization killing plants, medicine, and trees. We have been trying to collect documentation

²⁷ “Indigenous Mothers against Mercury Open Letter to National, State and regional Policy-Makers”, IITC and the Indigenous Women’s Environmental Justice and Reproductive Health Initiative, May 18th 2011

²⁸ United Nations, Economic & Social Affairs State of the Worlds Indigenous Peoples Vol 2: Indigenous Peoples’ Access to Health Services, Advance Copy, available online (2015) at page IV

of all of the plants that no longer exist that were relied on by our people for food, medicine, shelter, etc.;

- We have experienced a change in lifestyle due to increased salinization and coastal erosion resulting in relocation from lower PAC, living in more cramped quarters to accommodate more families, requiring families to elevate their homes as much as 12 feet, which puts elderly and children at risk of falling and prevents some elderly from being as social because of the risk of falling;
- We have experienced an inability to graze animals as before because of land loss and salt water resulting in reduction of ceremonial sharing of feasts from these animals;
- We have experienced mental and physical stress caused by impacts of climate change-- depression, strokes, aneurism when impacted by hurricane or storms;
- There is a lack of fresh water during and after a storm;
- We have experienced a change in diet from relying on agricultural and game because of the change in the land conditions to relying primarily on seafood;
- We have experienced stress caused by the destruction and/or erosion of burial mounds and sacred sites to climate impacts;
- We have experienced the introduction of new species in the water, and have concerns regarding invasive species and impacts on our fisheries.²⁹

Of great concern is not only the Indigenous Peoples of coastal regions, but also those located in areas known as “small island states” or similar regions. Our Affiliates from the Solomon Islands have submitted the following testimony for the purposes of this submission:

- Specific examples of the linkage between climate change and Indigenous Health in the Solomon Islands and other Pacific island countries are:
 - increases in incidences of disease infections such as dengue fever, malaria, belly run etc;
 - destruction of food gardens due to salt water intrusion therefore reducing communities's capacity on food security, resulting in malnutrition and increase in import of junk food as opposed to freshly produced organic food (which is the traditional way of life in the Solomons). This has given rise to NCDs affecting children, youth and women.
 - Fish is the major protein source for Pacific island countries. Irregular weather patterns due to climate change prevent fishermen from going out to sea to fish affecting Indigenous diet and contributing to the increasing rate of NCDs. More Indigenous Peoples and local communities are eating imported canned food due to bad weather and salt water intrusions as a result of climate change. Warming sea temperatures and irregular weather patterns have also affected fish migration patterns contributing to less amount of catch compared to the past.

²⁹ Pointe-au-Chien Indian Community (a state-recognized by non-federally recognized tribe), located in the Terrebonne basin of Louisiana and suffering from coastal erosion, provided by Patty Ferguson-Bohnee: “During the past 100 years, Louisiana has lost more than one million acres of coastal land and wetlands, and is losing approximately 25–40 square miles per year....[t]he State of Louisiana has developed a plan for restoration projects; however, most tribal communities are excluded.” Ferguson-Bohnee, ‘High Water and High Stakes: Cultural Resources and Climate Change’ in: *Forum Journal* Summer 2015 Vo. 29, No.4

- Coconut is the tree of life in many Pacific island countries, as all parts of the tree are used for Indigenous Peoples' livelihood, including water, food, etc.. However, many of them are being lost to sea level rise as islands and lands are submerged under salt water.
- Salt water incursion into freshwater aquifers is affecting freshwater access in low-lying Pacific island countries. Especially in Tuvalu, where they installed water tanks to catch rain water but it never rained!
- There are also incidences of flooding and king tides in Aotearoa (New Zealand) leading to an inability for the elderly and children to access health services, at times with a delay of access of up to two weeks.

Indigenous Peoples have been actively engaged in the UNFCCC process since its inception and have been able to include some rights-based safeguards in the text. However, Indigenous Peoples have protested their lack of a formal decision-making role in the UNFCCC process and have also expressed concerns about market-based “solutions” such as carbon trading and forest offsets. Indigenous Peoples continue to call upon States to reject false solutions and move towards real, sustainable alternatives that significantly reduce emissions and also respect the rights, traditional knowledge and cultural practices of Indigenous Peoples.

The Outcome Document adopted by the UN General Assembly at the World Conference on Indigenous Peoples on September 22nd, 2014 affirmed “that indigenous peoples’ knowledge and strategies to sustain their environment should be respected and taken into account when we develop national and international approaches to climate change mitigation and adaptation.” Such strategies must also be understood as manifest in Indigenous languages, cultural practices and knowledge systems.

Indigenous Peoples already have some tools, based in traditional and ecological knowledge, to combat the impacts of climate change. For example, Dr. William Carmen (Yaqui) Wildlife Biologist has found that “[t]ule marshes absorb more than ten times more carbon than a pine forest,” which are located in the state of California (United States) where such tule marshes were formerly abundant and managed traditionally by Indigenous Peoples.

A 2006 report by the UN Food and Agriculture Organization (FAO), “The Long Shadow of Livestock” confirmed that large scale commercial livestock production is one of the major causes of the world's most pressing environmental problems, including global warming, land degradation, air and water pollution, and loss of biodiversity. Using a methodology that considers the entire commodity chain, FAO estimates that livestock are responsible for 18 percent of total greenhouse gas emissions, a bigger share than that of transport.³⁰ FAO also reported that livestock production produced 37 percent of all human-induced CH₄ (methane) and 65 percent of N₂O (nitrous oxide) gas. These statistics have not improved in the years since this study.

However, Indigenous Peoples know how to counter such impacts, using traditional “technology” in ecological and livestock management – with for example the buffalo. Mitigation and adaptation are

³⁰ UN FAO Spotlight website, citing “Livestock’s Long Shadow”, November 2006

already underway for many Indigenous Peoples, as buffalo are resistant to a wide range of climate conditions, and are known to support the resiliency of native grasslands. This in turn prevents soil erosion. Buffalo are also a healthy and traditional food source, contributing to restoration of traditional economies as well as ecological and grasslands health. Such local food sources have a lower “carbon footprint” than other livestock, and will be central for food sovereignty and good wholistic health for Indigenous Peoples.

We also have testimony from our Affiliates in the Arctic regarding the linkages between health, climate change and the rights of Indigenous Peoples. Arctic Indigenous Peoples are among the most contaminated people in the world because the Arctic has become a hemispheric sink for persistent organic pollutants that are transported via atmospheric and oceanic currents from lower latitudes. Traditional foods of Arctic Indigenous Peoples can contain dangerous levels of POPs that bioaccumulate in arctic food webs (AMAP 2009, Welfinger-Smith et al. 2011). These problems are exacerbated with accelerated melting of sea ice, glaciers, and permafrost which release sequestered contaminants into ecologically sensitive coastal and marine areas that are also vital subsistence fishing and hunting areas. The Arctic is warming at more than twice the global average (McKinney et al. 2015), and the mobilization of persistent organic pollutants in the Arctic will likely accelerate (Jenssen 2006), causing combined effects and leading to higher health risks (UNEP/AMAP 2011). Additionally, the Arctic contains thousands of contaminated formerly used defense (FUD) sites dating from the Cold War, many of which are polluting the lands and waters of Indigenous Peoples and this problem is also exacerbated by rapid climate warming which is melting permafrost and sea ice, as well as causing increasing storm surges. In the words of an Indigenous representative from the Arctic:

Climate change has drastically affected our food security and it is getting worse. In one of our St. Lawrence Island (SLI) communities we harvested only 30 walrus, normally this community harvests 300-400 walrus. Our other SLI community walrus harvest was somewhat better however still much lower than what we normally get. Walrus are our main food for the long winters. Due to continued low walrus harvests in recent years, our freezers are empty, our elders and children are hungry. St. Lawrence Island is located in the Northern Bering Sea, our main subsistence foods are marine mammals including bowhead whale, walrus and three species of seals which are ice dependent. With the sea ice shrinking and rapidly changing weather due to climate change, the availability of our main foods have been greatly affected. It is more dangerous to go hunting, our hunters have to go much further to reach the ice to harvest the walrus and seals. Knowledge passed on for many generations is not working any more due to dramatic changes in our weather.³¹

Part of the challenge facing Indigenous Peoples is the inability to quantitatively demonstrate the anecdotal and qualitative impacts of climate change on health and environmental health. Often, national indicators of countries with impacted Indigenous Peoples are not inclusive of Indigenous experiences or related health outcomes. In fact, the first international disaggregated data ever released regarding Indigenous Peoples was by the World Bank in 2011, regarding poverty and development in particular.³² The findings were stark, and drew a picture of poverty amongst Indigenous Peoples which is compounded by the rampant pollution, contamination and fundamental

³¹ Vi Waghiyi, St. Lawrence Island Grandmother and Program Director with Alaska Community Action on Toxics

³² Available online at: <http://documents.worldbank.org/curated/en/2011/10/15198880/still-among-poorest-poor>

climate transformation of their traditional territories and waters. The World Bank only made use of state/country statistics though, which leads us back to the problem of non-inclusivity of national measurements of health in relation to poverty and by extension, determinants of health including climate change.

The 21st Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC-COP21) officially adopted the Paris Agreement on Saturday, December 12, 2015. It commits all countries, for the first time ever, to cut their carbon emissions while also recognizing the special circumstances of developing countries. The States also adopted the “Paris Decision” which is not legally binding, but commits States to immediately begin the process of reducing greenhouse emissions that cause climate change. The inclusion of “the rights of Indigenous Peoples” in the preamble paragraph of the Agreement, achieved despite the consistent opposition of some States throughout the process, is a significant and unprecedented step forward. This is the first time this phrase has appeared unqualified in a legally binding UN Treaty, environmental or otherwise. The same phrase was included in the preamble of the Paris Decision, although both say that States “should consider”, while Indigenous Peoples and human rights advocates called for the use of the stronger word “shall”. This represents only the second time that the term “Indigenous Peoples” has been included without qualification in any legally binding UN treaty, and is the first time it has been included in a UN environmental treaty.³³

However, the phrase “rights of Indigenous Peoples” and human rights in general did not appear in the Agreement’s operative section. This is repetitive of what we have outlined in other environmental initiatives at the United Nations – the peripheralization and minimization of the rights of Indigenous Peoples as expressed in the UN Declaration.

D. Mining

The ongoing and pervasive human rights violations produced mining activities and other forms of extractive industries in Indigenous Peoples’ lands without their free prior and informed consent, especially those carried out by North American mining companies in various parts of the world, are matters of ongoing international concern.

The 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.”³⁴ 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. This study was presented to the UN Human Rights Council the same year and yielded the following recommendation in regards the right of Indigenous women and girls to participate in decision-making in the context of extractive industries”

³³ The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) also includes the term “Indigenous Peoples” without qualification.

³⁴ 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.

Furthermore, unsustainable extractive industry development can have unique ecological, economic and spiritual impacts on indigenous women in their role as traditional caretakers of the environment. Those unique impacts and forms of violence against indigenous women and girls must be resolved through an understanding of the structural nature of violence against indigenous women, through the full participation of indigenous women in all aspects of decision-making and through consideration of this problem by indigenous communities as an integral part of self-determination³⁵

IV. Recommendations for EMRIP advice:

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

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

³⁵ UN Document: E/C.19/2012/6, paras. 46 and 50 Full document can be found at http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session5/A-HRC-EMRIP-2012-2_en.pdf