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

Seventeenth session of the UN Permanent Forum on Indigenous Issues (UNPFII)

*Theme: "Indigenous peoples collective rights to land, territories and resources"
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I would like to thank the UN Permanent Forum on Indigenous Issues (UNPFII) for the invitation to participate today. It is truly an honor. Last year, the UNPFII invited me to carry out a review of the United Nations chemical conventions on the basis of the Permanent Forum's continued concern about the impact of environmental toxins and the export and import of banned pesticides on the reproductive health of indigenous women and girls. The forum expressed its desire to ensure that they are in conformity with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child, in particular article 24, among others.

Before I present some preliminary thoughts on the question posed regarding the UN Conventions for chemicals and wastes, I thought it would be useful to reflect on the situation of toxic substances and wastes in indigenous lands and territories, based on my experiences and those of other Special Rapporteurs, independent experts, working groups, treaty bodies and other human rights mechanisms.

For decades, the mandate I now hold and other mandate holders have reported on the impacts of pollution, contamination and toxic chemicals on the rights of indigenous peoples. These hazardous substances and wastes are typically present in the lands, territories and natural resources of indigenous communities not because

of decisions they have made or even vaguely participated in, but rather because of a pervasive abuse of and disrespect for their individual and collective rights.

Today, indigenous peoples continue to be on the wrong side of a toxic divide. They are unfortunately on the side that does not enjoy the rights to life and the highest attainable standard of health, to safe food, safe water and adequate housing. Indigenous peoples from the Arctic to Australia, from the Americas, to Africa to Asia, continue to suffer from adverse health impacts ranging from cancers to miscarriages, birth defects, learning disabilities and diabetes, among others, that are linked to pesticides, toxic industrial chemicals and other environmental insults. Around the world, the rights that everyone should enjoy regarding toxic pollution are unfortunately realized as a privilege of the few, not a right of everyone. In addition to the rights to life, health, food, water, and housing, the procedural rights that environmental advocates champion as vital to the right to a healthy environment are typically neither available nor accessible to indigenous peoples.

For example, indigenous peoples such as the Yaqui have suffered grave adverse impacts on their health and dignity from of the ongoing use of highly hazardous pesticides. These pesticides are often imported from countries that have banned their use domestically because of uncontrollable and unreasonable risks. And yet, these same countries continue to manufacture and export these poisons to developing countries with weak chemicals management systems, resulting in cancers, birth defects and other health impacts among indigenous women and children, as documented by the Committee on the Rights of the Child.

As, I described in my [2016 report to the UN Human Rights Council on the rights of the child](#) in the context of my mandate, children exposed to toxics—a global challenge pediatricians now refer to as a silent pandemic—are victims of environmental violence. In 2017, I developed as requested by the UN Human Rights Council [guidelines to good practices for respecting and protecting human rights implicated by toxic chemicals and wastes](#), identifying a few of the internationally recognized rights, including those of indigenous peoples. These are among the many reports informs the analysis being developed for the UNPFII.

The chemicals and waste Conventions, namely the Basel, Rotterdam, Minamata and Stockholm Conventions, have developed in piece-meal fashion to address the global challenge of ensuring that toxic chemicals and wastes do not violate the rights of the most vulnerable, including indigenous peoples. Certainly, much progress has been made under these Conventions since the 1980s. However, this progress has not kept pace with the evolution of the chemical industry or the globalization of supply

chains. Today, chemicals of global concern are not only those which travel long distances through wind and water, or those that are traded across borders in their chemical form; but, rather, they are those in global supply chains, in products and materials that are traded in huge volumes every day around the world. Today, the circle of poison has taken a new route, but the impacts on the most vulnerable are much the same.

The existing chemicals and waste conventions are necessary but not by any means sufficient to protect human rights from toxic threats to these rights, including the rights of indigenous peoples. Briefly, I will offer a few of my preliminary observations, noting that a more detailed analysis is in development.

First, hundreds if not thousands of toxic substances and processes, which are unquestionably hazardous and of global concern, are not regulated throughout their lifecycle under global treaties. This is resulting in discriminatory practices between States. Less than 30 industrial chemicals and pesticides are regulated through their lifecycle globally, from a universe of 1000s of substances identified as being toxic and produced in substantial volumes by chemical companies around the world.

Second, the child's right to have their best interests taken into account by States regarding pollution and contamination is not taken into account under the existing provisions of global chemical treaties, setting aside the obvious fact of the protection gaps for children created by the patchwork of existing chemical and waste treaties. Stronger linkages between the environmental treaties and the UN CRC are necessary.

Third, there is no recognition of the right to free, prior and informed consent of indigenous peoples. While prior informed consent is in the title of the Rotterdam Convention, it is a misnomer. Indigenous peoples are not given the opportunity to consent under the convention, only States. Even if a State does not respond, a highly toxic chemical listed under the Convention and banned or restricted by several countries can still be exported after 90 days, negating the critical word 'consent.' And, by my analysis, hundreds of toxic chemicals that should be listed in the Convention are not yet listed. This problem is not limited to the highly hazardous pesticide paraquat or asbestos, although they are a perfect case in point of how the integrity of Conventions and UN agencies are being undermined chemical industry officials masquerading as public servants.

Fourth, the right of physical integrity, security of the person, and self-determination are not reflected in the Conventions. As we all know, exposure to hazardous

substances is harmful. The harm is not when cancer or another adverse health impact materializes; but, rather, when exposure happens without consent. This toxic trespass is violence, and should be viewed as a violation of anyone's physical integrity, particularly of children and indigenous peoples, who have unique rights in this regard, that must be respected and protected. The existing chemicals and waste Conventions operate with the presumption that favors, rather than discourages chemical exposure, including by children during critical periods of development.

Fifth, the Conventions have either broken or missing accountability mechanisms. Neither States, nor businesses, nor industry-driven NGOs are held accountable under these treaties. Compliance mechanisms are desperately needed to ensure that they perform their intended function.

If I may offer a recommendation to the Permanent Forum, now is the time to develop a stronger, more ambitious global regime for chemicals and waste. Discussions are ongoing regarding what the global framework for toxic chemicals will consist of after 2020, when the mandate of an insufficient, non-binding policy framework for toxic chemicals expires, i.e. the post-2020 discussions of the Strategic Approach to International Chemicals Management (SAICM). States like Sweden are calling for an ambitious agreement, consisting of both legally binding and non-binding provisions. I encourage the UNPFII to join these calls.

I encourage the UNPFII to recommend the creation of an ambitious, global and legally binding regime for toxic industrial chemicals and hazardous pesticides, the vast majority of which are currently unregulated under existing Conventions for toxic chemicals, to protect the rights of everyone, including indigenous communities, from the grave threats to human rights presented by the ongoing chemical intensification of the global economy.

Thank you, and I look forward to continued engagement with the UNPFII in the coming years.