

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 37/8, 32/8, 34/18 and 36/15.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning **inadequate remedy for exposure of the local community on the island of Vieques, a municipality of the Commonwealth of Puerto Rico, to toxic chemicals resulting from military activities of the U.S. Navy and from subsequent cleanup efforts.**

According to the information received:

From the mid-1940s to 2003, the U.S. Navy operated an installation and carried out military exercises on Vieques. The island was used for ground warfare and amphibious training for marines, naval gunfire support training, and air to ground training, as well as for storage of munitions and other support for the Atlantic Fleet Weapons Training Facility. These exercises took place on the eastern and western ends of Vieques, constituting 26,000 acres of the island's total of 33,000 acres, while some residents of Vieques (*Viequenses*) remained in the middle portion of the island.

The training conducted at these facilities reportedly included the use of toxic substances and chemicals including mercury, lead, copper, magnesium, lithium, perchlorate, TNT, napalm, depleted uranium, PCBs, solvents, and pesticides. Toxic substances from the remnants of the military activities on the land and sea reportedly leaked, and traces were found in the living marine organisms that inhabit the area, thereby negatively affecting the local ecosystem and livelihoods of the *Viequenses*, who rely heavily on the fishing industry as a primary source of nutrition and of income.

Chronic exposure to toxic chemicals poses serious risks to human life and health, and may not only affect individuals in direct contact with the

chemicals, but also bring about transboundary harm affecting vulnerable communities in nearby areas. As a result of the military activities, the *Viequenses* reportedly suffer from inflated rates of cancer, hypertension, asthma, birth defects, higher infant mortality rates and low birth weights, respiratory illnesses, and kidney failure, compared with the rates from other areas in Puerto Rico.

Between 2001 and 2003, the U.S. Department of Defense ceased the conduct of military activities on Vieques and transferred responsibility for management of portions of the areas of concern separately to the Municipality of Vieques, the Puerto Rico Conservation Trust, and the U.S. Department of Interior. In 2005, the U.S. Government declared areas of Vieques and its surrounding waters as a contaminated site (“Superfund site”) under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) and added the Superfund site to the National Priorities List of contaminated sites for cleanup. The U.S. Navy, responsible for munitions clearance and environmental restoration, commenced removing munition and investigations to assess chemical contamination, and cites the need for completion of removal actions before a comprehensive study is made on the extent of chemical contamination.

The ongoing cleanup process by the U.S. Navy allegedly includes methods that are harmful to the community and the ecosystem of the island. One of the procedures reportedly used is the controlled burning of vegetation to reveal the munitions, destroying vegetation and potentially exposing the nearby communities to toxins that may have accumulated in the biomass. Once the unexploded ordnances are found, open-air explosions are allegedly carried out, potentially exposing nearby communities to toxic chemicals resulting from their release into the environment. Further, it is alleged that removal of underwater munitions may not sufficiently address the release of toxic chemicals into the environment and alteration of the ecosystem resulting from disintegrating munitions.

In accordance with CERCLA, a Restoration Advisory Board (“RAB”) was established as a citizen oversight forum. The RAB holds meetings every trimester to inform the local community of the cleanup plan and progress on its implementation. The U.S. Government reportedly issues public notices and fact sheets in addition to meeting with the local community. However, the concerns of the *Viequenses* are reportedly inadequately included in the final decisions of the RAB.

Furthermore, information concerning meetings and outcomes of the RAB is allegedly not widely publicized on the island and few citizens know about its existence or activities. It is further alleged that the U.S. Government has not fully disclosed all activities and substances used in Vieques. Moreover, the reported restriction on disclosed information potentially impairs the capacity

of residents to give knowing and informed approval to proposed decontamination plans.

In 2005 a group of 7,000 *Viequenses* sought and failed to secure legal remedy at the local courts, for chronic, long-term, negligent and/or deliberate exposure to toxic dust, hazardous waste and environmental damage. Notably, the health risks resultant from chronic exposure to toxic chemicals disproportionately affect the most vulnerable in the community, including pregnant women and children, reducing life expectancy rates and threatening lives and livelihoods.

In 2013, a petition was filed with the Inter-American Commission on Human Rights on behalf of 10 *Viequenses* seeking recognition of violation of human rights on the part of the U.S. Government for failing to inform the local community of the negative impact of the military activities on their rights to life and health. The *Viequenses* continue to pursue their right to remedy through the legal system.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reports of alleged violation of fundamental human right principles of the rights to life, highest attainable standard of physical and mental health, access to information, food, and clean and healthy environment. Additionally, we wish to express concern about the apparent inadequacy of remedies for the reported violation of the rights of the *Viequenses* and what appears to be limited meaningful participation by the community in decision-making processes.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details of any preliminary chemical contamination assessment of the Vieques Superfund site.
3. Please provide the details on measures that your Excellency's Government is taking to protect the rights to life and physical and mental health of the *Viequenses* as a result of the environmentally unsound disposal of hazardous substances and wastes from the military activities on the Superfund site. Please specify any of your Excellency's Government's plans to ensure accountability for human rights abuse allegedly occasioned against the *Viequenses*.

4. Please provide details of particular measures including policies, legislation, regulations and adjudication, has your Excellency's Government put in place to prevent exposure to the toxic chemicals potentially present in Vieques.
5. Please provide us with any figures and studies of the impact of the toxic substances from the remnants of the military activities on the impact of the fishing industry and people's livelihoods.
6. Please provide details of measures taken to protect *Viequenses'* livelihoods since they to a large extent depend on the fishing industry for incomes and for nutrition. Please provide information concerning the existing mechanisms and safeguards to ensure adequate participation of the *Viequenses* in the decision-making processes related to the munitions clearance and cleanup.

We would appreciate receiving a response **within 60 days**. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We may publicly express our concerns in the near future as, in our view, the information upon which a press release would be based is sufficiently reliable to indicate a matter warranting attention. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Hilal Elver

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David Kaye

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Annex
Reference to international human rights law

In connection with the alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Rights of the Child;
- The Strategic Approach to International Chemicals Management Comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action; and
- The UN Guiding Principles on Business and Human Rights.

We wish to draw attention to your Excellency's Government's obligations under international human rights instruments to guarantee the right of every individual to life, liberty and security and not to be arbitrarily deprived of life, recalling Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), noting that your Excellency's Government ratified the ICCPR on 8 June 1992. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance.

We would like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), signed by your Excellency's Government on 5 October 1977, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. While the United States of America has not ratified the ICESCR, your Excellency's Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification. The right to health is also guaranteed as a part of the UDHR Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting health of the individual, and in terms of health services.

In relation to the right to food, we would like to draw the attention of your Excellency's Government to Article 25 of the UDHR, which recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Furthermore, Article 11(1) of the ICESCR stipulates that States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" and requires them to "take appropriate steps to ensure the realization of this right."

We wish to appeal to your Excellency's government to take all necessary steps to secure the right to information. We would like to refer your Excellency's Government to the fundamental principles laid down in Article 19 of the UDHR, and Article 19(2) of the ICCPR which guarantee the right to "seek, receive and impart information" as part of the right to freedom of expression. Also, Articles 13 and 24(d) of the CRC provide respectively that "the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice" and create an obligation for State Parties to "ensure that ... parents and children, are informed, have access to education and are supported in the use of basic knowledge of ... hygiene and environmental sanitation and the prevention of accidents".

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The right to information derives from the freedom of expression. However, the right to information has been recognized as a right in and of itself and one of the rights upon which free and democratic societies depend (E/CN.4/2000/63, para. 42). Access to information is a prerequisite to the protection of human rights, including worker rights, from hazardous substances, to public participation in decision-making and for monitoring governmental and private-sector activities. Public participation in decision-making is based on the right of those who may be affected to speak and influence the decision that will impact their basic human rights.

We would like to call the attention of your Excellency's Government to the importance of the right to information about hazardous substances to the general public, as emphasized in the Human Rights Committee's (HRC) Report of the Special Rapporteur (A/HRC/30/40) in paragraphs 7, 8 and 48, as well as in the HRC's General Comment No. 34 concerning Freedoms of Opinion and Expression (para.19). In addition, we would like refer your Excellency's Government to the HRC's General Comment No. 34 concerning Freedoms of Opinion and Expression. Paragraph 18 and 19 of General Comment No. 34 indicates that the right to access to information includes "access to information held by public bodies. Such information includes records held by a public

body, regardless of the form in which the information is stored, its source and the date of production.” Also, Article 20(4) of the WHO Framework Convention on Tobacco Control provides that Parties shall, subject to national law, promote and facilitate the exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco...”

In order to fully realize the right to information for transparent public institutions, implementation through frameworks for measuring, monitoring, reporting and verification of information are necessary for Governments to ensure accountability on their obligations. States should ensure collection and proper management of information on working conditions, exposure levels, contamination, and long-term health implications of exposure to chemicals including toxic pesticides, especially with regard to workers and communities living near areas of use. In this connection, General Comment No. 15 of the Committee on the Rights of the Child provides that States should regulate and monitor the environmental impact of business activities that may compromise children’s right to health. Maintaining disaggregated information is necessary to understand specific events in the realization of the impact of particular actions on various groups including workers and children.

We wish to draw the attention of your Excellency’s Government to the Strategic Approach to International Chemicals Management comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action, to which your Excellency’s Government nominated a focal point, under which parties state that they are “determined to implement the applicable chemicals management agreements to which we are Party, strengthen the coherence and synergies that exist between them and work to address, as appropriate, existing gaps in the framework of international chemicals policy” (clause 8, Dubai Declaration) and “commit ... to respecting human rights and fundamental freedoms, understanding and respecting ecosystem integrity and addressing the gap between the current reality and our ambition to elevate global efforts to achieve the sound management of chemicals” (clause 10, Dubai Declaration). Paragraph 10 of the Global Action Plan identifies measures to strengthening knowledge and information, and in so doing promote achievement of the right to information in relation to chemicals, to include “stepped-up monitoring of the impacts of chemicals on health and the environment, harmonized risk assessments, efforts to implement the Globally Harmonized System of the Classification and Labelling of Chemicals, and the development and publication of national pollutant release and transfer registers”.

We would like to refer your Excellency’s Government to Article 10 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, signed by your Excellency’s Government on 22 March 1990 , which requires States to cooperate in monitoring the effects of the management of hazardous waste on human health and the environment; and to Articles 9 to 11 of the Stockholm Convention on Persistent Organic Pollutants, signed by your Excellency’s Government on 23 May 2001, which provides for collection and dissemination of information on persistent

organic pollutants and their effect on human health and the environment, as well as implementation of public awareness programs for various categories of society including workers in general and children in particular.

Further, we would like to refer your Excellency's Government to the Declaration on the Right to Development (A/RES/41/128). Article 2, paragraph 3 of the Declaration stipulates that the right of affected persons and communities to be consulted is essential, in accordance with the human right to development.

Furthermore, we would also like to draw the attention of your Excellency's Government to Article 2(3) (a) of the ICCPR, which recognizes the right of victims to an effective remedy. Article 2(3)(a) requires States "[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." State parties have an obligation in pursuance to Article 2(3) (b) and (c) of the ICCPR, "[t]o ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; [and] To ensure that the competent authorities shall enforce such remedies when granted."

We would like to underline that the obligations of States to respect human rights, to protect the enjoyment of human rights from harmful interference, and to fulfil human rights by working towards their full realization apply in the environmental context. In that context, we refer to the Framework Principles on human rights and the environment of the Special Rapporteur on human rights and the environment (A/HRC/37/59, annex), which summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Namely, the Framework Principle 1 provides that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights. In the same vein, Principle 2 reiterates that States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment. Finally, Principle 12 reaffirms that States should ensure the effective enforcement of their environmental standards against public and private actors, and according to Principle 14 says that States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.