

Mandate of 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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3 September 2018

Your Honors,

I address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (toxics), pursuant to U.N. Human Rights Council resolution 36/15.

I understand the National Supreme Court of Justice of Mexico to be in the crucial stages of deciding on a constitutional matter in Case No. 365/2018, which concerns the construction of a new tailings dam by the company Buenavista del Cobre, S.A. de C.V in Cananea, Sonora. The case raises a number of procedural and substantive issues relating to the obligations of the Mexican Government under international human rights law.

The Government of Mexico ratified the International Covenant on Civil and Political Rights (ICCPR) in 1981. Among the rights enshrined in the ICCPR are the rights to access information and meaningful public participation under articles 19 and 25. It is well established that these rights extend to environmental matters.¹ In less than one month, Mexico is expected to sign the recently concluded Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). However, irrespective of its signature and ratification of the Escazú Agreement, the Government of Mexico has clear obligations under international law to realize the mutually supportive and interdependent rights of access to information and meaningful participation on environmental matters.

The communities that could be affected by the tailing dam have the right to meaningful participation and consultation before authorization is given for construction of the tailings dam. Based on information received, there appear to be grave deficiencies in public participation around this project. More precisely, the Plaintiffs claim that there was no public participation before the Secretariat of Environment and Natural Resources (SEMARNAT) granted authorization to construct the tailings dam at issue. If true, this is of grave concern.

¹ See e.g. United Nations Declaration on Environment and Development, principle 10 (1992); Dubai Declaration on International Chemicals Management (2006); and Paris Agreement on Climate Change, preamble (2015). See also U.N. Office of the High Commissioner for Human Rights (OHCHR) and U.N. Economic Commission for Latin America and the Caribbean (ECLAC), SOCIETY, RIGHTS AND THE ENVIRONMENT: INTERNATIONAL HUMAN RIGHTS STANDARDS APPLICABLE TO ACCESS TO INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE (Nov. 2016), available at: <https://www.cepal.org/es/publicaciones/40735-sociedad-derechos-medio-ambiente-estandares-internacionales-derechos-humanos>

Tailing dams have a consistent record of failure, unleashing toxic and otherwise hazardous waste on communities. In 2012, my predecessor under this mandate addressed numerous cases of tailing dam failures from around the world in his 2012 report to the U.N. Human Rights Council on extractive industries.² Since that report, several significant failures of tailing dams have resulted, including one in Rio Sonora in 2014, as well as the Bento Rodrigues (i.e. Rio Doce or Mariana) disaster in Brazil in 2015, which killed over 17 people and affected the livelihood of millions living along the 800 kilometer river.

In the case of extractive industries, which carry the risk of pollution and contamination from their activities, information about such risks, including potential adverse health outcomes, is essential. Extractive industries are by definition unsustainable. During the extraction of metals and minerals, there are serious threats to the rights to life, to the highest attainable standard of health, and to safe water, among other rights, from the exposure of affected communities to toxic substances. When resources are exhausted, these toxic threats to human rights can remain indefinitely. One of the primary sources of exposure to toxic substances released from extractive industries is through polluted water.

I am concerned that the Mexican standards of protection of water from pollution do not fully meet international standards for the protection of children's health. In the meantime, the Mexican Government has an obligation under the UN Convention on the Rights of the Child (CRC) to realize the right of every child to the highest attainable standard of health. Article 24 of the CRC explicitly requires the protection of children from exposure to hazardous substances in polluted water. It is my understanding that despite recent efforts and revisions, water quality standards in Mexico do not fully meet the World Health Organization's (WHO) recommendations. It is essential that the Government pursues efforts for improving water quality standards, including in the instant case, to ensure it meets its obligations under the CRC, as well as the CDESCR, to protect the right to safe water.

Shortcomings in Mexican water quality standards, including deviation from WHO recommendations, should be clearly explained to affected communities in the process of consultation and participation so that they can understand and appraise the health risks, even though contaminant level may be within levels the Government designates as "safe."

Thus, I am further concerned that even if there was some degree of consultation, whatever information may be provided to communities in Mexico through environmental impact assessments or other means did not convey complete information about associated health risks.

² *Report of the U.N. Special Rapporteur on Human Rights and Hazardous Substances and Wastes to the Human Rights Council, A/HRC/21/48* (2012), available at: <https://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/Annual.aspx>

Meaningful participation requires that information is available, accessible and in an appropriate form for the affected community.³ I am concerned that in the instant case, necessary information was neither available nor accessible for the population to participate in a meaningful manner.

These concerns have been raised with the Government of Mexico, which is in the process of considering extending an invitation to conduct an official visit in the coming year. Such a visit would provide a more detailed analysis of such substantive and procedural issues in light of the State's obligations under human rights treaties, as well as recommendations for the Government's consideration. At a recent review of the Government of Mexico's compliance with its obligations under the CRC, the official delegation told participants that it would extend an invitation to my mandate regarding concerns of pollution and contamination affecting the health and development of children in the country. When such an official visit can be organized, I would appreciate an opportunity to meet with you and discuss issues of common concern.

I am grateful for your consideration of the information provided in this letter, which I intend to make publicly available on the webpage of my mandate.

Please accept, Your Honors, the assurances of my highest consideration.

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

³ *Report of the U.N. Special Rapporteur on Human Rights and Hazardous Substances and Wastes to the Human Rights Council, A/HRC/30/40* (2015), available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_40_SPA_DOCX