

Tabled by: Senator Cox

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**End of Mission Statement by the UN Special Rapporteur on Toxics and Human Rights, Marcos A. Orellana, on his visit to Australia, 28 August to 8 September 2023**

**Canberra, 8 September 2023**

I wish to start this debrief by thanking the Government of Australia for inviting me to undertake an official visit to the country. I also wish to express my sincere gratitude to the Federal, State and Territory Governments for their high level of cooperation throughout the visit.

During the last two weeks since 28 August, I met high-level representatives of the Federal, State and Territory Governments, members of Parliament, members of the Judiciary, the Australian Human Rights Commission, Indigenous people, civil society organizations, workers unions, academicians, and industry representatives.

I would like to extend my special appreciation to the Department of Climate Change, Energy, the Environment and Water for its help in organizing this visit. I also wish to thank the UN Information Center in Canberra and the UN Office of the High Commissioner for Human Rights for their valuable support in the preparation and duration of the visit.

I held meetings in the Australian Capital Territory, New South Wales, Tasmania, Victoria, South Australia and Western Australia. I met with a number of communities, including in Sydney, Hobart, Adelaide, Melbourne, and Perth to hear about their concerns. I held meetings with several Indigenous Peoples from the Northern Territory and heard about their concerns and priorities. I also visited a number of sites, which are adversely affected by toxic pollution and hazardous wastes. I would like to thank all the community members in all these places for their time, their openness and their sharing of experiences concerning toxic substances.

In this final phase of my official visit, I am pleased to share today my preliminary observations. A full report on my visit to Australia will be presented to the UN Human Rights Council in September 2024.

**Introduction**

There is a deep disconnect or distance between the government and community narratives concerning toxics. Where the government sees efforts towards stronger regulations to address the risks of chemicals and pollution, communities and civil society denounce the capture of the State for the benefit of mining, oil, gas, agrochemical and other corporate interests.

This disconnect appears particularly acute between Indigenous Peoples and the government. For example, where the government perceives instances of the “not-in-my-back-yard” phenomenon in regards to the siting of radioactive wastes, representatives of First Nations have spoken to me

genuine dialogue, then one of the fundamental pillars of sustainable development begins to collapse. And when that happens, dialogue is replaced by anger and distrust.

At this point I wish to make certain observations about Australia's engagement with multilateral agreements in the chemicals and waste cluster and human rights.

### **Multilateral Environmental and Human Rights Agreements**

Australia is exercising leadership in various international arrangements for environmental protection. For example, it has led a proposal to overcome the breakdown of the science-policy interface mechanism in the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.

Australia has also supported the negotiation of a new international treaty on plastic pollution and has joined the High Ambition Coalition of countries that wish to conclude a robust instrument that addresses the full life-cycle of plastics. In this regard, Australia has adopted in 2021 a national plastics plan. Australia is also confronting the impact of plastic litter in its outer islands as well as the leakage of microplastics and plastic feedstock from industrial facilities.

Australia has also applied significant efforts at international cooperation in the Pacific region. For example, it has supported Pacific islands in the implementation of the Waigani Convention, which bans the import into the Parties' territories of hazardous wastes and provides measures of control in the transboundary movements of such wastes. The Australian Human Rights Commission is also providing technical support to human rights commissions in the Pacific Islands Forum.

At the same time, there are several shortcomings in the implementation of multilateral environmental agreements by Australia. Australia is a party to the Stockholm Convention on persistent organic pollutants, but has not ratified the amendments that have listed new pollutants, beyond the original 12 POPs. The Stockholm Convention also requires measures to address the unintended releases of persistent organic pollutants, such as from waste incinerators. Australia's National implementation plan of the Stockholm Convention is more than 15 years old, and I have been informed of plans to install waste incinerators in various parts of the country.

While Australia is a party to the Minamata Convention on mercury, its controls on mercury emissions from coal-fired power plants have been limited or at times non-existent. While Australia is a party to the Montreal Protocol on substances that deplete the ozone layer, it has sought (and obtained) exemptions for methyl bromide, which is a hazardous pesticide, without having a substitution plan in sight. While Australia is also a party to the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, it has not yet ratified the Basel Ban Amendment. This amendment entered into force in 2019 and is a key tool

Australian Constitution could be amended to incorporate protections for fundamental rights, I have been informed that this is hard to achieve. But momentum towards a federal Human Rights Act is growing. Human Rights Acts have been passed in Victoria, the Australian Capital Territory and Queensland. These developments are auspicious and set the stage for the incorporation of the right to a clean, healthy and sustainable environment in the Australian legal order.

This reflection on human rights acts offers me an opportunity to share observations on environmental governance more generally.

### **Environmental Governance**

There can be no doubt that access to environmental information is critical to environmental decision-making and public participation. I am troubled to learn about significant delays in the processing of requests for environmental information under freedom of information laws. The issue of costs imposed on public interest organizations also stifles access to information.

Draconian restrictions on the right to protest in several states are also very troubling. Peaceful protests are a legitimate exercise of the right to freedom of assembly, and they enable citizens to mobilize their concerns and make them visible to public authorities.

I have also been informed that judicial review of government decisions is strictly procedural. This can lead to negative environmental outcomes where political decisions do not reflect expert advisory recommendations. This links with the requirements founded on the right to science for alignment between regulatory measures and the best available scientific evidence.

The imposition of low penalties for violations of environmental licenses is another issue of great concern. Where the level of penalties is insufficient in severity to motivate compliance and secure deterrence, they are simply absorbed as a cost of doing business, while the toxic harm is imposed upon neighboring communities.

Substantive environmental standards are key to protecting the right of every person to live in a non-toxic environment. It has come to my attention that ambient air quality standards in Australia are less protective than in other member countries of the Organization for Economic Cooperation and Development (OECD). Moreover, certain industries have received exemptions from compliance with relevant standards. Where environmental standards are not robust, the outcome is legalized contamination. This can infringe on the effective enjoyment of a range of human rights.

### **Toxics Challenges**

Earlier in this briefing, I spoke about the Kimba case regarding siting of radioactive wastes. I have been informed that while Australia's National Radioactive Waste Management Act does not override Federal laws to protect cultural heritage, it contains racist elements that override cultural heritage protections established by the States. This shows again here the lack of alignment with the UN Declaration on the Rights of Indigenous Peoples.

It has come to my attention that 95% of radioactive wastes in Australia are of low and intermediate levels, and they are being adequately managed in the Lucas Heights facility in Sydney. In that regard, the introduction of high-level radioactive waste into Australian territory, from nuclear-powered submarines under the new AUKUS plans, poses significant management challenges.

### Highly hazardous Pesticides

The widespread use of hazardous pesticides is a major source of contamination of water, soil and air. Human exposure to highly hazardous pesticides have been linked to disabilities and serious adverse health impacts, such as malformations in utero, deadly illnesses, respiratory problems and neurological impairment.

In Australia there is limited or no information on the use of pesticides that is disclosed to the public. Similarly, there is a lack of monitoring on impacts on humans of pesticide exposure. There is monitoring of impacts of certain pesticides on the Great Barrier Reef as well as evidence that pesticides are reducing the resilience of corals and thus aggravating bleaching caused by warming temperatures.

Certain hazardous pesticides that are banned in their country of origin are still imported to Australia. Industry argues that what matters is not the hazardous properties of the chemicals, but actual risk posed by their use, and that accordingly, decisions should be based on evidence regarding Australia's specific environmental situation. By contrast, organizations in civil society argue that the human body is the same for everyone in the human species, that Australia also has pollinators that are adversely impacted by hazardous pesticides, that assessments of risks depend on information that is not available, among other arguments.

What's clear is that where hazardous pesticides have been banned because of their potential adverse health impacts, that assessment should be given greater weight by the Australian regulator, to ensure protection of human health. What's also clear is that the risks of hazardous pesticides involve not only occupational exposure of workers in the fields, but also air drift and contamination of water sources, all of which is adversely affecting local communities and aggravating the loss of biodiversity.

adversely affect communities and ecosystems in the region, but that it would also litter the landscape with toxic ponds of contaminated water.

The Middle Arm project in Darwin, and the toxic substances it would release, raise health concerns in neighboring communities, such as asthma, heart disease and various forms of cancer. This project involves an industrial facility, in addition to a terminal for export of liquified natural gas. The project has been sited close to residential areas. It is to receive a \$1.5 billion subsidy. The greenhouse gas emissions of natural gas for export, so-called scope 3 emissions, have not been quantified.

### Incineration

Waste incineration is the end of the line for fossil fuels. It reflects a linear process that is incompatible with a circular economy. Incineration imposes heavy health and other costs on local communities, and it is a significant source of greenhouse gases. It has been reported that even the most modern incinerators produce dioxins, furans and toxic ash.

The case of Tarago in New South Wales, where a waste incinerator has been proposed, is instructive on the potential health, agricultural and economic impacts. Tarago produces significant amounts of food for the State. Reportedly, the government has decided not to site incinerators in Sydney, and instead to site them in four regions, including Tarago. I heard from residents that they had not received adequate explanations for this decision, that it had been taken without consultations, and that they felt treated as second-class citizens, condemned to suffer the environmental injustice of disproportionate toxic impacts.

### **Conclusions**

Like other industrialized countries, Australia grapples with the challenges of managing contaminated sites, industrial chemicals, closing mines, among other sources of toxic releases. And like other federal countries, the country grapples with varying environmental standards among sub-national states.

The challenges are significant. And so are the opportunities: to learn from the past; to revisit and recalibrate, and to realign with international good practices. Some stakeholders have spoken to me about the need of a national environmental regulator that can enforce harmonized national standards. I understand this would require agreement by all States.

Regardless of whether a federal environmental protection agency is created, the world needs Australia to lead on a range of toxics issues. If Australia is unable to ensure that mining does not pose toxic threats, what can we expect from other jurisdictions lacking the institutional regulatory