

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

REFERENCE: SPB/SHD/MD/II

29 January 2018

Dear Sirs,

I have the honor to 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, pursuant to Human Rights Council resolution 36/15. I write in reference to your letter of 17 January 2018 addressed to the Inspector General and the Acting Secretary of the U.S. Department of Health & Human Services.¹

In this letter, you inform that the Congressional Committee on Science, Space and Technology is conducting oversight of the activity of Dr. Linda Birnbaum, director of the U.S. National Institute of Environmental Health Sciences (NIEHS). The oversight relates to an article co-authored by Dr. Birnbaum and Dr. Liza Gross, in the scientific journal PLOS Biology, a highly selective peer-reviewed publication. You indicated your suspicion that Dr. Birnbaum might have violated the U.S. Anti-Lobbying Act by encouraging citizens “to petition the Government to make certain policy decisions.” The letter underlines this statement: “Closing the gap between evidence and policy will require that engaged citizens, both scientists and nonscientists, work to ensure our government officials pass health-protective policies based on the best available scientific evidence.”

In this regard, I would like to take this opportunity to express my deep concern regarding what I believe may be an attempt to intimidate a highly respected scientist for her contribution to a scientific journal. The article in question contained no specific policy guidance that could suggest lobbying or any signal of conflict of interest. Rather, it simply insisted on the need for policies and norms to be fully grounded in the best possible scientific evidence, and for the public to engage in debates regarding how the U.S. Government fulfills its obligation to protect the public from exposures to toxic chemicals, pollution and other hazardous substances.

Encouraging citizen engagement, as done by Drs. Birnbaum and Gross, does not articulate a “certain” policy outcome. Rather, it promotes fundamental human rights,

¹ Available at <http://bit.ly/2E5qRnS> and <http://bit.ly/2GfOk6E>

The Honorable Lamar Smith
U.S. House of Representatives
Chairman of the U.S. House Committee on Science, Space and Technology

The Honorable Andy Biggs
U.S. House of Representatives
Chairman of the U.S. House Sub-Committee on Environment

including the right to take part in the conduct of public affairs, which the United States of America has recognized. Public participation is core component of democracy, and central to environmental governance. Indivisible from the right to participation is the right to information and freedom of expression, which Drs. Birnbaum and Gross promote and exercise in their article.

Last year, I reported to the U.N. Human Rights Council that “the ability to protect the human rights to life and to health [from hazardous substances] and to realize the right to the benefits of scientific progress and its applications hinges upon the ability to translate evidence into protective laws and policies.”² I noted that extreme delays in the translation of evidence of hazard and risk into protective measures have harmed the public, drawing on well-documented examples from the United States of America. I emphasize to you that State’s duty to protect the rights to life, health and physical integrity from toxic and otherwise hazardous substances must be reflected in the adoption, implementation and enforcement of adequate laws and policies regarding such substances.³

The work of NIEHS is essential to protecting human rights, including the rights of children, who are arguably the most at risk of health impacts from exposure to toxic chemicals and pollution. In 2016, I reported to the U.N. Human Rights Council on the urgent need of all States to better protect children from exposure to pollution and toxic chemicals.⁴ The gap between what is required under international human rights law, and the protections afforded by Governments based on current scientific knowledge continues to diverge. And, race and poverty continues to be major factor in the disproportionate levels of exposure by children of color and low-income communities.

I encourage you and your Congressional colleagues to explore opportunities to support the crucial work of NIEHS in advancing human rights. Ensuring laws and policies adequately protect everyone—rich or poor, young or old—from exposure to hazardous substances an obligation of States, which flows naturally from international human rights law.⁵ While the United States of America remains the only country in the world that is not Party to the U.N. Convention on the Rights of the Child, it is a signatory and thus obligated not to defeat its object and purpose.

² A/HRC/36/41 available at:

<http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/Annual.aspx>

³ I note two ongoing cases of delayed implementation of U.S. toxic chemical laws <https://earthjustice.org/sites/default/files/files/Pet%20for%20Rev-Prioritization%20Rule.pdf> and <https://earthjustice.org/sites/default/files/files/Pet%20for%20Rev-Risk%20Eval%20Rule.pdf>

⁴ A/HRC/33/41 available at:

<http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/Annual.aspx>

⁵ See e.g. human rights to life and to the highest attainable standard of health, which are enshrined at the Universal Declaration of Human Rights (respectively articles 3 for and 25), and further developed by the U.N. Convention on the Right of the Child (respectively articles 6 and 24).

Considering the public relevance of this debate and its direct relation to the work I conduct as a Special Rapporteur, I have decided to send this open letter in a spirit of cooperation. The letter will be posted in the webpage of the mandate.

I remain at your disposal to further discuss the reasons for the concerns stated in this letter and my work on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

Please accept, dear Sirs, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'B. Tuncak', written in a cursive style.

Baskut Tuncak

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

cc: Hon. E. D. Hargan, Acting Director, U.S. Dept. of Health and Human Services
Hon. D. R. Levinson, Inspector General, U.S. Dept. of Health and Human Services
Hon. E. Bernice Johnson, Ranking Member, U.S. House Committee on Science,
Space and Technology
Hon. P. D. Ryan Jr., Speaker of the U.S. House of Representatives