



TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 13 June 2018

A/TO: Her Excellency
Ms. Maria Nazareth Farani Azevêdo
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Permanent Mission of Brazil
to the United Nations Office and other international organizations in Geneva

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OBJET/SUBJECT: **JOINT COMMUNICATION FROM SPECIAL PROCEDURES**

Please find attached a joint communication sent by 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 implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the human rights to safe drinking water and sanitation.

We would be grateful if this letter could be transmitted at your earliest convenience to His Excellency Mr. Aloysio Nunes Ferreira, Minister for External Relations and His Excellency Congressman Rodrigo Maia, President of the Chamber of Deputies, National Congress of Brazil.



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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 implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
OL BRA 5/2018

13 June 2018

Excellency,

We have the honor 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 implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 37/8, 32/8, 36/15, 33/9 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Project of Law (PL), [6.299/2002](#)** which amends Law No. 7.802 of 11 July 1989, which deals with the **research, experimentation, production, packaging and labeling, transportation, storage, commercialization, commercial advertisement, use, import, export, final destination of wastes as well as packaging, registration, classification, control, inspection and inspection of pesticides.**¹ The referred amendments would significantly weaken the criteria for approving the experimental and commercial use of pesticides, posing threats to a number of human rights.

¹ Pesticides are defined herein to include chemical compounds that are used to kill pests, including insects, rodents, fungi and unwanted plants (weeds). World Health Organization, "Health Topics: Pesticides" (webpage, last accessed 29 May 2018), available at: <http://www.who.int/topics/pesticides/en/>

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His Excellency
Mr. Aloysio Nunes Ferreira
Minister for External Relations

According to the information received:

The Project of Law 6.299/2002 amends articles 3 and 9 of Law No. 7,802 of July 11, 1989. The referred law project further incorporates several other bills presented (PL n° 713/1999, 1.388/1999, 2.495/2000, 3.125/2000, 5.852/2001, 5.884/2005, 6.189/2005, 7.564/2006, 1.567/2011, 1.779/2011, 3.063/2011, 4.166/2012, 4.412/2012, 49/2015, 371/2015, 461/2015, 958/2015, 1.687/2015, 3.200/2015, 3.649/2015, 4.933/2016, 5.218/2016, 5.131/2016, 6.042/2016, 7.710/2017, 8.026/2017, 8.892/2017), fully revising the regulations for pesticides registration and their use in Brazil with the aim of making the framework more flexible, facilitating the registration and marketing of these products in the country.

A number of concerns are noted below regarding the proposed amendments to the existing legislation, which may loosen regulation and oversight of hazardous pesticides in Brazil.

The concerns listed below are heightened by consideration of the current state of pesticide use and regulation in Brazil, reportedly the largest consumer and importer of pesticides in the world. Public health data illustrates serious concerns. According to the data collected by the Ministry of Health, 5501 cases of intoxication were recorded in 2017 in Brazil (almost the double of what was recorded ten years before), an average of fifteen persons per day. According to the same source, 152 persons died in Brazil as a result of poisoning in 2017. These figures are likely an underestimation of adverse impacts to human health, given the limited data available on poisonings and the health impacts of chronic exposure to hazardous pesticides.

Concerns further exist with regard to the capacity of water suppliers across the territory in regularly monitoring the levels of contamination of water by pesticides. Only around 30% of the cities in Brazil regularly provide information on levels of contamination to the national entity monitoring water quality (SISAGUA).

It is further noted that five among the ten most frequently sold pesticides in Brazil (Atrazine, Acephate, Carbendazim, Paraquat and Imidacloprid²) are reportedly not authorized in several countries as well as the European Union due to their risks to human health or ecosystems. Further, it is noted that the existing Brazilian standards permit higher levels of exposure to toxic pesticides than the equivalent standards, such as those in Europe. For example, it is reported that while the European Union limits in 0.1 milligrams per liter the maximum amount of

² The ban for Imidacloprid will come into force by the end of 2018 and will mean they can only be used in closed greenhouses due to impact environmental impact.

glyphosate to be found in drinking water Brazil allegedly allows up to 5,000 times more.³

a) Concerns on the proposed institutional framework for pesticide registration, use and commercialization:

The proposed amendment of Art. 3 of Law No. 7,802 alters the institutional framework for approval and registration of new pesticides in Brazil. Currently, approval and registration requires the authorization from the federal authorities for health, environment and agriculture – the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), the Brazilian Health Regulatory Agency (ANVISA) and the Ministry of Agriculture Livestock and Supply (Agriculture), respectively.

The amendment concentrates in the Ministry of Agriculture the mandate of registering pesticides in Brazil, while the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), the Brazilian Health Regulatory Agency (ANVISA) homologate this decision. It is not specified what could happen in the case the health or environmental authorities disagree with the registering of a product.

Concerns exist that the overwhelming financial capacity of the agriculture lobby in Brazil would easily control decisions adopted with this new institutional arrangement.

The proposed institutional arrangements reduce the powers of the health and environmental authorities in the decision making process, raising serious questions of how evidence of hazard and risk will be evaluated in arriving at regulatory decisions.

The amendments establish a maximum period for the adoption of decisions on products registration. For example, 12 months for the decisions with regard to the registration of a new pesticide. Also opening the possibility of temporary registration in cases when analysis are not concluded by the authorities within the established timeframe.

The amendments establish the possibility for automatic temporary authorizations for products that are registered for similar crops in at least three member countries of the Organization for Economic Cooperation and Development (OECD) to take place without any supportive analysis to be made in Brazil.

Finally, the amendments proposed to Articles 9, 10, 11 concentrate all the authority in the establishment of restrictions and controls on pesticide registration and use in the federal government, eliminating the current recognition of the

³ Bombardi, L., Geografia do uso de agrotóxicos no Brasil e conexões com a União Europeia, FFLCH-USP, 2017

capacity of cities and states to propose standards of protection tailored to locally identified circumstances and challenges.

b) Concerns regarding the authorization and use of pesticides linked to cancer, birth defects and other adverse health outcomes, in particular for children

Article 3 of the existing law explicitly prohibits the registering of pesticides with elements considered to be teratogenic, carcinogenic, mutagenic, endocrine disruptive, or posing risks to the reproductive system. Many of these substances present incalculable risks to young children during sensitive periods of development. Under the proposed amendment, hazardous pesticides will only be prohibited from the use where “scientifically established unacceptable risk” is demonstrated. This approach rejects the application of good practices on the risk management of pesticides such as those in the European Union, in favor of an unspecified definition of “unacceptable risk” that deeply problematic bearing the reduced powers of health and environmental authorities under the new institutional arrangement.

Furthermore, lessons from other countries illustrate how standards based on the acceptability of risks fail to adequately protect those most at risk from exposure to toxic chemicals, such as low-income communities, minorities, workers, different genders and their children.

Moreover, the proposed amendments inject additional uncertainties that reduce the accuracy of risk assessments that may be conducted. Accordingly, permits for the use of pesticides may be obtained also for preventive purposes (before the occurrence of crop pests), increasing the uncertainties in the types and volumes of pesticides applied and the risk of exposure for workers and local communities.

c) Concerns regarding gaps in the proposed regulatory framework for pesticides

The amendments proposed would limit the application of the Law No. 7,802 regulating pesticides only to the rural environment. This would mean that urban and industrial environments would be either uncovered or regulated only by the health surveillance law, Law 6,360 / 76, which is outdated and has no specific clauses on the registration and use of pesticides, including protective measures.

d) Concerns on import and export of prohibited or banned pesticides

Brazil reportedly continues to permit foreign chemical manufacturers to exploit lower standards of protection in the country, exporting hazardous pesticides prohibited from use in their domestic markets to be used in Brazil. Many of these countries from which these banned pesticides are exported have stricter health and environmental protection systems in place than Brazil. Several countries have

prohibited such practices, mindful of the inequities created for local communities and workers.⁴

Furthermore, current norms do not provide any guidance on the exportation of pesticides produced in Brazil. The amendments proposed establish that requirements of agronomic, toxicological and environmental studies for the production of pesticides are not required if these are produced with the sole purpose of exportation. This is of considerable concern where pesticides are exported to countries without adequate risk reduction systems for pesticides.

e) Additional contextual concerns

The Brazilian Government reportedly continues to stimulate the use of pesticides through financial incentives. Experiences from other countries have illustrated the benefits of financial incentives for minimizing the use of hazardous pesticides and other toxic chemicals. Decree 7.660 of December 23, 2011 established the total exemption of Tax on Industrialized Products for the production and sale of pesticides and the Agreement 100/97 do National Council of Economic Policy (Confaz) that reduces in 60% the basis used for calculating the Tax on the Circulation of Goods and Services for agriculture inputs, including pesticides.

Furthermore it is noted that an alternative law project - PL6670 / 2016, establishing a National Policy for Pesticide Reduction (PNARA), proposed two years ago by civil society and academic organizations received a lower level of priority by the Federal Congress. A commission to analyze this proposal was only established on 23 May 2018.

In light of all of the above and without prejudicing the accuracy of the allegations, we are concerned that the multiple changes proposed to the existing legal and institutional framework for pesticides in Brazil would significantly weaken protection mechanisms that are vital to guarantee the human rights of agriculture workers, of the communities living around areas where pesticides are used and of the population consuming food produced with the support of these chemical products.

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.

We are very concerned by the evident weakening of the role of public health and environmental authorities in the decision making process on the authorization of the use and commercialization of highly toxic products resulting from the proposed institutional framework. Equally the new norms unduly imposes the priority of compliance with unreasonably short deadlines in the authorization of products, clearly privileging the commercial interest of the industry over the protection of the rights of people to health and life.

⁴ See e.g. Bamako Convention

We are especially disturbed by the significant loosening of the existing criteria and procedures for authorizing the registration and use of products proposed by the amendments described. The lack of clarity of what would constitute scientifically established “unacceptable risk” opens the door for the introduction of highly toxic products directly threatening the rights to life, to health and to safe water and food of persons living in Brazil, as well as their right to physical integrity and freedom from scientific experimentation without consent. The experimental use of toxic substances without the prior consent of those exposed as a result, contradicts a basic principle set by the Nuremberg Code on human research, which is similarly reflected in the International Covenant on Civil and Political Rights. The possibility of automatic registration of products already registered in three OECD countries further reduce the scope for minimal scientific assessment on the pertinence of products.

We also express concern on the continued import by Brazil of products banned in their region of production due to the detection of significant health or environmental risks. Equally, the exclusion by the new norm of any requirement with regard to the potential toxicological and environmental impact of substances produced for exportation widens the space for the introduction of highly hazardous substances in Brazil. This new window is also clearly incompatible with Brazil’s obligations to ensure that locally based enterprises do not engage in conduct that is alleged to violate or harm the enjoyment of human rights abroad.

Moreover, we are concerned by the weakening of the oversight on the toxicity of pesticides will also undermine public access to information on pesticides. This is also incompatible with the duty of the Government to ensure wide access to information on the direct threats these products pose to the health of workers, their families and communities, as well as necessary protective and precautionary measures.

Finally, the proposed amendments are especially worrying considering the very high consumption of toxic pesticides in Brazil and the consequent public health impact of the population. The increased use of pesticides can also directly affect the safety and quality of the water, the food produced. In this regard, we also express our alarm at the continued support of the Government for the dissemination and use of pesticides in Brazil through the promotion of tax exemptions. It is also difficult to understand the limited attention given to alternative legislative proposals aiming at promoting the reduction of the levels of exposure to toxics.

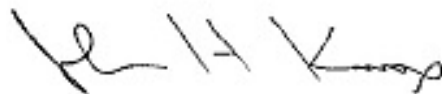
It is our responsibility under the mandates provided to us by the Human Rights Council to clarify all cases brought to our attention. Therefore, we would welcome any additional information or clarification from the your Excellency’s Government with respect to the proposal under discussion and on measures taken to ensure that it complies with the Brazil’s obligations under international human rights law, particularly with respect to the rights to an adequate standard of living and the right to the highest attainable standard of health. We would also welcome the opportunity to discuss the proposal in more detail with Government officials at their convenience.

We intend to publicly express our concerns through a press release to be disseminated in the near future as, in our view, the amendment proposals potential impact in human rights warrants immediate public attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Finally, we would like to inform your Government that this joint communication will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes: (<http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/SRToxicWastesIndex.aspx>).

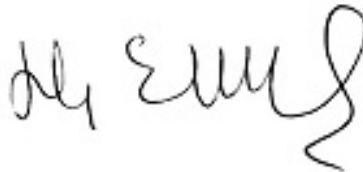
Your Government's response will also be made available on the same website as well as in the regular periodic Communications Report to be presented to the Human Rights Council.

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

Special Rapporteur on the right to food



Baskut Tuncak

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



Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health



Léo Heller

Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

We wish to draw the attention of your Excellency's Government to article 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency's Government on 24 January 1992, which enshrine respectively the rights to an adequate standard of living, including adequate food and the right to the enjoyment of the highest attainable standard of physical and mental health. We further underline the obligations connected with Article 7 b) of the same Covenant that recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular, the obligation to secure safe and healthy working conditions.

In this respect, we recall that the Committee on Economic, Social, and Cultural Rights, in its general comment No. 12 (1999) on the right to adequate food (art.11), establishes that this right must not be construed in a narrow or restrictive sense, and declaring that adequacy denotes not just quantity but also quality. The Committee further considers that the right implies food that is free from adverse substances, and asserts that States must implement food safety requirements and protective measures to ensure that food is safe and qualitatively adequate. Moreover, in its general comment No. 14 on the right to physical and mental health (art. 12) the Committee notes this right extends to the underlying determinants of health, such as safe food, potable water, safe and healthy working conditions and a healthy environment. It also notes that the obligation to improve industrial and environmental hygiene essentially entails the right to a healthy workplace, including the prevention and reduction of exposure to harmful substances, and the minimization of the causes of health hazards inherent in the workplace.

We furthermore recall the explicit recognition of the human rights to safe drinking water and sanitation by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Furthermore, the United Nations General Assembly in its resolution 70/169 of 2015 recognized that "the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use", and that "the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living".

We would also like to refer to article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Brazil on 24 January 1992, which protects everyone's right to right of access to information. We further refer to articles 11 and 12 of

the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Brazil in 1 February 1984 which address women's right to protection of health and safety, including the safeguarding of the function of reproduction, and call for special protections to be accorded to mothers before and after childbirth.

Finally we refer to the Article 6 of the Convention on the Rights of the Child (CRC) ratified by Brazil in 24 September 1990 which establishes the obligation of Governments, to the maximum extent possible, to ensure that children survive and develop in a healthy manner. The article 24 of the Convention makes an additional explicit link between food, water and the right to the highest attainable standard of health. Accordingly, States must combat disease and malnutrition through the provision of adequate, nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.

We further refer to the report of the Special Rapporteur on the right to food A/HRC/34/48 that details the multiple human rights implications of the use of pesticides in the world today and the role of States in regulating and overseeing the use of these chemicals. The report calls States to, inter alia, "(b) Establish systems to enable various national agencies responsible for agriculture, public health and the environment to cooperate efficiently to address the adverse impact of pesticides and to mitigate risks related to their misuse and overuse; (c) Establish impartial and independent risk-assessment and registration processes for pesticides, with full disclosure requirements from the producer. Such processes must be based on the precautionary principle, taking into account the hazardous effects of pesticide products on human health and the environment; (d) Consider non-chemical alternatives first, and only allow chemicals to be registered where need can be demonstrated."

Finally, 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. Principle 11 reminds States that they should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.