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Without improvements FAO/WHO monitoring procedure on its way to becoming meaningless:

Experts fail to deliver assessment of Bayer CropScience and Syngenta compliance with the International Code of Conduct on Pesticide Management

In October 2015, ECCHR jointly with its partners submitted an ad-hoc monitoring report (“the Report”) to the FAO/WHO.¹ Based on evidence from farmers in Punjab², the Report revealed that companies Bayer and Syngenta sell hazardous pesticides but fail to ensure that farmers are adequately informed about the dangers of the products or the necessary protective measures. It also questions whether the pesticides companies do enough to monitor their business practices and its consequences for human health and the environment. The Report was submitted in September 2015 and considered by a Panel of Experts at the FAO/WHO Joint Meeting on Pesticides Management (JMPM) in April 2017 at its 10th meeting in New Delhi. In November 2017, the FAO/WHO finally published its recommendations.³

The International Code of Conduct on Pesticide Management (“the Code”) is the only global instrument for the management of pesticides and the Report is illustrative of an endemic problem in many countries that is not being adequately addressed. As the Ad Hoc Monitoring mechanism had only been used three times since its inception in 2007, the Report thus offered the JMPM a unique chance to push for fuller adherence to the Code. The JMPM, however, failed to assess the companies’ compliance with the Code. Specific recommendations for business behavior are entirely missing. Even though article 12.6 requires giving “full support to the observance of the Code,” the FAO and WHO only encouraged “further multi-

¹ https://www.ecchr.eu/en/our_work/business-and-human-rights/pesticides/q-a-pesticides-monitoring-report-to-fao.html.

² <https://vimeo.com/155547660/101153a8c1>.

³ http://www.fao.org/fileadmin/templates/agphome/documents/Pests_Pesticides/Code/JMPM_2017_Report.pdf.

stakeholder dialogue” and stated that it “supports the stakeholders’ talking and working together to promote practices that minimize pesticide risks.” Without improvements, the FAO/WHO monitoring procedure is on its way to becoming meaningless. It can only be a useful tool if it can advance compliance with the Code. The signatory organizations therefore urge the FAO/WHO to take note of the following concerns:

First, the recommendations did not clarify whether the Code was violated. The ad-hoc monitoring report shies away from clear statements on corporate violations of the FAO/WHO Code of Conduct. Although the JMPM response accurately summarizes the main concerns raised in the Report, namely (i) inadequate labeling of pesticides and (ii) lack of proper training and protective personal equipment, the recommendations do not address these shortcomings. The JMPM, thus, leaves all stakeholders in the dark as to whether Bayer’s and Syngenta’s distribution of pesticides in Punjab violates the International Code of Conduct. In advance of the JMPM, the FAO secretariat submitted a report to the Panel of Experts as preparatory material for its deliberations. This report contained a constructive assessment of the allegations raised in the monitoring report and could have served as a benchmark for future scrutiny of business practices. Even though the Guidelines on Monitoring encourage the publication of the FAO report and to our knowledge no stakeholder requested confidentiality, the FAO decided against making it public.

Second, the recommendations fail to take into account the risks faced by Punjabi farmers. No practical guidelines are provided for remedial company behavior and there is no follow-up mechanism. The JMPM also fails to take a position as to whether the products described in the Report meet the conditions to be taken off the market as foreseen by Art. 5.2.5 of the Code i.e. when handling or use pose an unacceptable risk under any use directions or restrictions). Worryingly, this lack of specific recommendations allows the business practices identified in the Report to continue and the effort by Punjabi farmers to raise their concerns has no consequences in practice.

Third, the monitoring process was inadequate. The mechanism lacks accessibility. Few local organizations are aware of the Code and even fewer know about the possibility to submit reports. Yet, it is precisely those local organizations that possess first-hand information on the reality in the fields and on plantations. The procedure must also be improved in terms of predictability and transparency. ECCHR and its partners never received a clear, publicly available, procedural guideline with a time frame and explanation of each stage of the process. The submitting organizations could not, in their own right, participate in the JMPM, due to a lack of accreditation. The JMPM was postponed several times, significantly delaying an effective reaction to the problems raised in the Report. The official recommendations were published more than two years after submission.

The JMPM rightly recommends an evaluation of the ad-hoc monitoring procedure. To be effective, the procedure should:

- Put in place standards for JMPM assessments, which should address all allegations and include reasoned conclusions and practical recommendations.

- Enhance awareness of and access to the ad-hoc monitoring mechanism to enable all stakeholder groups to use the procedure, including by reducing undue registration and accreditation requirements for the JMPM and assisting those who face particular barriers, such as a lack of resources.
- Set up a timeline and keep parties informed about its progress.
- Publish online all preparatory material prepared by the FAO Secretariat.
- Provide an official assessment of state and business compliance with the Code.
- Provide practical recommendations on how to end violations of the Code and identify if a product should be taken off the market under Art. 5.2.5 Code of Conduct.
- Identify the responsibility of home states of pesticides companies in fulfillment of their extraterritorial human rights obligations to monitor conduct of business actors abroad in line with established practice of other UN bodies.⁴
- Request compliance reports from stakeholders to be submitted to the next meeting of the JMPM and define follow-up activities by FAO/WHO.
- Set up a working group for the revision of the Guidelines on Monitoring.

Given the institutional and financial limitations of the FAO/WHO, we urge Member States to provide the FAO/WHO with the necessary resources to implement these recommendations.

The signatories call on the JMPM to publicly respond to this open letter to clarify what its powers and capabilities are and how it plans to implement the necessary changes to effectively address the widespread mismanagement of pesticides.

For the coalition:



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⁴ Statement of the United Nations Special Rapporteur on Hazardous Substances in relation to Germany in September 2016.

List of co-signatories

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