

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

*Summary of mission reports 1996-2014*

*January 2015*

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## Country visited

### Mission to the Republic of Hungary (4 – 11 October 2012)

## Summary

In the present report, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes gives his findings and makes recommendations on the basis of his visit to Hungary, during which he aimed to assess the impact on human rights of the environmentally improper management and disposal of hazardous substances and wastes.

The Special Rapporteur focused on the occurrence of industrial accidents involving hazardous substances and, in this regard, he assessed the impact on human rights of the Ajka industrial incident and efforts made by the Government to mitigate adverse effects. He concludes the report with his recommendations thereon.

## Recommendations

### V. Recommendations

#### 1. International obligations

56. The Special Rapporteur recommends that the Government of Hungary:

(a) Consider accession to the Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal and to contribute to its entry into force;

(b) Consider ratifying the ILO Chemicals Convention, 1990 (No. 170) and the Prevention of Major Industrial Convention, 1993 (No. 174) to strengthen the framework for occupational safety.

#### 2. Constitutional, legislative, policy and institutional framework

57. The Special Rapporteur recommends that the Government of Hungary:

(a) Expedite promulgation of the regulations of the new Waste Act to assure protection against the adverse impact of hazardous substances, and to continue to streamline, simplify and rationalize relevant legislation to enhance cohesion and conformity with international human rights standards;

(b) Shift the focus from disposal of waste to its prevention and reduction in the next National Environmental Programme in compliance with the European Union hierarchy of waste management, to address the sparse and ineffective policies on prevention;

(c) Align the Mining Act with the European Union definitions of “mining activity” and “mining waste”, and place emphasis on provisions that provide for meaningful engagement with affected communities and for the safety of workers, especially those dealing with harmful substances;

(d) Ensure that impact assessments use reliable baseline studies for both environmental contaminants and human health conditions, and are carried out by competent authorities to ensure an

environmentally sound reflection of the impact of contaminants on the environment and human health of proposed developments;

(e) Establish competencies and improve coordination between all agencies responsible for chemical and waste management at all levels, including by establishing synergies between the Environment Inspectorate and the Disaster Management Authority, and explore mechanisms by which they may effectively participate in each other's proceedings with the accompanying financial resources;

(f) Ensure continued proper identification, monitoring and classification of sites with potential harmful activities to the environment and human life, ensuring to that end that adequate resources are available to the relevant authorities, including for strengthening the capacity for frequent and efficient inspections carried out by qualified personnel;

(g) Ensure systematic cooperation and exchange of information between enforcement agencies, including by conducting joint inspections to benefit from the added value of expertise and effort, in particular in business activities involving hazardous substances, thereby strengthening oversight bodies, which are essential to preventing and addressing any adverse impact;

(h) Fully resource State-owned analytical laboratories to address the challenges the Government has identified during chemical analysis of persistent organic pollutants, and secure technical assistance to build local capacity in analysis;

(i) Strengthen transparency and accountability mechanisms, and take measures to address gross negligence in duty and, in this regard, to ensure that administrative controls are strengthened to reduce misuse and provide non-judicial remedies for omissions by or actions of State authorities that occasion environmental harm, destruction of property and loss of life;

(j) Increase the capacity of the Commissioner for Fundamental Rights to effectively monitor any impact on human rights, especially impact from business activities, and raise awareness of this competency among the public;

(k) Develop specific provisions for enforcing civil liability for environmental harm pursuant to the Environment Act, and in particular elaborate more effective administrative and non-judicial avenues with regard to private sector liability, to ensure that rights are protected as they are enforced, so that there are no future incidents where people have to resort to litigation to achieve justice in environmental issues;

(l) Consider, in view of its experience, taking the lead in regional and international consultations to address the matter of liability of private actors for environmental damage, with a view to shifting the burden of environmental damage from the State, where appropriate, to corporations and individuals;

(m) Develop strategies to promote the sustainability of health systems based on pollution prevention integrated into national development programmes, and create linkages with environment sectors to enable mainstreaming of environment and disaster responses into the health sector; and address health force migration in the context of disaster management and ensure specialized knowledge to assure delivery of services in complex medical situations, such as those involving hazardous substances;

(n) Review the disaster training programmes for first responders, such as search and rescue teams, to ensure well-coordinated, robust responses to disaster, to thereby reduce casualties and increase success rates of post-disaster recovery; design modules on special rules for rescuing persons requiring special protection, such as children, elderly persons and the disabled, as well mainstream issues of gender into the design of the programme; and consider compiling a register on disabled persons in an appropriate format for the use of rescue teams;

(o) Stimulate private sector engagement with environmental issues, and exploit the potential for economic growth and job creation from proper implementation of waste management initiatives; and provide greater incentives to companies in environment-friendly corporate social responsibility initiatives, including adoption of compulsory and voluntary options to cultivate respect for human rights.

3. Municipal waste

58. The Special Rapporteur recommends that the Government of Hungary:

(a) Strengthen programmes aimed at waste reduction and the sound management of waste generated by households in accordance with waste hierarchy principles, and encourage separation of hazardous and non-hazardous waste at source and subsequent re-use and recycling to ultimately reduce disposal by landfills; ensure regular inspections of existing landfills, and promote re-cultivation of abandoned landfills;

(b) Address the issue of illegal waste dumping observed by the European Environment Agency, and provide for appropriate administrative and criminal fines in new waste regulations;

(c) Ensure that the revenue derived from the landfill tax pursuant to the new Act on Waste Management is used efficiently and directed accordingly to relevant programmes within the realm of environmental protection.

4. Hazardous waste

59. The Special Rapporteur recommends that the Government of Hungary:

(a) Strengthen efforts to complete the liquidation of existing stockpiles of obsolete pesticides, and ensure monitoring of the presence of persistent organic pollutants in the environment, as well as the sound disposal of all objects containing polychlorinated biphenyls;

(b) Address the nationwide deterioration in air quality observed by the European Environment Agency resulting from both legal and illegal incineration; also, in compliance with the Commissioner's findings, conduct frequent air tests and disclose testing data to exposed communities, especially those in Vas and Zala counties, including updated lists of pollutants; also, to this end, consider introducing the WHO Health and environment progress review programme.

5. Right to information and participation

60. The Special Rapporteur recommends that the Government of Hungary:

(a) Provide resources, including technical assistance, for the few environmental non-governmental organizations in Hungary involved in advocacy, awareness-raising and education activities, to thus allow for civil society participation and encourage transparent scrutiny of government action, and to include civil society organizations in developments on responses to disasters to ensure coordinated preparedness and response, capitalizing in particular on networks of non-governmental organizations to reinforce early warning systems and mobilization of national rescue efforts;

(b) Ensure, in the light of the restricted access to the Constitutional Court, a robust and comprehensive legal aid scheme, and assess the effectiveness of all other grievance mechanisms;

(c) Develop a comprehensive and multi-sectoral communication strategy on the environment to facilitate access to information on chemical and waste management, in particular in the case of disasters involving chemical waste, to ensure that consistent safety messages are given by companies, thus helping to avoid confusion and prevent exposure to toxins.

6. Ajka incident

61. The Special Rapporteur recommends that the Government of Hungary:

(a) Continue to monitor the health of the communities affected by the Ajka incident and actively engage with them through a broad consultative process involving victims, families of victims, victims' associations and other relevant civil society actors on unresolved concerns regarding housing, property, health and measures required to address any long-term human health and environmental effect; and more generally, conduct a comprehensive national health survey on the impact of hazardous wastes on the population to assess the health of the nation and quantify environmental and social impact by means of reliable data, including consideration of the health concerns of vulnerable sections of the community, including women of childbearing age, elderly persons, children, the poor and the disabled;

(b) Establish programmes to support small-scale economic initiatives in communities, especially those conducted by women, and provide the capacity-building necessary;

(c) Consider leading international discussions to explore the environmentally sound disposal and recycling of red sludge, with emphasis on sustainability, including a viability assessment of brickmaking and of investment in best low-waste technologies, to thus remove environmental hazards and their subsequent impact on the health of communities, which continue to be exposed to these dangers;

(d) Comply with its duty to protect persons from human rights violations and ensure adequate remedy is provided to the communities affected by the incident.

7. Business and the duty to respect human rights

62. The Special Rapporteur recommends that business enterprises in Hungary:

(a) Fulfil their obligation to respect human rights, including by conducting human rights due diligence on current and planned activities, including remediation and remedy in instances of adverse impact;

(b) Ensure that operational grievance mechanisms conform fully to the principles outlined by the Guiding Principles on Business and Human Rights such that they are legitimate, accessible, predictable, equitable, transparent and compatible with internationally recognized human rights standards;

(c) Maintain adequate policy space with the Government to clarify business and government roles and liability in environmental matters, to avoid uncertainty and a rights void;

(d) Adhere to such best practices as the Environmental Excellence in Exploration (e3), the Extractives Industry Transparency Initiative, the Global Reporting Initiative, the Sustainable Development Framework of the International Council on Mining and Metals, the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development, the Towards Sustainable Mining Guiding Principles and the Global Compact.

Year

2013

Symbol

A/HRC/24/39/Add.2

## Country visited

### Mission to the Marshall Islands (27-30 March 2012) and the United States of America (24-27 April 2012)

## Summary

In the present report, submitted pursuant to Human Rights Council resolution 18/11, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes gives his findings and makes recommendations on the basis of his visits to the Marshall Islands and the United States of America, during which he aimed to assess the impact on human rights of the nuclear testing programme conducted in the Marshall Islands by the United States from 1946 to 1958, focusing also on the efforts made by both Governments to mitigate its adverse effects.

The Special Rapporteur explores the adverse impact on human rights of the testing programme, in particular those resulting from hazardous substances and wastes. He discusses efforts to mitigate or eliminate these adverse effects, and concludes the report with his recommendations thereon.

## Recommendations

### V. Recommendations

63. The Special Rapporteur recommends that the Government and relevant State actors of the Marshall Islands:

- (a) Carry out an independent, comprehensive radiological survey of the entire territory and, in this regard, request relevant United Nations agencies to undertake a study similar to the one conducted by IAEA on testing sites in other countries;
- (b) Develop a comprehensive national health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population and, in particular, non-communicable diseases (such as cancer and diabetes), and build on the lessons learned from the National Comprehensive Cancer Control Plan for the period 2007–2012; the strategy and plan should pay special attention to women and children, and seek to overcome the barriers that women encounter in their access to health facilities, goods and services, including family planning and sexual and reproductive health services; support should also be sought for the renovation of the main hospital and provision of qualified medical personnel and oncology services;
- (c) Consider taking the lead in regional consultations to address the burden of cancer and emerging non-communicable diseases in the Pacific;
- (d) Ensure that impact assessments use reliable baseline studies for both environmental contaminants and human health conditions; impact assessments should be ongoing to monitor the evolving impact, and be carried out by competent, independent third parties;
- (e) Engage in a broad consultative process, including with victims, families of victims, victims' associations and other relevant civil society actors, on outstanding issues and measures required to address any long-term human health and environmental effects of the testing, with particular emphasis on solutions aimed at reconciling the traditional land tenure system with durable solutions to displacement;

(f) Develop an economic diversification strategy to reduce overreliance on the Compact of Free Association, including by developing the tourism sector, and make a viability assessment of commercial exploitation of the medicinal and health properties of the pandanus fruit; ensure the implementation of mechanisms that strengthen the capacity of indigenous and tribal peoples to further their own development priorities are favoured; and establish programmes to support small-scale economic initiatives for women, including the necessary capacity-building;

(g) Promote good governance and transparency at the national and atoll administration levels, including through the disclosure of the use of Compact funds and other technical assistance; concurrently, strengthen public and private sector accountability; and develop a human rights policy and management framework, including annual reporting on their social, environmental and economic impact, with appropriate monitoring and evaluation;

(h) Consider creating partnerships with international academic institutions with a view to making the Marshall Islands a centre of excellence in environmental studies by means of the unique research, internship and secondment opportunities it provides, in such areas as climate change and marine biology;

(i) Seek international assistance to improve public infrastructure, including for water, sanitation and waste management facilities; and strengthen engagement with international agencies in these fields, including with the United Nations Environmental Programme, to address the waste and chemicals management issues, nuclear or otherwise.

64. The Special Rapporteur recommends that the Government and relevant State actors of the United States of America:

(a) Continue to provide the Marshall Islands with assistance (financial, technical and otherwise) in order assist it to develop its health infrastructure and capacity further and to reduce the need for off-island referrals, including through the establishment of fellowship and technical training programmes; a nationwide medical survey; cancer and other health registries; and the infrastructure necessary to conduct early diagnosis and treatment for radiogenic diseases;

(b) Continue to assist the Marshall Islands in its efforts to protect the environment and to safeguard the rights of its people, by providing environmental information obtained by means of its monitoring operations; supporting Marshallese efforts to develop and sustain their own atmospheric, marine and terrestrial monitoring capabilities; strengthening the capacity of the Marshall Islands to address remaining threats and to protect its population from new dangers identified as a result of technological progress; assisting in the development of national public health and disaster response plans; and supporting the development of the educational and technical capacity to implement such plans fully;

(c) Support the Marshall Islands in conducting a comprehensive nationwide terrestrial and marine survey that identifies and maps the presence and concentration of radiogenic and other toxic substances remaining from the United States military activity in the Marshall Islands marine and terrestrial ecosystem, and continue to provide assistance and the means to secure, contain and remediate hazardous sites;

(d) Strengthen transparency and accountability mechanisms to ensure that individual atoll-administered funds are used to benefit the constituents intended, as well as the annual reporting mechanism used by the Marshall Islands to report to the United States Congress on the implementation and use of funds;

(e) Grant full access of the Marshall Islands to United States information and records regarding the environmental and human health ramifications of past and current United States military use of the islands, as well as full access to United States medical and other related records on the Marshallese, in accordance with the right to information and the principle of transparency;



(f) Guarantee the right to effective remedy for the Marshallese people, including by providing full funding for the Nuclear Claims Tribunal to award adequate compensation for past and future claims, and exploring other forms of reparation, where appropriate, such as restitution, rehabilitation and measures of satisfaction (for example, public apologies, public memorials and guarantees of non-repetition); and consider the establishment of a truth and reconciliation mechanism or similar alternative justice mechanisms;

(g) Consider adopting a presumptive approach to groups currently excluded from the special programmes of the United States of America created to assist survivors of nuclear testing, whereby individuals exposed to nuclear fallout would be presumed to be eligible;

(h) Consider issuing a presidential acknowledgment and apology to victims, in accordance with the conclusion of the Advisory Committee on Human Radiation Experiments that the one of the greatest forms of harm from past experiments and intentional releases may be the legacy of distrust they created, and that, in such instances, the Government of the United States should deliver a personal and individualized apology.

65. The Special Rapporteur recommends that both the Governments of the Marshall Islands and of the United States of America maximize the benefits of the joint task force established to discuss progress in the implementation of the Compact of Free Association, emphasizing open and frank engagement to enhance accountability of both parties under the Compact.

66. The Special Rapporteur recommends that the international community, including relevant United Nations departments, funds and agencies:

(a) Recall that the Marshall Islands were placed under the trusteeship of the United States of America by the international community, which therefore has an ongoing obligation to encourage a final and just resolution for the Marshallese people;

(b) Acknowledge that the harm suffered by the Marshallese people has resulted in an increased global understanding of the movement of radionuclides through marine and terrestrial environments, and learn from the Marshallese experience with nuclear contamination, particularly the documentation prepared by the United States on the effects of nuclear exposure and medical research, which has contributed to the understanding of the relationship between radioiodine and thyroid cancer;

(c) Support bilateral and multilateral action to assist the Marshall Islands in its efforts to regain use of traditional lands, including the knowledge and means to identify, assess, remediate and restore a sustainable way of life;

(d) Promote regional and international assistance and cooperation in order to support the efforts of the Marshall Islands to guarantee the rights of affected communities, including through investment in the development of new technologies to remove environmental hazards and their subsequent impact on health;

(e) Support nationally-owned and nationally-led development plans and strategies, including through the provision of funding and technical assistance; to scale up small- and medium-enterprises; to mitigate the effects of climate change; and to monitor, secure and remove nuclear wastes on a scale and standard comparable to the clean-up of domestic testing sites in the United States, as part of an international response to nuclear legacy issues;

(f) Stand in international solidarity with the Marshallese people as they face the challenge of overcoming the legacy of nuclear testing.

Year

2012

Symbol

A/HRC/21/48/Add.2

## Mission to the Marshall Islands: comments by the State

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## Country visited

### Mission to Poland (25-31 May 2011)

#### Summary

The Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights conducted a country visit to Poland, at the invitation of the Government, from 25 to 31 May 2011. The purpose of his visit was to examine the progress made and the difficulties encountered by the country in the implementation of its obligations under human rights law and environmental law to ensure the safe and environmentally sound management and disposal of hazardous products and wastes. In particular, the Special Rapporteur focused on the measures taken by Poland to guarantee, in accordance with the Aarhus Convention, the right of access to information, public participation in decision-making, and access to justice in environmental matters.

The Special Rapporteur welcomes the significant progress made by Poland in protecting its people from the adverse impact that hazardous chemicals and toxic wastes may have on the effective enjoyment of human rights. Poland is a party to a number of international and regional human rights treaties and multilateral environmental agreements, and has developed an impressive legal and institutional framework to ensure the environmentally sound management of toxic and dangerous products and wastes throughout their life cycle.

Despite the progress made, however, there are a number of challenges in the field of chemicals and waste management that need to be addressed in order to minimize the risks that hazardous chemicals and toxic waste pose to the effective enjoyment of human rights. To that end, the Special Rapporteur makes a number of recommendations.

#### Recommendations

##### A. International obligations

66. The Special Rapporteur shares the concerns expressed by the Committee on Economic, Social and Cultural Rights that Poland has not yet taken the necessary measures to ensure that the Covenant is given full effect in its domestic legal order. In this regard, he notes that some of the economic and social rights enshrined in the Constitution, including the right to safe and healthy working conditions and the right to a healthy environment, cannot be directly invoked before national courts and tribunals.

67. The Special Rapporteur recommends that the Government take all appropriate measures to give full effect to the International Covenant on Economic, Social and Cultural Rights in its domestic legal order.

68. The Special Rapporteur notes that Poland is not a party to a number of ILO conventions on health and safety at work.

69. He calls on the Government to consider ratifying these conventions, in particular the Convention concerning Occupational Safety and Health and the Working Environment, 1981 (No. 155) and the Convention concerning the Prevention of Major Industrial Accidents, 1993 (No. 174).

##### B. Legislative and policy framework

70. The Special Rapporteur notes that norms and standards on waste and chemicals management are scattered over a great number of laws and regulations, as well as in a number of EU regulations. This makes it difficult to identify the applicable legal regime and hampers its effective implementation. Additional efforts are needed to bring national legislation in compliance with international human rights standards and environmental regulations which seek to eliminate, or reduce to a minimum, the risks that the improper management and disposal of hazardous waste pose to human health and the environment. In particular, the Act of 27 April 2001 on waste and the Act of 11 May 2001 on packaging and packaging of waste, currently under review, need to be amended in line with the obligations arising from the EU legislation on waste.

71. In order to ensure the full transposition of the *acquis communautaire* on waste management into its domestic legal system, the Special Rapporteur calls on Poland to finalize, as a matter of priority, the adoption of the new Act on waste. In order to ensure that the Act is developed in an open and transparent manner, the Special Rapporteur urges national authorities to observe strictly existing national rules on the consultation and involvement of citizens and stakeholders.

72. The existing legal framework on waste management should also be strengthened by developing specific provisions on the sound management and disposal of specific types of hazardous waste, such as e-waste and hazardous waste generated by health-care establishments.

73. In this regard, the Special Rapporteur encourages national authorities to review and amend the Act of 29 July 2005 on waste electrical and electronic equipment, and to consider adopting a specific Act on the management and disposal of health-care waste.

#### C. Institutional framework

74. The responsibilities for the implementation of legislation and policies in the area of waste and chemicals management are distributed among a number of different ministries and institutions, with no strict delineation of functions and limited coordination of their respective actions. This situation makes it difficult, in some cases, to identify the role and specific competencies that different ministries and institutions have in these areas.

75. The Special Rapporteur notes in particular that while the Ministry of the Environment has general responsibilities with regard to environmental protection and waste management, issues pertaining to chemicals management fall within the mandate of the Bureau for Chemical Substances. He also notes that three different authorities perform the tasks of national focal points for the implementation of the Basel Convention, the Rotterdam Convention and the Stockholm Convention, respectively, despite the common objectives and the strong synergies existing between these multilateral environmental agreements.

76. The Special Rapporteur believes that the role and functions of the various institutions responsible for the implementation of national legislation and policies on waste and chemicals management at the central, regional and local levels should be better defined, so as to improve its effectiveness and avoid duplication or overlapping of responsibilities between different ministries and agencies. He also recommends that a national platform for cooperation between different ministries and State institutions responsible for chemicals and waste management be established to facilitate exchange of information and better coordination among these institutions.

77. The Special Rapporteur notes with concern that national authorities responsible for monitoring compliance with national legislation on environmental protection, waste and chemicals management, and health and safety at work frequently lack adequate human, technical and financial resources to carry out their monitoring functions adequately. This is particularly the case at the regional level, where staff resources are limited and the awareness about the requirements of EU and national legislation on chemicals and waste management needs to be improved. At present, small and medium enterprises are inspected only once every four years, and only big industrial and agricultural enterprises with high pollution potential are subject to more regular controls.

78. The Special Rapporteur recommends that Poland allocate adequate human, technical and financial resources to the various agencies responsible for enforcing and monitoring compliance with national legislation on environmental protection, waste and chemicals management, and health and safety at work. He also recommends that adequate financial and technical resources be allocated to State-owned analytical laboratories, so as to improve their capacity to ensure accurate measurements of waste and chemical pollution and its possible adverse impact on human health and the environment.

79. As regard to the collaboration between different enforcement agencies, the Special Rapporteur notes with concern that the responsibilities of the different inspectorates often overlap, and that no specific mechanism is in place to facilitate collaboration and cooperation among the various inspectorates. While cooperation between voivodship inspectorates for environmental protection and regional sanitary inspectorates seems to be functioning well, cooperation at the central level should be strengthened, particularly with regard to the collation of health data and environment data and the integration of information collected by the Chief Inspectorates.

80. The Special Rapporteur recommends that appropriate mechanisms be developed to ensure better collaboration and cooperation between enforcement agencies. With regard to regional inspectorates, the Special Rapporteur recommends that joint inspections be used in a more systematic way, so as to ensure better use of the human, technical and financial resources available and to ensure more frequent inspections of small and medium enterprises. With regard to central authorities, he recommends that the Chief Inspectorate for Environmental Protection and the Chief Sanitary Inspectorate explore ways to ensure systematic exchange of information and better integration of the information they collect.

#### D. Municipal waste management

81. The municipal waste management system needs significant improvements. The Special Rapporteur is seriously concerned that Poland has made very limited progress in ensuring that municipal waste is managed in accordance with waste hierarchy principles set out in EU Directive 2008/98/EC on waste (see footnote 7 above).

82. The Special Rapporteur recommends that Poland strengthen its efforts to promote waste reduction and the sound management and disposal of hazardous waste generated by individual households in accordance with the waste hierarchy principles. Such measures should include the development of waste prevention programmes at the national, regional and local levels to improve effectiveness in the use of resources, the adoption of waste prevention guidelines for specific economic sectors and the organisation of nationwide information and education campaigns to encourage the segregation of waste at source and its reuse, recycling and recovery.

83. The Special Rapporteur notes with regret that 86 per cent of the total amount of municipal waste continues to be disposed of in municipal waste landfills, and that some of these landfills do not comply with the legal and technical requirements set out in Directive 1999/31/EC on landfill of waste (see footnote 13 below).

84. In line with the landfill directive, the Special Rapporteur recommends that Poland adopt all appropriate measures, including the use of appropriate economic incentives, such as annual charges on landfilled waste, to discourage landfilling of waste in favour of safer and more environmentally sound methods of management of municipal waste. In particular, the Special Rapporteur urges Poland to reduce, as a matter of priority, the amount of biodegradable waste deposited in landfills by developing appropriate selective collection schemes to increase its recycling or recovery for energy production.

85. The Special Rapporteur recommends that Poland develop and regularly update a database on the distribution of operating landfills, with a view to ensuring regular inspections to verify compliance with existing legislation on public health and environmental protection and the closing of those landfills that do not comply with the legal and technical requirements set out in the landfill directive.

86. The Special Rapporteur is concerned that despite the efforts made by public authorities to prevent and punish illegal dumping of municipal waste, including hazardous waste, this phenomenon remains widespread.

87. The Special Rapporteur recommends that Poland strengthen its efforts to prevent and punish illegal dumping, inter alia by imposing appropriate criminal and administrative fines to discourage this phenomenon and by allocating additional financial and human resources to improve enforcement capacities at local level.

E. Hazardous waste

Hazardous waste generated by households

88. The Special Rapporteur notes with concern that more needs to be done to ensure the segregation of hazardous household waste (e.g. expired pharmaceuticals; waste batteries and accumulators; end-of-life electric and electrical equipment) from non-risk waste at the point of generation.

89. The Special Rapporteur recommends that the current municipal waste management system be reviewed so as to ensure the separate collection of different types of household waste at the point of generation and the segregation of hazardous household waste from non-risk waste.

Obsolete pesticides

90. The Special Rapporteur notes with concern the environmentally sound disposal of existing stocks of obsolete pesticides, which was to be finalised by the end of 2010, has not been completed yet due to insufficient financial resources allocated to the preparation of inventories and the liquidation of this waste. The Special Rapporteur is particularly concerned about the threats that the landfill of the old Organika-Azot in the town of Jaworzno, Upper Silesia, poses to human health and the environment.

91. The Special Rapporteur recommends that Poland strengthen its efforts to complete the liquidation of existing stocks of obsolete pesticides.

92. The Special Rapporteur recommends that competent national authorities monitor the presence of POPs into the environment (soil, air, waste, surface and groundwater resources) on a regular basis and carry out specific studies to assess possible adverse impact of POPs on health of local population.

93. The Special Rapporteur urges Poland to adopt all appropriate measures to prevent, as a matter of priority, the access of rain water into the "Rudna Gora" landfill and the release of POPs into the surrounding environment. He also recommends that Poland identify an adequate long-term solution for the environmentally sound disposal of the pesticides stored in the "Rudna Gora" landfill and for the remediation of the environmental contamination of surface and underground waters in the Vistula river basin.

Polychlorinated biphenyls (PCBs)

94. The Special Rapporteur notes with concern that Poland did not manage to eliminate all used PCBs and equipment containing PCBs by the end of 2010, as required by the EU Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT).

95. The Special Rapporteur urges Poland to allocate adequate financial resources to finalise the environmentally sound disposal of all PCB-containing transformers and capacitors.

Medical waste

96. The Special Rapporteur considers that the current system for the management and disposal of hazardous health-care waste needs be improved, so as to ensure its safe and environmentally sound disposal in accordance with the proximity principle.

97. The Special Rapporteur recommends that hazardous medical waste be systematically segregated at source from non-risk medical waste and handled, labelled, packaged, collected, stored, transported and disposed of in a safe and environmentally sound way and in proximity to the place where it is generated. Whenever possible, the management of health-care waste should encourage the substitution of incineration as a disposal method of hazardous medical waste with more environmentally-friendly and safe methods of disposal, such as autoclaving.

#### F. Right to information and participation

98. The Special Rapporteur is concerned that information on chemicals and waste management is not always easily accessible in Poland, especially for person with no or limited access to the Internet, older persons or persons living in rural areas. He also notes with concern the general lack of public awareness on the risks that hazardous chemicals and toxic waste may pose to human health and the environment if not properly managed and disposed of.

99. The Special Rapporteur recommends that information on chemicals and waste management be made easily available, accessible, user-friendly, adequate and appropriate to the needs of all stakeholders. In addition to information already provided on the websites of the various Ministries and State agencies with responsibilities in the field of chemicals and waste management, Poland should develop additional measures to facilitate access to information on chemicals and waste management for person with no or limited access to the Internet, older persons or persons living in rural areas.

100. The Special Rapporteur recommends that Ministries and State institutions responsible for chemicals and waste management promote information and environmental campaigns, including through mass media, to raise public awareness on the risks that hazardous chemicals and toxic waste may pose to human health and the natural environment if not properly managed and disposed of, as well as on the safety measures to minimise these risks.

101. The Special Rapporteur is concerned that despite the efforts undertaken by Poland to transpose the Aarhus Convention into national legislation, some challenges still exist in the implementation of the country's normative framework on access to information, public participation in decision-making and access to justice on environmental matters. He notes in particular that the general public is still not sufficiently familiar with the Aarhus Convention, as evidenced by the limited number of requests for environmental information received by public authorities, and that the lack of training opportunities on the Convention for civil servants hinders public involvement in the decision-making process.

102. Poland should strengthen its efforts to ensure the full and effective implementation of the Aarhus Convention in its domestic legal order. Such efforts should include the organization of adequate training opportunities and information campaigns to familiarize civil servants and the general public with the Convention and the rights it creates.

103. The Special Rapporteur is seriously concerned about the limited public participation on issues related to chemicals and waste management. Although many environmental NGOs exist in the country, the Special Rapporteur was not able to identify any civil society organization working in the field of human rights and the environment or focuses directly on environment and health. The environmental NGOs he met did not have sufficient expertise on chemicals and waste management, and were not aware about the major problems associated with the implementation of national legislation in these areas.

104. The Special Rapporteur is aware that many NGOs have been adversely affected by the financial crisis of 2007, which forced many of them to reduce their personnel or close their activities. Nevertheless, he is of

the opinion that much more needs to be done in order to ensure public participation of civil society organizations in the design and implementation of legislation and policies concerning chemicals and waste management. In this regard, he urges national authorities and relevant European institutions to provide additional non-earmarked funds to NGOs so as to enable civil society participation and ensure strengthened scrutiny of Governmental action in these areas.

G. Proposed construction of a nuclear power plant in the country.

105. The Special Rapporteur is aware that Poland is highly dependent on coal for energy generation, with more than 90 per cent of electricity generated from combustion of hard coal and brown coal, and needs to diversify its sources for energy production. He is also conscious that nuclear power is and will remain a controversial topic, and that it would not be appropriate for him to take a position on the debate currently underway on the use and safety of nuclear energy. Proponents of nuclear power contends that a shift from coal combustion processes for energy and heat production to nuclear power would contribute to the reduction of Poland's CO<sub>2</sub> emissions in the atmosphere, while its opponents highlights the threats that nuclear power pose to human health and the environment, as the recent nuclear accident in Fukushima has showed.

106. The Special Rapporteur considers that it is of vital importance that any decision in this regard be taken on the basis of a wide consultation at the national level. In order to ensure meaningful participation of the public in decision-making processes concerning the construction of a nuclear power plant, public authorities should provide adequate information to the public. Such information should not be limited to the location of the future nuclear power plant and the timeframe for its construction; it should also include the most recent information and scientific data on uranium procurement, on the possible risks associated with the use of nuclear energy and on the solutions envisaged for the safe storage and environmentally sound disposal of nuclear waste generated by the power plant.

107. The Special Rapporteur encourages Polish national authorities to take all necessary steps to ensure that its population participate in an informed, transparent and fair manner to any decision concerning the construction of the proposed nuclear power plant. Given the importance of the matter, he encourages the Parliament and the President of the Republic to consider organising a nationwide referendum on this matter.



## Country visited

### Mission to Kyrgyzstan (30 September to 9 October 2009)

#### Summary

At the invitation of the Government, the Special Rapporteur conducted a country visit to Kyrgyzstan from 30 September to 9 October 2009. The purpose of the mission was to examine existing problems related to the movement and dumping of toxic and dangerous products and wastes and their adverse effects on human rights. In particular, the visit focused on three areas: uranium tailings; obsolete or banned pesticides; and mercury waste. During the mission, the Special Rapporteur met with a wide range of Government representatives and non-State actors, and visited dump sites or storage facilities for hazardous chemicals or wastes in Orlovka, Kara-Balta and Kant.

The Special Rapporteur welcomes the progress made by the country in addressing the serious transboundary threats that uranium tailings pose to the health and the environment of Central Asian countries, as well as in attracting international support for a long-term solution to this problem. He also notes with satisfaction the efforts undertaken by the Government of Kyrgyzstan to promote and protect the human rights of individuals and communities living in the vicinity of tailings sites and storage facilities for obsolete chemicals. These measures include the elaboration of a national plan to protect human health and the environment from the adverse effects of persistent organic pollutants (POPs) and the implementation, with the support of the international community, of urgent recovery measures for high-priority tailings sites.

Despite the progress made, the Special Rapporteur identifies a number of key challenges in the areas of radioactive waste and chemicals management. He formulates several recommendations on measures to eliminate, or reduce to a minimum, the adverse effects that radioactive waste and hazardous substances, including pesticides, pose to the health and the environment of affected individuals and communities. These recommendations include:

- (a) Relocation of the most dangerous uranium tailings and POP pesticides to more secure locations;
- (b) Rehabilitation of abandoned mines, uranium tailings and waste storage facilities to prevent environmental contamination and unauthorized access;
- (c) Comprehensive assessment of the harmful impact of radioactive and hazardous substances on the health of individuals and communities living close to tailings sites and storage facilities for hazardous chemicals;
- (d) Improvement of the existing regulatory framework on radioactive waste and chemicals management in order to ensure its consistency with international norms and standards;
- (e) Clarification of the roles and functions of the different ministries and State agencies with responsibilities in the areas of radioactive waste and chemicals management, and creation of appropriate mechanisms to ensure better coordination and cooperation among these institutions;
- (f) Organization of public information campaigns and awareness-raising initiatives on the risks that radioactive and hazardous waste storage facilities pose to local populations and the environment and on safety measures to reduce these risks.

## Recommendations

### VII. Conclusions and recommendations

76. The mission to Kyrgyzstan allowed the Special Rapporteur to learn more about the legislation, policies and practice of the country in the field of sound management and disposal of toxic and dangerous products and wastes. In particular, the mission offered a valuable opportunity to assess the progress made and difficulties encountered by the State in addressing the adverse effects of uranium tailings, obsolete or banned pesticides and mercury waste on the enjoyment of human rights.

77. In order to assist the country in identifying and prioritizing its action in the field of radioactive waste and chemicals management, the Special Rapporteur would like to recommend the adoption of the following measures.

#### Priority measures

78. The Special Rapporteur recommends that Kyrgyzstan take, as a matter of priority and with the assistance and support of the international community, all appropriate measures to eliminate, or reduce to a minimum, the threats that uranium tailings, toxic waste dumps, obsolete or banned pesticides and mercury waste pose to the enjoyment of human rights of thousands of people living close to these sites.

79. Such measures should include the relocation of the most dangerous uranium tailings and persistent-organic-pollutant pesticides to more secure locations and the rehabilitation of abandoned mines, uranium tailings and waste storage facilities to prevent soil and water contamination caused by the seepage and leaking of radioactive and toxic materials.

80. Existing facilities for the storage of radioactive and hazardous waste and banned pesticides should be fenced off, marked with warning signs and controlled by armed guards in order to prevent unauthorized access by the population to contaminated materials.

81. The Special Rapporteur is of the view that the lack of comprehensive information on the radiological or ecological safety of radioactive and hazardous waste storage facilities and the potential risks they pose to local populations and the environment has so far hampered the efforts undertaken by the country to protect affected individuals and communities from the impact of radioactive and hazardous materials on their human rights, including the right to life, the right to health and the right to a safe environment.

82. He therefore urges Kyrgyzstan to carry out, with the assistance and support of the international community, a comprehensive study on the levels of radiation/chemical pollution in dump sites and adjacent areas and a comprehensive assessment of the harmful impact of radioactive and hazardous substances on the human rights of people living in the regions where storage facilities are located.

83. The Special Rapporteur encourages the Government of Kyrgyzstan to implement, as a matter of priority and with the technical support of the United Nations Institute for Training and Research and the United Nations Environment Programme, the action plan on primary mercury mining in Kyrgyzstan. In view of the serious adverse impact that mercury may have on public health and the environment, the Special Rapporteur urges the country to consider closing, as soon as reasonably practicable, the mine in Khaidarkan, and replacing the present mercury mining operations with other viable economic activities.

84. The Special Rapporteur calls on Kyrgyzstan to develop and implement, in close consultation with the affected local communities, programmes aimed at improving the socio-economic conditions in villages and towns that once relied heavily on the uranium and mercury ore mining and processing industries. Priority actions should include the creation of new employment opportunities and the improvement of access to education, health care and safe drinking water.

#### Normative framework

85. The Special Rapporteur calls on Kyrgyzstan to finalize the adoption of the draft environmental code.

86. The Special Rapporteur recommends that Kyrgyzstan review and expand its regulatory framework on radioactive waste management and radiation safety in order to ensure its consistency with international norms and standards on radiation safety and the security of radioactive sources.

87. The Special Rapporteur also recommends that Kyrgyzstan review its normative framework on chemicals management, and consider adopting a comprehensive law on chemicals management. Such a law should rationalize existing norms, standards and procedures to protect human health and the environment from the threats arising from the unsound handling, management, use, transport and disposal of hazardous chemical products.

88. Considering that the country is situated at the upper portion of the region's water basins, and taking into account the transboundary threat posed by radioactive and toxic wastes stored on its territory, the Special Rapporteur calls on the Government of Kyrgyzstan to consider ratifying the United Nations Economic Commission for Europe Convention on the Protection and Use of Transboundary Watercourses and International Lakes and its Protocol on Water and Health.

#### Institutional framework

89. The Special Rapporteur believes that the role and functions of the various institutions responsible for the implementation and enforcement of national legislation on radioactive waste and chemicals management at the central, provincial and local levels should be better defined, and appropriate mechanisms should be developed in order to ensure better coordination and cooperation among these institutions.

90. As recommended by the International Atomic Energy Agency (IAEA), Kyrgyzstan should consider establishing an independent regulatory body with overall responsibility for radioactive waste management and radiation safety, and allocate adequate human, financial and technical resources to enable it to carry out its functions.

91. The Government should also consider reviewing the status of the State Agency for Environmental Protection and Forestry, with a view to raising it to that of a ministry.

#### Enforcement and monitoring

92. The Special Rapporteur recommends that Kyrgyzstan provide, with the support of the donor community, adequate human, technical and financial resources to the ministries, State agencies, and local authorities which are responsible for the implementation and enforcement of national legislation on radioactive waste and chemicals management.

93. The Government should also allocate, with the support of the donor community, adequate financial resources, technical means and expertise to State-owned analytical laboratories, so as to improve their capacity to ensure accurate measurements of radiation and chemical pollution.

94. The Special Rapporteur calls on relevant international organizations such as the World Health Organization and IAEA to organize professional trainings for staff of analytical laboratories and provide laboratories with state-of-the-art equipment needed to monitor radioactivity levels and to calibrate the instruments used for measuring radioactivity.

95. The current system of environmental inspections should be reviewed. Existing restrictions on access to industrial sites should be eliminated, and inspection authorities should be granted the power to carry out, in addition to the annual planned inspection, additional inspections without prior notice whenever the safety situation at the industrial site so requires.

96. The Special Rapporteur recommends that Kyrgyzstan adopt all appropriate measures to combat the illegal import and export of hazardous products, including mercury and banned pesticides, to and from the country, including the allocation of adequate human and financial resources to custom authorities and the provision of training opportunities for custom officials. The country should also strengthen its capacity to prosecute and punish environmental crimes by, inter alia, organizing appropriate training opportunities for judges and prosecutors.

#### Right to information and participation

97. People living near radioactive or hazardous waste storage facilities are often unaware of the serious risks that long-term exposure to radioactive or toxic materials or substances poses to their health and the environment. The Special Rapporteur recommends that Kyrgyzstan ensure, through public information and awareness-raising campaigns, access to information on the status of tailings and waste dumps, on the adverse effects of exposure to radioactive materials or hazardous substances, and on the safety measures to minimize these risks.

98. Information on chemical products sold in the country should be available, accessible, user-friendly, adequate and appropriate to the needs of all stakeholders. People handling hazardous chemicals, such as farmers and employees in the chemical or energy sector, should receive appropriate information and training on such chemicals and their intrinsic properties, and on how to use them in ways that minimize adverse health consequences. The Special Rapporteur calls on the Government to consider ratifying the Convention concerning Safety in the Use of Chemicals at Work, 1990 (No. 170) of the International Labour Organization.

99. Kyrgyzstan should develop a detailed strategy or an action plan for the implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). Such a plan should envisage the organization of adequate training opportunities and information campaigns to familiarize civil servants and the general public with the Convention.

#### International cooperation

100. The Special Rapporteur considers that better assessment and prioritization of required action at the country level is needed in order to ensure a more efficient use of international financing and technical assistance in the areas of radioactive waste and chemicals management.

101. He also wishes to emphasize that, in accordance with the Charter of the United Nations, international cooperation for the realization of civil, cultural, economic, political and social rights is an obligation of all States. He therefore calls on the donor community, international and regional organizations, financial institutions and the private sector to continue to provide the Government of Kyrgyzstan with assistance and financial support in order to enable it to strengthen the protection of individuals and communities within its jurisdiction from the adverse effects of uranium tailings, obsolete or banned pesticides, mercury and other hazardous wastes.

## Country visited

### Mission to India (11-21 January 2010)

#### Summary

At the invitation of the Government, the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights conducted a country visit to India from 11 to 21 January 2010. The purpose of the mission was to examine the adverse effects that hazardous activities, such as shipbreaking and the recycling of electrical and electronic waste (e-waste), have on the enjoyment of human rights of countless individuals working in these sectors or living close to the places where these activities take place. During the mission, the Special Rapporteur met with a wide range of Government representatives and non-State actors, and visited an e-waste recycling facility in Roorkee, informal small-scale laboratories for the dismantling and recycling of electronic products at Shastri Park in the suburb of the capital, a facility for the treatment, storage and disposal of hazardous wastes in Ankleshwar, and a number of shipbreaking yards in Alang and Mumbai.

The Special Rapporteur welcomes the significant progress the country has made in the area of the management and disposal of hazardous products and wastes. India has developed a comprehensive legal framework to protect human rights and ensure the environmentally sound management of hazardous products and wastes throughout their life cycle. With specific regard to shipbreaking, the Special Rapporteur notes with satisfaction the improvement of the health and safety conditions in Alang/Sosiya, as well as the efforts made by the regulatory authority and the industry to improve the health and quality of life of workers and their families. With regard to e-waste, the Special Rapporteur welcomes the various initiatives undertaken by Indian authorities to address the e-waste problem in India, and in particular the elaboration of the draft rules on the environmentally sound management and disposal of e-waste.

Despite the progress made, the Special Rapporteur identifies a number of key challenges. National legislation on waste management and health and safety at work is not effectively implemented, and the current institutional framework appears inadequate to respond to the health and environmental challenges posed by the generation, management, handling, transport and disposal of toxic and dangerous products and wastes. The health and safety situation prevailing at the shipbreaking yards continues to remain critical, especially in Mumbai, where the working conditions and the quality of facilities remain highly inadequate for guaranteeing health and safety at work and an adequate standard of living for those employed in the shipbreaking sector. The Special Rapporteur notes that at present, the existing legal framework is not sufficient to ensure the environmentally sound management and disposal of e-waste and expresses his concerns about the extremely dangerous recovery processes and techniques used in the informal e-waste recycling sector, as well as about the widespread contamination caused by the unsound disposal of e-waste into the environment.

The Special Rapporteur concludes with a series of recommendations aimed to assist the Government in its efforts to promote the effective enjoyment of human rights by those individuals and communities who may be adversely affected by the unsound management and disposal of hazardous products and wastes.

#### Recommendations

#### IV. Conclusions and recommendations

#### A. International obligations

84. The Special Rapporteur recommends that the Government take all appropriate measures to give full effect to international human rights treaties to which India is a party, and notably the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, in domestic law.

85. The Special Rapporteur notes that India is not a party to several International Labour Organization conventions on health and safety at work, and calls on the Government to consider ratifying these conventions, in particular the Convention concerning Occupational Safety and Health and the Working Environment, 1981 (No. 155) and the Convention concerning Safety in the Use of Chemicals at Work, 1990 (No. 170).

#### B. Constitutional and legal framework

86. The Special Rapporteur notes with appreciation that India has developed a comprehensive constitutional and legal framework for the promotion and protection of human rights. India is one of the few countries in the world that has included specific provisions on the protection and promotion of a safe and healthy environment in its Constitution.

87. The Special Rapporteur welcomes in particular the significant role played by national courts in strengthening the justiciability of economic, social and cultural rights laid down in part IV of the Constitution. He also notes with satisfaction that the Supreme Court has on a number of occasions recognized the right to a safe and healthy environment as being implicit in the fundamental right to life.

88. India has developed a comprehensive legal framework to ensure the sound management and disposal of hazardous products and wastes. However, the Special Rapporteur notes with concern that this legislation is not effectively implemented. He is also concerned about the insufficient enforcement of existing labour legislation at the federal and the state levels, as well as the lack of awareness among employers on the existing rules and standards.

#### C. Institutional framework

89. The Special Rapporteur is of the view that the current institutional framework is inadequate for responding to the emerging health and environmental challenges posed by the generation, management, handling, transport and disposal of toxic and dangerous products and wastes. He shares the view expressed by the Supreme Court Monitoring Committee on Management of Hazardous Wastes that institutional failure at different levels has to be regarded as the main cause for weak application of existing laws for pollution control and environmental protection.

90. The Special Rapporteur recommends that the role and functions of the central and state government institutions responsible for the implementation and enforcement of national legislation on hazardous substances and toxic waste management be better defined, and that appropriate mechanisms be developed to ensure better coordination and cooperation among these institutions.

#### Enforcement and monitoring

91. The Special Rapporteur recommends that the Government take all appropriate measures to provide adequate human, technical and financial resources to the Central Pollution Control Board (CPCB) and the State Pollution Control Boards, in order to improve their capacity to effectively enforce, and monitor compliance with, the existing legal framework on hazardous substances and waste management. He also recommends that the Government consider establishing a new national environment protection authority to carry out some of the functions currently discharged by the Ministry of Environment and Forests and CPCB.

92. The Special Rapporteur further recommends that India adopt all appropriate measures to curb illegal import of hazardous waste. Such measures should include the allocation of adequate human and financial resources to customs authorities, the provision of adequate training opportunities for customs officials and the upgrade of laboratory facilities in the major ports of the country. The country should also strengthen its capacity to prosecute and punish environmental crimes by, inter alia, organizing appropriate training opportunities for judges and prosecutors.

#### D. Shipbreaking

93. The Special Rapporteur finds that national legislation on health and safety in the workplace and environmental protection has not been properly implemented by the shipbreaking industry or enforced by the Gujarat Maritime Board (GMB), the Mumbai Port Trust (MPT) and the State Pollution Control Boards. He also notes that the Supreme Court order of 6 September 2007 has not been fully complied with by the responsible agencies. He urges the yard owners to comply with their obligations under national legislation, and encourages central and local government authorities, including GMB, MPT, the State Pollution Control Boards and the National Institute of Occupational Health, to enforce relevant legislation and apply the sanctions provided for by the law in case of non-compliance.

94. The Special Rapporteur wishes to stress that the informal nature or the seasonal character of shipbreaking activities, which depend on the demand for recycled steel and on the cost of recycling operations, cannot – and must not – be invoked as a reason to justify the non-implementation of national labour standards. All workers, including semi-skilled and unskilled workers, should be provided with a written contract of employment, which constitutes an essential precondition for ensuring job security and the effective exercise of core labour rights. Such a contract should indicate, at the very least, the job duties, the duration of employment, compensation and benefits, and should be terminated only in the circumstances provided for by the law.

95. Regulatory authorities in Alang/Sosiya and the shipbreaking industry should step up their efforts to improve health and safety in the yards. Such measures should include the provision of appropriate personal protective equipments (PPEs) for those who work in specialized areas, the creation of additional training opportunities and safety workshops, and regular exercises in emergency prevention, preparedness and response procedures. With regard to Mumbai, the Special Rapporteur urges MPT and the shipbreaking industry to adopt all appropriate measures, without further delay, to ensure that all workers in the yards receive and use appropriate PPEs and have access to formal training opportunities.

96. Regulatory authorities and the industry should also organize training opportunities and awareness-raising initiatives to provide workers and the local population with adequate information on the health risks arising from long-term exposure to hazardous substances and materials present on end-of-life ships.

97. The Special Rapporteur recommends that the Government take steps, to the maximum of its available resources, to remove the obstacles that currently prevent those working in the informal economy to have access to social security on an equal basis with other workers. Regulatory authorities in Alang/Sosiya and Mumbai should, in consultation with the shipbreaking industry and workers' associations, consider developing informal social security schemes to ensure a minimum level of coverage of risks and contingencies for all workers in the yards.

98. The Special Rapporteur urges regulatory authorities in Alang/Sosiya and the industry to allocate additional human, technical and financial resources to existing health facilities in Alang/Sosiya. Since no facilities of a permanent nature, except first-aid and ambulance services, exist in Mumbai, the Special Rapporteur urges MPT and the shipbreaking industry to establish such facilities with no further delay.

99. The Special Rapporteur is seriously concerned at the poor conditions in which most workers live, especially in Mumbai. He calls on GMB and MPT to provide appropriate plots of lands, and to facilitate – with the financial help of the shipbreaking industry – the construction of adequate housing facilities for those

who work in the yards. Adequate access to safe drinking water and sanitation facilities should also be provided within and outside the yards. Taking into account that about 20 per cent of workers are accompanied by their families, the Special Rapporteur also calls on the Government of India and regulatory authorities to establish and maintain schools or formal education facilities for the children of those employed in the yards.

100. Finally, the Special Rapporteur recommends that an independent study be carried out to assess the actual and potential adverse effects caused by the discharge of hazardous substances and materials into the natural environment. Such a study should also assess the steps that need to be taken for the gradual phasing out of “beaching” in favour of more environmentally friendly methods of shipbreaking.

#### E. E-waste

101. The Special Rapporteur calls on the Ministry of Environment and Forests to finalize, as a matter of priority and in close consultation with civil society organizations and the e-waste informal recycling sector, the adoption of the e-waste (management and handling) rules, 2010.

102. The Special Rapporteur also recommends that India develop a national implementation plan to ensure the sound management and disposal of e-waste. Such a plan should identify appropriate incentives to ensure that obsolete electrical and electronic equipment (EEE) be dismantled and recycled only in authorized recycling facilities, and facilitate the integration of the informal sector – which at present recycles at least 95 per cent of e-waste generated or imported into the country – in the new Government policies on the sound management and disposal of e-waste.

103. The Special Rapporteur urges Indian authorities to adopt all appropriate measures to improve health and safety working conditions in small-scale informal workshops. Such measures should include the organization of safety trainings for workers and awareness-raising campaigns on the risks associated with the improper handling and disposal of hazardous substances contained in obsolete EEE, as well as on the precautions to adopt in order to minimize any adverse effects on health and the environment.

104. Lastly, the Special Rapporteur considers that the new draft rules might be ineffective in controlling illegal trade, since they prohibit only the import of EEE in India for charity. He recommends that the current draft be reviewed to include specific provisions to prohibit the import of obsolete EEE – in particular computers – as scrap metal or second-hand products.



## Country visited

### **Mission to Côte d'Ivoire (4 to 8 August 2008) and the Netherlands (26 to 28 November 2008)**

#### Summary

The present report presents the findings and recommendations of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights deriving from his visits to Côte d'Ivoire, from 4 to 8 August 2008, and to the Netherlands, from 26 to 28 November 2008.

The two country visits were undertaken as part of the Special Rapporteur's efforts to examine the effects on the enjoyment of human rights of the movement and dumping of toxic and dangerous products and wastes from the vessel Probo Koala, in Abidjan, on and around 19 August 2006. The Probo Koala had been chartered by the commodity trading company Trafigura and had docked in Amsterdam prior to its journey to Côte d'Ivoire, where the waste from the ship was dumped in various sites in the district of Abidjan.

With regard to the Netherlands, the visit focused on events surrounding the aborted offloading of the waste from the Probo Koala in the port of Amsterdam, the reloading of the waste, and the subsequent departure of the ship. The Special Rapporteur also assessed the actions taken by the Dutch authorities after the dumping in Côte d'Ivoire.

The Special Rapporteur concludes that improved measures have been taken to avoid the recurrence of similar incidents in the Netherlands. He encourages public authorities to ensure rigorous inspection and, where necessary, the detention of ships, such as the Probo Koala. The Netherlands should also continue to provide support to the Government of Côte d'Ivoire to allow the latter to monitor and address effectively the long-term human health and environmental effects of the incident.

The scope of the visit to Côte d'Ivoire included a review of procedures followed prior to and during the offloading and dumping of the waste from the Probo Koala and an assessment of remedial action taken by the Government after the incident. The Special Rapporteur identified an urgent need to tackle outstanding issues, in particular with regard to decontamination, health care and compensation. He encourages the Ivorian authorities to take further action to protect the right to life, the right to the enjoyment of the highest attainable standard of physical and mental health and the right to a healthy environment of all affected victims and their families.

The Special Rapporteur's review of the role of Trafigura in the dumping of the waste from the Probo Koala was focused on the company's responsibility to respect human rights. In this regard, he recommends that Trafigura continue to fund and support outstanding remedial work in Côte d'Ivoire. In its overall operations, Trafigura should also ensure that timely and reliable information is disclosed regarding its activities and the nature and composition of the waste that these activities generate. In addition, Trafigura should provide adequate information, in a timely manner, on the potential environment, health and safety impact of its activities and systematically ensure that waste is treated in an environmentally sound manner, including by rigorously assessing appropriate port reception facilities and balancing commercial interests with human rights and environmental requirements.

#### Recommendations

#### VI. RECOMMENDATIONS

85. The Special Rapporteur recommends that the Government of the Netherlands and relevant State actors:

(a) Harmonize and strengthen existing legislation on the prevention of marine pollution and environmental management in order to ensure more rigorous inspection and, where necessary, the detention of ships for a reasonable period of time, in particular in cases of inconsistent or incorrect declarations regarding cargo and waste on board;

(b) Consider the creation of a financial mechanism that would ensure the proper discharge and treatment of toxic and hazardous waste in the Netherlands; such a mechanism would need to be developed in accordance with the “polluter pays” principle and presuppose reimbursement by the carrier of the waste upon a judicial determination of liability;

(c) Continue to provide support to the Government of Côte d’Ivoire to enable the latter to effectively monitor and address possible long-term human health and environmental effects of the incident.

86. The Special Rapporteur recommends that the Government of Côte d’Ivoire and relevant State actors:

(a) Engage in a broad consultative process, including relevant civil society actors, and specifically seek the views of victims, families of victims and victims’ associations on outstanding issues and measures required to address possible long-term human health and environmental effects of the incident;

(b) Allocate sufficient resources and seek financial and technical assistance to ensure full decontamination of all remaining dumping sites as soon as possible;

(c) Take further action to protect the right to life, the right to the enjoyment of the highest attainable standard of physical and mental health, including the right to a healthy environment of all affected victims and their families, by, inter alia, conducting a health survey in affected areas and a mapping of outstanding health issues and providing adequate medical assistance to victims, including treatment of new and long-term manifestations of illnesses as a result of the dumping;

(d) Take additional measures to intensify the dispensation of compensation to all victims and to complete this process as a matter of urgency in a clear and transparent manner;

(e) Implement structural reforms to improve waste treatment capacities in the port of Abidjan and strengthen monitoring and supervision by relevant environmental agencies in order to ensure that waste is treated in an environmentally sound manner;

(f) Ensure full access to information for those affected on measures taken to address possible long-term adverse effects on health and the environment of the incident.

87. The Special Rapporteur recommends that Trafigura:

(a) In relation to the Probo Koala incident, continue to provide financial assistance to the Government of Côte d’Ivoire in order to address outstanding issues related to decontamination, health care and compensation, and support structural reforms to strengthen capacities to manage hazardous waste in an environmentally sound manner;

(b) In its overall operations, ensure that reliable information is disclosed in a timely manner regarding its activities and the nature and composition of the waste that these activities generate;

(c) Provide adequate information in a timely manner on the potential environmental, health and safety impact of its activities, and systematically ensure that waste is treated in an environmentally sound manner, including by rigorously assessing appropriate port reception facilities and balancing commercial interests with human rights and environmental requirements;

(d) Develop a corporate accountability and human rights policy and management framework, including annual reporting on social, environmental and economic effects.

88. The Special Rapporteur recommends that the international community, including United Nations entities, and donors:

(a) Continue to provide support to the Government of Côte d'Ivoire and relevant State actors in addressing possible long-term human health and environmental effects of the incident, with a particular focus on decontamination, health care and compensation, and promoting the rights of victims;

(b) Continue to assist the Government of Côte d'Ivoire and other States, as appropriate, both in terms of financial and technical assistance, to strengthen capacities to monitor and control both transboundary and domestic movement of toxic and dangerous products and wastes.

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## Country visited

### Mission to the United Republic of Tanzania (21-30 January 2008)

#### Summary

At the invitation of the Government, the Special Rapporteur undertook a mission to the United Republic of Tanzania from 21-30 January 2008. The principal aim of the mission was to study and gather first-hand information about the impact of both small-scale and large-scale mining activities in the country. In addition, the Special Rapporteur wanted to acquaint himself with chemicals management in the country and its safe handling, as well as the waste management for both industrial and domestic waste.

The Special Rapporteur also took the opportunity to study the existing legal framework and its enforcement, as well as international, regional and national trade agreements on the transboundary movement of toxic waste and hazardous materials.

The Special Rapporteur was pleased to note that there is an adequate legal framework to deal with the transboundary movement of toxic and dangerous products and wastes. He noted, however, that many of the laws and subsidiary instruments are recent and is looking forward to monitoring the implementation of these laws.

While visiting the country, the Special Rapporteur was concerned at the lack of regulation for both small-scale and large-scale mining activities. He has proposed a number of recommendations to the Government, encouraging it (in no order of priority) to:

- (a) Ensure that the right of its people to a safe and adequate environment is progressively fulfilled;
- (b) Step up its sensitization efforts on educating the public as to the effects that artisanal and small-scale mining can have on their health and livelihood;
- (c) Provide more resources to local and national authorities to step up inspection of artisanal and small-scale mining areas;
- (d) Be mindful of the specific concerns of indigenous communities and land rights when allocating land for artisanal and small-scale or large-scale mining;
- (e) Pay extra attention to the situation of vulnerable groups, including women and children, due to the exposure to highly toxic substances while engaging in artisanal and small scale mining activities;
- (f) Set up a database of mining-related illnesses to improve the monitoring of environmental and human rights impacts of mining activities;
- (g) Consider renegotiating contracts that were granted to large-scale mining corporations before the Environmental Management Act No. 20 of 2004 was enacted, to ensure that the contracts are consistent with the Act;

(h) Monitor the operations of large-scale mining corporations, particularly on the issue of occupational health and safety standards and the level of compliance with environmental and other relevant legislation;

(i) Encourage large-scale corporations to carry out social impact assessments to better protect and promote the human rights of the local population;

(j) Consider being a candidate country for the Extractive Industries Transparency Initiative.

## Recommendations

### III. CONCLUSIONS AND RECOMMENDATIONS

90. The Special Rapporteur commends the Government for a well-developed and comprehensive range of laws and subsidiary instruments that deal with the particular issue of toxic and dangerous products and wastes. Although the legal developments are recent, the Special Rapporteur calls on the Government to be diligent in the implementation and monitoring of these laws. He would welcome being kept informed of developments in this regard.

91. Based on his visit to the country and after consultations with a variety of stakeholders and interlocutors, the Special Rapporteur would like to make the following comments and recommendations.

#### A. Artisanal and small-scale mining

92. The Special Rapporteur recognizes the challenge that the Government faces, with limited capacity and the fact that as much as 1 million citizens are engaged in artisanal and small-scale mining. Nonetheless, he calls on the Government to step up its efforts in protecting the human rights of its people, covering their economic, social and cultural rights, and particularly the right to a safe and adequate environment.

93. The Special Rapporteur welcomes the sensitization efforts undertaken by the Government and other stakeholders for artisanal and small-scale miners to raise their awareness of the effects of mercury and other dangerous chemicals. However, he urges the Government and other stakeholders, including the United Nations country team and civil society, to step up efforts to inform the public of the risks posed by mining as well as by toxic chemicals used in other industries, such as tanneries and textiles. Requisite media and formats should be used throughout rural and urban areas in the local languages and dialects to communicate these issues to the populace. Attention should be paid to isolated rural areas and illiterate populations to ensure that the effort is comprehensive.

94. The Special Rapporteur calls upon donor countries and international financial institutions, such as the World Bank, to provide the necessary technical and financial support to assist the Government of Tanzania in setting up entrepreneurship training and small-scale credit programmes in mining and other forms of income-generating activities. This will provide the means for artisanal and small-scale miners to acquire the necessary safety equipment. It could also provide the opportunity for them to pursue other forms of livelihoods.

95. The Special Rapporteur calls on the Government to provide more resources for vital local and national authorities such as the district authorities and the Zonal Mines Office (under the auspices of the Ministry of Energy and Minerals), the National Environment Management Council and the Government Chemist Laboratory Agency to create an inter agency task force that will step up inspections of artisanal and small-scale mining areas. This is necessary to harmonize the monitoring activities of the various agencies and make the process more efficient and cost-effective.

96. The Special Rapporteur would like to remind the Government to ensure that primary mining licences are awarded not just on a “first-come first-served” basis, but build in an equity principle that ensures that local communities and villages are not excluded. It is also important for the Government to be mindful of the

specific concerns of indigenous communities and their land rights. He acknowledges that there are irregular and regular migrants from neighbouring countries that may be engaging in artisanal and small-scale mining activities in the same area, but efforts should be made to provide protection against harassment and forced eviction from the area.

97. The Special Rapporteur calls on the Government to pay additional attention to the situation of vulnerable groups, including women and children. Once again, he recognizes the difficulties in trying to regulate artisanal and small-scale mining activities. However, he is particularly concerned about children being exposed to highly toxic substances such as mercury and other dangerous chemicals. He calls on the Government, the United Nations Children's Fund (UNICEF) and other stakeholders to treat the issue as a matter of urgency and to try and find a way to reduce the number of children engaged in such mining activities. He welcomes being informed of good practices in other countries in the hope that they may be replicated in Tanzania.

98. In order to improve the monitoring of the environmental and human rights impacts of mining activities, the Special Rapporteur urges the Government to develop a database of mining-related illnesses that have affected communities in the mining areas.

99. The Special Rapporteur greatly welcomes the initiatives of the Government, United Nations agencies, the World Bank, civil society, and especially transnational corporations, in launching projects on community development and sensitizing the local population to the dangers of unsafe practices in artisanal and small-scale mining activities. Since the Mwadui Community Diamond Partnership was only at its inception during his visit, he would like to be informed of the results of the first phase in order to have the opportunity to provide his comments and suggestions.

100. The Special Rapporteur notes with interest the recommendations set forth in the final report of the Global Mercury Project. However, he would like to caution against providing village leaders with power to expel irregular migrants. From what the Special Rapporteur observed, it is already a challenge for local authorities to regulate the activities of artisanal and small-scale miners given that there are as much as 1 million of them around the country. Therefore, it would be difficult to assess whether a miner is of regular or irregular status. While the Special Rapporteur acknowledges and respects that the role of village leaders is very important in the local context in Tanzania, the Special Rapporteur believes that empowering them to deal summarily with irregular migrants could have negative social and political consequences. In addition, the Special Rapporteur believes that the implementation of environmental legislation is better done by appropriate bodies such as the National Environmental Management Council and the Ministry of Energy and Minerals, rather than local leaders.

## B. Large-scale mining

101. The Special Rapporteur is concerned that the large-scale mining corporations are largely in charge of regulating their own activities. This raises concerns about transparency and accountability on the part of the corporations. He calls on the Government to monitor more closely the operations of large-scale mining companies, particularly on issues of occupational health and safety standards and the level of compliance of corporations with environmental and other legislation, and to ensure good relations between the mining corporation and surrounding communities.

102. The Special Rapporteur calls on the Government to consider renegotiating the contracts that were granted to large-scale mining corporations before the Environmental Management Act was adopted in 2004, to ensure that the contracts are consistent with the Act. He was informed that corporations that were granted mining licences prior to the adoption of the Act may not have been required to carry out environmental impact assessments, which are now mandatory. He calls for increased participation of the public and civil society organizations, local villagers and elders during the renegotiation of contracts. The

non-State actors should also be given sufficient notice of time in order to effectively contribute to the process.

103. While the Special Rapporteur welcomes the Government's initiative to ensure that environmental impact assessments are carried out before granting mining licences, it should be noted that they do not fully take into account the human rights impact of environmental degradation in mining areas. The Special Rapporteur urges the Government and mining corporations to also carry out social impact assessments to better protect and promote the human rights of the local population.

104. The Special Rapporteur commends corporations such as the De Beers Group, which has made an effort to engage with its surrounding communities and commit technical and monetary resources to community development. The Special Rapporteur calls upon other corporations, such as Barrick Gold Corporation and AngloGold Ashanti, to do more in engaging with its surrounding communities in fostering development and poverty reduction efforts.

105. The Special Rapporteur would like to remind corporations such as AngloGold Ashanti and De Beers of their commitment to the Global Compact and encourages other corporations who have not done so, to join this important initiative to advance responsible corporate citizenship.

106. The Special Rapporteur implores the Government to pursue the option of being a candidate country for the Extractive Industries Transparency Initiative. The initiative aims at strengthening governance by improving transparency and accountability in the extractive sector. This would in turn, encourage foreign investors whose resources can be used to fulfil the development needs of the country.

#### C. Hazardous waste and chemicals management

107. The Special Rapporteur welcomes the different checks and balances that are currently in place for hazardous waste and chemicals management in the country. While he acknowledges the great efforts made by the different agencies, much work remains to be done. He recommends that the Government allocate more resources to safer waste disposal in urban areas.

## Country visited

### Mission to Ukraine (22-30 January 2007)

#### Summary

At the invitation of the Government, the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights undertook a mission to Ukraine from 22 to 30 January 2007. The purpose of the mission was, inter alia, to examine the situation regarding the effects of illicit traffic in toxic and dangerous products and wastes on the enjoyment of human rights, to follow up on relevant communications that had been sent to the Special Rapporteur and to study Ukrainian regulations and safeguards against illicit traffic in toxic and dangerous products and wastes. The Special Rapporteur held meetings in Kyiv, Lviv and Uzghorod and conducted visits to sites in the Lviv and Zakarpatska regions. The Special Rapporteur met with a wide range of government and non governmental interlocutors.

The Special Rapporteur finds that Ukraine has a quite complete legislative framework to deal with issues related to the illicit movement and dumping of toxic and dangerous products and wastes, but notes that implementation must be more closely monitored. He welcomes the planned legislative developments in this area.

The Special Rapporteur examines two cases of illicit transfers of toxic wastes and dangerous products to Ukraine. He strongly urges countries of origin to accept the return of these wastes and dangerous products. He also expresses his concern that these types of transfers might still be ongoing. In addition to transboundary movements of toxic and dangerous products and wastes, this report also examines, inter alia, the general problem posed by important stockpiles of domestically produced toxic waste, the issue of obsolete pesticides and the right to information in environmental matters.

The Special Rapporteur makes a number of recommendations which aim to reinforce the effective prevention of illicit movements of toxic waste and dangerous products. Commending the work of the Office of the Prosecutor General with regard to environmental crimes, he also issues some recommendations which if implemented would make its work even more effective. Other recommendations are made in the areas of the right to information, action of health authorities, obsolete pesticides, and foreign technical assistance.

#### Recommendations

#### IV. CONCLUSIONS AND RECOMMENDATIONS

49. The mission to Ukraine allowed the Special Rapporteur to learn more about the policy, legislation and practice of that country on the issues falling within the scope of his mandate. The mission also provided him with a valuable opportunity to examine how a State has dealt with important environmental problems in an economy which has been in transition for just over 15 years.

50. The Special Rapporteur notes that Ukraine's legislative framework to address problems related to the illicit movement and dumping of toxic wastes or dangerous products is quite complete. He also notes that legislative developments are planned to make the framework regulating waste management and environmental protection even more stringent. The Special Rapporteur welcomes the work of both the Government and Parliament in this area.



51. The Special Rapporteur believes that even with a very well-developed legal framework, proper enforcement is essential to limit instances of illicit movements and dumping of toxic and dangerous products and wastes. In this regard he makes the following recommendations:

- All inbound shipments of materials should be accompanied by more detailed information indicating the origin of the product, its exact chemical composition, and a declaration on the use of this product by the receiving countries.
- Systematic controls of all shipments of raw materials should be carried out by customs officials, with random testing by independent laboratories to verify the conformity of the product with the customs declaration.

52. In relation to ex-post facto enforcement, the Special Rapporteur has had an excellent impression of the work of the Office of the Prosecutor General in the particular area of environmental crimes. In particular, he finds it encouraging that the Office has established a specialized branch in this area. The work of the Office of the Prosecutor General is particularly important, as a greater accountability of corporations may lead to fewer cases of illicit import and dumping and thus a better protection of the human rights of the affected population. He notes however, that procedures are long and complex and that this particular unit does not have sufficient resources in comparison with the vast number of complex cases that it needs to deal with. In this regard he recommends:

- An increase in the number of prosecutors working in this specialized unit.
- A larger number of prosecutors from other branches and in particular regional prosecutors to benefit from basic training or seminars on environmental crimes, in order to have the basic knowledge to supplement the work of this specialized unit.
- The Office of the Prosecutor General seeks to provide continuous training to members of this unit, in particular through international cooperation with similar units in other States so that experiences can be shared and best practices identified. In order to implement this recommendation, the Special Rapporteur encourages all States to participate and encourage this type of exchange between specialized prosecutors.

53. The Special Rapporteur notes that while access to information is protected, in the particular cases he examined local authorities were not sufficiently proactive in providing information to members of the public that could have allowed them to take preventive measures. The Special Rapporteur invites authorities at all levels to provide all information available about potential environmental hazards as soon as possible, and to do so even if thorough testing is not completed, thus applying the precautionary principle. Access to information regarding environmental issues and their potential consequences for human rights thus appears to require some improvement.

54. Other recommendations based on his findings from the mission to Ukraine but not listed in order of importance are as follows:

- In cases of alleged illicit dumping, the sanitary authorities should systematically monitor the health of the local population in order to provide early detection of any potential impact on human health.
- The precautionary principle should guide the action of all government departments dealing with cases of illicit dumping of toxic or dangerous products and wastes. In particular, because of the difficulty of scientifically proving links between a product and adverse health effects, the action of sanitary authorities must always be guided by this principle.
- In the particular case of the quarry in Novy Rozdil, the authorities should remove the acid tars and dispose of them in an environmentally sound manner before the water which fills the quarry reaches them, in order to avoid the potential pollution of the waters of the Dniester.

- The Government should establish programmes that would lead to more centralized storage of obsolete pesticides, with the objective of eliminating small, unregulated and dangerous storage sites. In the implementation of these programmes the Government could envisage offering incentives to ensure their effectiveness.
- In order to deal with very important stockpiles of toxic wastes, such as obsolete pesticides and acid tars, Ukraine should seek and other States, in particular neighbouring States, should provide technical assistance so that appropriate and effective elimination technologies can be adopted.
- Countries of origin should accept the return of illegally or fraudulently exported toxic wastes and dangerous products and facilitate, when applicable, the implementation of the Basel Convention mechanisms.

55. The Special Rapporteur requests that he be kept informed of any further illicit import of toxic wastes and of any developments concerning the cases mentioned in this report.

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Year  
2008  
Symbol  
A/HRC/7/21/Add.3

#### **Preliminary note on the mission to the United Republic of Tanzania**

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**Preliminary note on the mission to Ukraine**

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## Country visited

### Mission to Turkey (10 to 20 March 2004)

#### Summary

At the invitation from the Government, the Special Rapporteur undertook a mission to Turkey from 10 to 20 March 2004. The purpose of the mission was, inter alia, to study the laws and practice in the areas of concern to the Special Rapporteur's mandate and to follow up on individual cases. She held meetings in Ankara, Izmir and Istanbul and went on a site visit to the Aliaga ship dismantling facility and to the Petkim petrochemical plant. The Special Rapporteur held consultations with a wide range of governmental and non-governmental interlocutors.

While the Special Rapporteur is impressed with the scope of the legislative reform undertaken by the Government of Turkey, including in the areas covered by her mandate, the validity of the conclusions and findings of her mission are limited by the fact that the relevant regulations or legislation is currently under review, in the process of being drafted, or in the process of implementation.

The Special Rapporteur notes with concern the different attempts at illegal transfers of waste and dangerous products to Turkey. She condemns such actions, and strongly urges the countries of origin to accept the return of the waste and dangerous products.

The Special Rapporteur makes a number of recommendations to the Government of Turkey on the issue of ship dismantling, including that it take measures to strengthen unionization among the workers in the ship dismantling industry, that studies be done to determine the risks and illnesses to which workers in the sector are exposed and ways of preventing them, and that the Government maintain the prohibition on the entry and demolition of ships contaminated by toxic products, in particular asbestos, as long as the country has not developed the capacity to ensure optimal protection of workers and rational ecological management.

Other recommendations include:

- Turkey should consider ratifying the Stockholm Convention on Persistent Organic Pollutants, the Rotterdam Convention on Trade in Hazardous Chemicals, and the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and Their Disposal and the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil to the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention);
- Turkey should ratify the Aarhus Convention and give priority to developing the infrastructure necessary to implement it;
- A national environment agency should be created and attention paid to the local administration and institution through which public participation could be strengthened. Policies should be implemented that ensure more effective control of waste which enter Turkey;
- An inventory of toxic substances and a general inventory of chemical substances used in Turkey should be established;
- A survey of the existence of DDT in Turkey and other stockpiles of persistent organic pollutants (POPs) should be conducted and the results made public;

- Participation and access to information in environmental matters by non-governmental organizations must be guaranteed, subject only to the kinds of exemptions listed in international human rights instruments and the Aarhus Convention;
- Trade union rights should be amended to comply fully with international labour standards. The Special Rapporteur requests that she be kept informed about any developments in the cases concerning alleged targeting of Turkey for illicit dumping of toxic and dangerous products outlined in section II.B of the report; the circumstances surrounding the sinking of the MV Ulla in September 2004 and the outcome of the legal challenge launched by Greenpeace to the licence granted to operate the Izmit facility.

## Recommendations

96. The mission to Turkey allowed the Special Rapporteur to learn more about the policy, legislation and practice of that country on the issues falling within the scope of her mandate. The mission also provided her with a valuable opportunity to learn about the impressive list of reforms made in the last few years. However, she notes that she heard widespread allegations that implementation of the legislative reforms is insufficient.

97. The Special Rapporteur finds that the prospect of commencing negotiations for EU accession has been a key to the reform process. She notes with satisfaction that the Council at its meeting in December 2004 has decided on a date on negotiations for Turkey's entry into the European Union, which is an encouragement to the continuation of the reforms.

98. An estimated 250 laws and regulations were in preparation at the time of the Special Rapporteur's visit and the Prime Minister committed himself to implementing them as soon as they were adopted, in the course of 2004. The Special Rapporteur hopes that a task of this amplitude will be carried out with the participation of all concerned parties, including NGOs and other members of civil society. She expresses the hope that the participatory mechanisms will be preserved and strengthened and that more attention will be given to the implementation modalities of the draft laws being prepared and the laws and regulations that have already been adopted.

99. While the Special Rapporteur is impressed with the scope of the legislative reforms undertaken by the Government of Turkey including in the areas covered by her mandate, the validity of the conclusions and findings from her mission to Turkey are limited by the fact that the relevant regulations or legislation are currently under review, in the process of being drafted or in the process of implementation.

100. The Special Rapporteur notes with concern the different attempts of illegal transfers of waste and dangerous products toward Turkey. She condemns such actions, and strongly urges the countries of origin to accept the return of the waste and dangerous products. She recommends that the Secretariat of the Basel Convention continue to assist Turkey in its efforts to find solutions to the cases highlighted in this report.

101. Regarding the specific issue of ship dismantling, the Special Rapporteur is aware of the economic advantages that accrue from such activities, while underlining their social, human and environmental costs, as well as the enormous risks that they pose for the lives, health and rights of the workers and others who may be exposed. She makes the following recommendations:

- Efforts to improve working conditions and control of the activities must be continued and strengthened;
- Special measures should be taken to strengthen unionization among the workers in the ship dismantling industry;
- Studies should be made to determine the risks and illnesses to which workers in the sector are exposed and ways of preventing them. The workers must be ensured access to the results of these

studies as well as to the computer files and statistics on occupational accidents, which must be kept up to date;

- The Government should maintain the prohibition on the entry and demolition of ships contaminated by toxic products, in particular asbestos, as long as the country has not developed the capacity to ensure optimal protection of workers and rational ecological management during the dismantling and the final disposal of the dangerous and toxic wastes that are recovered; Countries of origin should take measures to decontaminate ships before exporting them for dismantling;
- Countries of origin should accept the return of illegally exported contaminated ships as well as any recovered toxic product that could not be eliminated by the dismantling country;
- On the multilateral level, States should work to elaborate binding norms and directives to set responsibilities and define the rules and mechanisms for the management and control of ship dismantling activities.

102. Other recommendations based on her findings from the mission to Turkey but not listed in order of importance are the following:

- Turkey should ratify the Stockholm Convention, the Rotterdam Convention, and the Offshore Protocol and the Hazardous Wastes Protocol to the Barcelona Convention;
- Turkey should ratify the Aarhus Convention and give priority to developing the infrastructure necessary to make implementation of the provisions of the Aarhus Convention possible;
- Turkey should adopt the approach proposed in the Regional Plan for the Reduction of the Generation of Hazardous Waste from Industrial Installations by 20 per cent by the year 2010, as recommended in the report of the 13th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Protocols that took place from 11 to 14 November 2003;
- A national environment agency should be created and attention be paid to the local administration and institution through which public participation could be strengthened. More emphasis should be given to the implementation of the stated objective of waste reduction as a primary policy goal and for the implementation and enforcement of the Hazardous Waste Control Regulation;
- Policies should be implemented that ensure more effective control of wastes entering Turkey;
- An inventory of toxic substances and a general inventory of chemical substances used in Turkey should be established;
- A survey on the existence of DDT and other stockpiles of POPs in Turkey should be conducted and the results made public;
- NGO participation and access to information in environmental matters must be guaranteed, subject only to the kinds of exemptions listed in international human rights instruments and the Aarhus Convention;
- Trade union laws should be amended to fully comply with international labour standards.

103. The Special Rapporteur requests that she be kept informed about any developments in the cases concerning alleged targeting of Turkey for illicit dumping of toxic and dangerous products outlined above in section II above. She particularly requests to be informed about the circumstances surrounding the sinking of the *MV Ulla* in September, and the outcome of the legal challenge launched by Greenpeace to the licence granted to operate the Izmit facility.

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## Country visited

### Mission to the United Kingdom of Great Britain and Northern Ireland (May-June 2003)

#### Summary

At the invitation of the Government, the Special Rapporteur undertook a mission to the United Kingdom of Great Britain and Northern Ireland in May-June 2003. The principal aim of the mission was to learn more about the law, policy and practice of the United Kingdom regarding the illicit traffic in toxic and dangerous products and wastes on the enjoyment of human rights. During the mission, the Special Rapporteur met with a large number of interested actors, including from government agencies, devolved administrations, non-governmental organizations (NGOs) and the private sector.

While studying the laws and regulations relevant to her mandate, including relevant European Union legislation, a number of particular issues were raised, namely regulation of chemical products, including pesticides, corporate responsibility, access to information, technical cooperation and environmental justice.

While welcoming many of the Government's policies in the areas relevant to her mandate, particularly in its implementation of the requirements of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Special Rapporteur noted that the scope and validity of the findings and conclusions from the mission are limited by the fact that many of the central regulations or pieces of legislation are currently under review, in the process of being drafted or in the process of implementation. As a result, important parts of the conclusions and recommendations are based on draft or future legislation/regulation rather than on practice.

The Special Rapporteur would like to be informed about the following developments:

- (a) The outcome of the pending review of the 1996 Special Waste Regulations;
- (b) The Government's plans to address the problem of capacity to treat hazardous waste, following the full implementation of the Landfill Directive and other directives;
- (c) Amendments to the Waste Shipment Regulations which are currently pending and practical measures taken in order to implement the regulations.

The Special Rapporteur made the following observations (not in order of priority):

- (a) She noted the concerns expressed about the absence of transparency, particularly in the domain of transport of toxic and nuclear wastes;
- (b) She noted with approval that important policy documents in the areas of her mandate are publicly available, as is comprehensive information about the mandates and activities of the relevant agencies and regulators;
- (c) She noted that there is a process of consultation on new draft legislation and opportunities for stakeholder contribution in policy processes. However, she also noted concerns expressed by NGOs that claim to have experienced limitations and difficulties in their efforts to have full and effective participation, notably problems with access to information and costs;

(d) The Special Rapporteur noted with concern that, apart from the regulations and restrictions arising from the Rotterdam Convention, there is no ban at present on the export of chemical products that have been restricted or banned from use in the United Kingdom;

(e) The Special Rapporteur noted with interest the cases decided by United Kingdom courts allowing access to justice for overseas victims of multinational corporations and establishing multinational accountability. She noted nevertheless the difficulties encountered in bringing the enterprises to justice and the fact that numerous cases are settled out of court and by the low level of penalties, which infringes the rights and interests of the victims;

(f) She noted with approval that the exemptions regarding the general right of access to information under the Freedom of Information Act 2000 are subject to a public interest test. She would like to be kept informed about any instances in which a ministerial veto overrules a decision of disclosure made by the Freedom of Information Commissioner;

(g) The Special Rapporteur noted with concern the accounts from NGOs about the growing evidence about the links between environmental problems and social injustices as well as the costs of accessing justice in environmental cases which are prohibitive for disadvantaged communities. However, she also noted the efforts made by the Government to work with NGOs to achieve better environmental justice.

The Special Rapporteur made the following recommendations:

(a) That the Government introduce a ban on the export of any chemical product which has been restricted or banned for use in the United Kingdom;

(b) That more attention be given to the difficulties encountered by the developing countries with regard to pesticides and other chemical products and that technical cooperation specifically address this problem;

(c) That a strengthening of the enforcement of existing and future legislation in the areas of concern to her mandate by the courts be considered which should order more dissuasive civil and criminal sanctions against those who break the law;

(d) That the Government complement its promotion of voluntary initiatives by implementing legally binding minimum standards for corporate behaviour and transparency, including with respect to corporate activities abroad.

## Recommendations

### IV. CONCLUSIONS AND RECOMMENDATIONS

97. The mission to the United Kingdom allowed the Special Rapporteur to learn more about the policy, legislation and practice of that country on the issues falling within the scope of her mandate. Importantly, the mission also provided her with a valuable opportunity to learn about present and upcoming EU regulations on those issues, which will apply in 25 countries once the enlargement of EU takes effect.

98. While appreciating the opportunity provided by the mission to learn about the laws and practices in the United Kingdom, the scope and validity of the findings and conclusions from the mission are limited by the fact that many of the central regulations or legislation in the areas of concern to the Special Rapporteur are currently under review, in the process of being drafted or in the process of implementation. As a result, important parts of the conclusions and recommendations are based on draft or future legislation/regulation rather than on practice.



99. Having said that, the Special Rapporteur notes with approval that the United Kingdom and its devolved structures appear to be attaching great importance to implementing the requirements of the Basel Convention. She would like to be kept informed about the outcome of the pending review of the 1996 Special Waste Regulations which aims to bring the definitions of hazardous waste in conformity with the Basel Convention.

100. The Special Rapporteur shares the concern expressed by the Environment Agency and the waste management industry about the expected shortfall in the capacity to treat hazardous waste, following the full implementation of the Landfill Directive and of directives such as Waste Electrical and Electronic Equipment and End of Life Vehicles. She would like to be kept informed about the Government's plans to address the capacity problem and to prevent illicit movement and dumping of dangerous products and wastes that may result from such a pressure. She also notes the concerns expressed about the absence of transparency, particularly in the domain of transport of toxic and nuclear wastes.

101. Following reports of difficulties in classifying different types of waste, and the possibility of sham green-list waste exports, the Special Rapporteur would also like to be kept informed about amendments to the Waste Shipment Regulations which are currently pending and about practical measures taken to implement the regulations.

102. The Special Rapporteur notes with approval that important policy documents in the areas of her mandate are publicly available, as is comprehensive information about the mandates and activities of the relevant agencies and regulators. She notes that there is a process of consultation on new draft legislation and opportunities for stakeholder contribution in policy processes. Meanwhile, she also notes the concerns expressed by NGOs that claim to have experienced limitations and difficulties in their efforts to have full and effective participation, notably problems with access to information and costs.

103. The Special Rapporteur notes with concern that, apart from the regulations and restrictions arising from the Rotterdam Convention, there is no ban at present on the export of chemical products that have been restricted or banned from use in the United Kingdom. She recommends that the Government introduce a ban on the export of any chemical product which has been restricted or banned for use in the United Kingdom. She also recommends that more attention be given to the difficulties encountered by the developing countries and that technical cooperation specifically address this problem.

104. While remaining partisan to more restrictive measures, and in particular to the idea of an international code of conduct for multinational corporations, the Special Rapporteur welcomes the Government's efforts to promote CSR. She recommends that the Government complement its promotion of voluntary initiatives by implementing legally binding minimum standards for corporate behaviour and transparency, including with respect to corporate activities abroad.

105. The Special Rapporteur notes with interest the cases decided by United Kingdom courts allowing access to justice for overseas victims of multinational corporations and establishing multinational accountability. She notes nevertheless the difficulties encountered in bringing the enterprises to justice and the fact that numerous cases are settled out of court and is concerned about the low level of penalties, which infringes the rights and interests of the victims. In addition, the process is slow, long, expensive and discouraging for the victims. The law is silent on the question of the responsibility of the parent company and the problem of enterprises that declare bankruptcy in order to avoid paying the fines levied.

106. She notes with approval that the exemptions to the general right of access to information under FOIA are subject to a public interest test. She would like to be kept informed about any instances in which a ministerial veto overrules a decision of disclosure made by the Freedom of Information Commissioner.

107. The Special Rapporteur believes that there is a need to strengthen the enforcement of existing and future legislation in the areas of concern to her mandate by the courts which should order more dissuasive civil and criminal sanctions against those who break the law.

108. The Special Rapporteur listened with concern to the accounts given by NGOs about the growing evidence of the link between environmental problems and social injustices as well as the costs of accessing justice in environmental cases which are prohibitive for disadvantaged communities. However, she also notes with approval the efforts by the Government to work with NGOs to achieve better environmental justice. She hopes that the studies that are currently under way will be made public and disseminated widely and that the problems discovered will be addressed by the competent authorities.

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## Country visited

### Mission to the United States of America (3-14 December 2001)

#### Summary

At the invitation of the Government, the Special Rapporteur undertook a two-week mission to the United States of America in December 2001. The principal aim of the mission was to learn more about the law, policy and practice of the United States regarding the illicit traffic in toxic and dangerous products and wastes and the enjoyment of human rights. During the mission, the Special Rapporteur met with a large number of interested actors, including federal and State agencies, representatives of the federal legislature, non-governmental organizations and academic research institutes.

While expressing her satisfaction that federal and State legislation relating to toxic and dangerous products and wastes is highly developed (thus demonstrating the importance attached by the Government to the issues under her mandate), the Special Rapporteur identified and raised with the Government six areas of concern: ratification of international instruments relevant to the mandate; shipbreaking; the export of pesticides banned from use within the United States; toxic waste exports to *maquiladoras*; the export of spent lead acid batteries; and the effects of regional efforts at trade liberalization. Three further matters were brought to her attention during the mission: issues relating to migrant workers, claims of environmental racism and the particular vulnerability of indigenous peoples.

As a result of her mission, the Special Rapporteur has addressed a number of recommendations to the Government, encouraging it (not in order of priority) to:

- (a) Ratify the Basel Convention and its Ban Amendment, the Stockholm Convention on Persistent Organic Pollutants, and the PIC Convention;
- (b) Amend its categorization of toxic and dangerous products and wastes in order to harmonize it with the Basel Convention;
- (c) Increase resources provided to the Federal Environmental Protection Agency to allow it to better fulfil its mandate in this area, in particular to allow it to implement the recommendations set forth in this report;
- (d) Address issues of impunity through increased reliance on criminal prosecutions in relation to breaches of the law;
- (e) Facilitate the prosecution of United States corporations whose subsidiary entities in Mexican *maquiladoras* are responsible for failing to deal with both imports of toxic and dangerous products and wastes and such wastes generated in the finishing process, in accordance with United States, Mexican or international law;
- (f) Seek innovative ways of ensuring repatriation of illicitly exported toxic and dangerous products and wastes, either through obliging the exporter to repatriate, or (where the exporter cannot be pursued) by establishing a public fund to pay for repatriation;

- (g) Increase its efforts to coordinate its institutional action to ensure that relevant material exported from the United States is sent to the designated destination for the designated purpose;
- (h) Prohibit the export of pesticides unregistered for sale or use within the United States;
- (i) Subject exports of spent lead acid batteries for recycling to export regulations;
- (j) Make permanent the moratorium on the foreign scrapping of American Government-owned ships, and extend the recovery scheme to private shipping, the cost being borne by the shipowners;
- (k) Pay closer scrutiny to the movement of inactive private ships abroad in order to ensure that export regulations on toxic and dangerous products and wastes are enforced; and
- (l) Ensure that the reduction of trade barriers will not be construed as allowing the illicit traffic in toxic and dangerous products and wastes.

## Recommendations

63. The mission to the United States allowed the Special Rapporteur to learn more about the policy, legislation and practice of that country concerning issues under her mandate. She had the opportunity to discuss openly with government officials and the representatives of civil society.

64. The Special Rapporteur notes with satisfaction that federal and State legislation relating to toxic and dangerous products and wastes is highly developed. The institutional framework is likewise very elaborate. This demonstrates the importance attached by the Government to the issues under the Special Rapporteur's mandate. However, it seems that efforts should be made for better coordination between the numerous institutions having a responsibility on the matter.

65. Bilateral and regional frameworks are playing an increasing role, a positive trend which should be encouraged while paying attention to the threats accompanying cooperation between countries which have different levels of development. In that regard, technical cooperation and assistance is vital.

66. The Special Rapporteur notes with interest that enforcement of laws relating to the export of toxic and dangerous products and waste may involve prosecution through civil, administrative and even criminal law. However, and despite the increased readiness of prosecutors to impose custodial sentences, it remains difficult for a victim to have access to information, and to pursue a legal remedy, particularly against private corporations. In addition, in many serious cases only financial fines are levied. According to a report, "over 90 per cent of all federal cases, including environmental cases, are settled by mutual agreement or otherwise or without a trial".

67. Without being exhaustive, the Special Rapporteur mentioned nine main areas of concern brought to her attention during the mission: ratification of international instruments; shipbreaking; export of domestically banned pesticides; maquiladoras; export of spent lead acid batteries; risks associated with trade liberalization; migrant workers; environmental racism; and indigenous peoples.

68. In light of the issues raised in this report, the Special Rapporteur presents the following comments and recommendations:

69. International treaties: the Special Rapporteur encourages the Government of the United States of America to ratify the Basel Convention and its Ban Amendment, the Stockholm Convention on Persistent Organic Pollutants, and the PIC Convention.

70. Legislation: the Government is encouraged to amend its categorization of toxic and dangerous products and wastes in order to harmonize it with the Basel Convention.

71. Institutions: the Special Rapporteur encourages the Government to increase resources to the EPA to allow it better to fulfil its mandate in this area, in particular to allow it to implement the recommendations set forth in this report. In this respect, the Special Rapporteur is disheartened to learn of a 4 per cent reduction in the agency's budget earlier in 2002.

72. Enforcement:

(a) The Government is encouraged to continue its increased reliance on criminal prosecution together with civil or administrative actions in relation to breaches of the law in the area of toxic and dangerous products and wastes; to improve the procedural rights of the victims and to pay particular attention to the issue of impunity;

(b) The Special Rapporteur is concerned at reports that the Government intends to reduce resources to the EPA's enforcement mechanisms;

(c) In relation to the maquiladoras, the Government is encouraged to facilitate the prosecution of United States corporations whose subsidiary entities in Mexico are responsible for failing to deal with imports of toxic and dangerous products and wastes in accordance with United States, Mexican or international law. To this end, the Government should:

(i) seek the cooperation of the Mexican authorities in investigations, and in representation in court proceedings;

(ii) facilitate the enforcement of Mexican judgements within the United States; and

(iii) consider extraterritorial jurisdiction in these matters; and

(d) Repatriation of illicitly exported toxic and dangerous products and wastes remains a problem. The Government is encouraged to seek innovative ways of ensuring repatriation of this material, either through obliging the exporter to repatriate, or (where the exporter cannot be pursued) by establishing a public fund to pay for repatriation.

73. The Special Rapporteur encourages the Government to increase its efforts and to coordinate its institutional action to ensure that material exported from the United States is sent to the designated destination for the designated purpose.

74. Pesticides:

(a) The Special Rapporteur recommends that the export of pesticides unregistered for sale or use within the United States be prohibited; and

(b) Until such export is prohibited, the EPA should ensure that the attention of the Government in the importing country is drawn to the export before the shipment leaves the United States.

75. Spent lead acid batteries: SLABs should be, at least, fully regulated when exported for recycling, thus making them subject to manifesting and export requirements.

76. Shipbreaking:

(a) The moratorium on the foreign scrapping of United States Government owned ships should be made permanent;

(b) The laudable regimes established in respect of Navy and government shipping should be extended to private shipping, the cost being borne by the shipowners; and

(c) Closer scrutiny should be paid to the movement of inactive private ships abroad in order to ensure that export regulations on toxic and dangerous products and wastes are enforced.

77. Trade liberalization: the Special Rapporteur reiterates the need to ensure that the reduction of trade barriers will not be construed as allowing the illicit traffic in toxic and dangerous products and wastes.

78. The Special Rapporteur invites the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on the human rights of migrant workers and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to pay particular attention to the specific issues raised in this report related to their respective mandates.

## Country visited

### Mission to Canada (17-30 October 2002)

#### Summary

At the invitation of the Government, the Special Rapporteur undertook a mission to Canada in October 2002. The principal aim of the mission was to learn more about the law, policy and practice of Canada regarding the illicit traffic in toxic and dangerous products and wastes and the enjoyment of human rights. During the mission, the Special Rapporteur met with a large number of interested actors, including federal and provincial agencies, non-governmental organizations and private sector representatives.

While studying the laws and regulations relevant to her mandate, a number of particular issues were raised with her during the mission, namely export of hazardous electronic waste to Asia; a proposed incinerator project in Northern Ontario; transboundary pollution of First Nation territories; ship-recycling; the effects of trade liberalization; POPs; pesticides and their export; public participation and transparency in environmental decisions; and corporate social responsibility.

While welcoming many of the Canadian government policies in the areas relevant to her mandate, particularly in the areas of POPs, technical cooperation and public participation, the Special Rapporteur has addressed a number of recommendations to the Government, encouraging it (not in order of priority) to:

- (a) Ratify the Ban Amendment to the Basel Convention;
- (b) Undertake concrete measures to ensure that Canadian exporters respect any conditions imposed on the importation of chemicals and pesticides subject to the PIC procedure, paying particular attention to difficulties encountered by developing countries;
- (c) Incorporate ESM criteria into federal regulations on hazardous wastes movements as soon as possible;
- (d) Investigate all the claims made in the report by the Basel Action Network concerning unauthorized export of hazardous electronic waste to Asian countries;
- (e) Prohibit the export of pesticides unregistered for sale or use within Canada;
- (f) Be aware of the gaps in the consultation processes at the federal level, where specific approvals occur concerning hazardous waste import approvals, new substances evaluations, and pesticide approvals;
- (g) Ensure that full consultation on all aspects of a project be conducted in an open and transparent manner;
- (h) Make all possible efforts to avoid developing or locating projects in already disadvantaged communities where it could lead to adverse impacts on the environment and on the health of those communities;

(i) Pay particular attention to allegations relating to threats to the traditional lifestyles and rights of indigenous groups;

(j) Explore ways of establishing accountability for human rights violations committed by companies operating abroad; and

(k) Continue reliance on criminal prosecution, together with civil or administrative actions, in relation to breaches of the law in the area of toxic and dangerous wastes.

## Recommendations

### IV. CONCLUSIONS AND RECOMMENDATIONS

109. The mission to Canada allowed the Special Rapporteur to learn more about the policy, legislation and practice of that country on the issues falling within the scope of her mandate. The mission also gave her the opportunity to discuss the many relevant issues openly with government officials and representatives of NGOs and civil society.

110. The Special Rapporteur notes that many aspects of federal and provincial environmental legislation are very developed, and that the corresponding institutional frameworks are comprehensive. On other issues, for example, criteria for ESM of hazardous wastes and an implementation plan for POPs, work is ongoing. This demonstrates the importance attached to the issues by the Canadian Government.

111. Bilateral and regional frameworks are playing an increasing role in the regulation of the issues relevant to the mandate of the Special Rapporteur. This is a positive trend which should be encouraged while paying attention to the threats accompanying cooperation between regions and countries which have different levels of development. In that regard, technical cooperation and assistance are vital.

112. The Special Rapporteur notes with interest that enforcement of laws relating to export of toxic and dangerous products and waste may involve prosecution through criminal law. The Special Rapporteur also notes allegations by indigenous groups of difficulties in receiving compensation for damage suffered as a result of phenomena of concern to her mandate.

113. In light of the issues raised in this report, the Special Rapporteur presents the following comments and recommendations:

#### Ratification of international instruments

114. Canada has ratified the main international instruments related to toxic wastes and dangerous products with the exception of the Ban Amendment to the Basel Convention. Canada has informed the Special Rapporteur that it believes that the text of the amendment could be improved to promote environmentally sound recycling in all countries, and that it will not consider ratification of the amendment prior to further clarification of the implications of the amendment. The Special Rapporteur has noted the concerns of Canada in respect of the Ban Amendment. However, she believes that ratification of the Ban Amendment would have a positive impact on Canada's policies in the area of hazardous waste export and urges Canada to ratify it.

115. The Special Rapporteur welcomes the recent adoption of the Export of Substances under the Rotterdam Convention Regulations, as a sign of Canada's commitment to implementing the provisions of the Rotterdam Convention. As underlined by the Government, the main purpose of the regulations is to require that Canadian exporters not export to parties to the Convention chemicals and pesticides subject to the PIC



procedure, unless the importing party has provided its “prior informed consent” to the shipment. The Special Rapporteur expresses the hope that concrete measures will be undertaken to ensure that Canadian exporters respect any conditions imposed on the importation of these substances, paying particular attention to difficulties encountered by developing countries.

#### Hazardous waste management

116. The Special Rapporteur welcomes the ongoing consultations on the ESM criteria and recommends that incorporation of ESM into federal regulations be completed as soon as possible.

#### Capacity-building and technical cooperation

117. The Special Rapporteur welcomes Canada’s active contribution to technical cooperation and capacity-building in the area of hazardous waste management and POPs. The Canadian Government has created a Can\$ 20 million Canada POPs Fund designed to help developing countries and countries in transition increase their own capacities to address issues related to the reduction and elimination of POPs. The Special Rapporteur welcomes Canada’s commitment to the Stockholm Convention and congratulates Canada on the establishment of the Canada POPs Fund. She further notes with satisfaction that Canada is also involved in tackling the issue of stockpiles of obsolete POPs in Africa through the technical cooperation programmes under the auspices of the Canadian International Development Agency.

#### Export of electronic waste

118. The Special Rapporteur takes note of the allegations made by the Basel Action Network of grave human rights implications arising from the export of hazardous electronic wastes from Canada to developing countries. She welcomes Canada’s ongoing efforts of reviewing its definitions of hazardous waste and its attempt to seek clarifications from China with regards to export of hazardous electronic waste to that country. The Special Rapporteur hopes that the Canadian Government will address all of the specific allegations in the Basel Action Network report. She calls on the Canadian Government to investigate the claim that certain Canadian companies have been exporting waste for disposal or recycling which, according to the Canadian Government’s own analysis, would qualify as hazardous under both the Basel Convention and Canadian law (i.e. electronic scrap containing mercury switches, regulated batteries or PCB-capacitors). The export of such material should be subject to procedures outlined in the Export and Import of Hazardous Wastes Regulations and it should thus give rise to concern that Environment Canada reportedly has not issued any permit for export of such materials to any developing country. The Special Rapporteur also calls on the Canadian Government to investigate the claim that hazardous waste is being exported to countries without the technology to dispose of recycled waste in an environmentally sound manner.

#### Pesticides

119. The Special Rapporteur recommends that the export of pesticides unregistered for sale or use within Canada be prohibited. Until such export is prohibited, the competent Canadian authorities should ensure that the attention of the Government in the importing country is drawn to the export before the shipment leaves Canada.

#### Public participation

120. The Special Rapporteur welcomes the adoption of comprehensive policy frameworks for consultations in environmental decision processes as well as the establishment of the Environmental Petitions Process. The process of consultation in environmental decisions functions by and large satisfactorily at the federal level, although concerns were expressed by NGOs that the Government does not

always take into account the input provided in the consultation process. She agrees with the sentiment expressed to her that the input prepared by the public and by non-governmental organizations provide a service to the Government which enhances the end result. Notwithstanding the above, the Special Rapporteur would like to draw the attention of the Canadian Government to the gaps in the consultation processes at

the federal level, where specific approvals occur. She notes that there are no participation provisions around hazardous waste import approvals, new substances evaluations, and pesticide approvals.

121. The Special Rapporteur emphasizes the importance of meaningful public participation in environmental decisions at the provincial level. Following a constructive dialogue with representatives from the Ontario Ministry of the Environment about the extent of public participation and consultation in the provincial environmental assessment process, she notes that while there are significant obligations of public consultation built into the process, there are very few specifications of how such a consultation process must be conducted. This leaves wide discretionary powers for the Ministry of the Environment to decide whether the requirements of the Environmental Assessment Act that public consultation be undertaken have indeed been honoured. She also notes that the decision to hold public hearings on a particular proposal is at the Minister's discretion. She furthermore notes that intervenor funding to interest groups for preparation of a hearing was terminated some time ago.

122. The Special Rapporteur urges both provincial and federal agencies involved in environmental assessment processes, to ensure that full consultation on all aspects of a project be conducted in an open and transparent manner. She would also like to refer to the question of resources available to local communities to prepare meaningful substantive input into what is often a highly technical and complicated process.

#### Targeting of marginalized communities

123. The Special Rapporteur heard various allegations that indigenous and/or marginalized communities are targeted for projects like that of the Bennett incinerator. Allegations of this nature have been made to the Special Rapporteur during missions to other countries. She wishes to emphasize that Governments make all possible effort to avoid developing or locating controversial projects like polluting industries in communities where this could lead to adverse impacts on the environment and on the health of the communities. At a minimum, Governments should ensure that marginalized communities are given the possibility to participate in a substantive and meaningful way in environmental decisions which may have implications for their health, their rights, including cultural rights, or their lifestyles.

124. The Special Rapporteur recommends that particular attention is paid to allegations relating to threats to the traditional lifestyles and rights of indigenous groups. She invites the Special Rapporteur on indigenous peoples to monitor the specific issues raised in this report related to his mandate.

#### Trade liberalization

125. The Special Rapporteur impresses on the Government the importance of trade liberalization agreements being construed in a way which complies with the Basel Convention and other international instruments.

#### Corporate social responsibility

126. The Special Rapporteur welcomes the various Canadian corporate social responsibility (CSR) initiatives taking place in both the public and the private sector. However, she remains convinced that self-

regulation and voluntary codes of conduct - however laudable - can only complement legally binding norms for holding transnational companies responsible for human rights violations committed in their spheres of influence. While recognizing the jurisdictional and procedural issues arising from trying to establish accountability for actions, including actions falling within the mandate of the Special Rapporteur, committed abroad by a transnational company which would be criminalized if committed in the companies' countries of origin, the Special Rapporteur nevertheless calls on the Canadian and other Governments to explore ways of establishing extraterritorial jurisdiction over human rights violations, committed by companies operating abroad. The concept of extraterritorial jurisdiction for human rights violations is not unknown in both international and many national laws, and the Special Rapporteur recommends that the establishment of accountability be explored.

127. The Government is encouraged to continue its increased reliance on criminal prosecution together with civil or administrative actions in relation to breaches of the law in the area of toxic and dangerous products and wastes; and to improve the procedural rights of the victims.

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## Country visited

### Mission to Germany and the Netherlands (18 - 29 October 1999)

#### Summary

N/A

#### Recommendations

#### IV. CONCLUSIONS AND RECOMMENDATIONS

73. The Special Rapporteur was pleased with her mission to Europe, following on her visits to Africa and Latin America in previous years. It enabled her to gain a more diverse and comprehensive understanding of the central theme of her mandate. She is grateful to the German and Netherlands Governments for being among the first to accede to her wish to visit industrialized countries. The constructive discussions which took place during her mission were distinguished by a spirit of complete cooperation and openness.

74. The Special Rapporteur is aware that Germany and the Netherlands are not representative of all the countries in the European Union or OECD, and she therefore hopes to visit other industrialized countries in 2000. Despite the reservations which had been expressed about her mandate - for example, that the Commission on Human Rights was not the appropriate body to discuss the issue - the Special Rapporteur duly notes the willingness of the Governments of both countries to cooperate fully with all Special Rapporteurs. The representatives of both Governments stressed their commitment to sustainable development and measures to counteract the illicit trade in toxic and dangerous products and wastes, a commitment backed up by international obligations and specific national measures.

75. While attentive to the concerns of developing countries, the Governments of Germany and the Netherlands believe that the illicit trade in toxic products and wastes is a diminishing problem of limited scale, at least in the context of North/South relations. Problems arising from the transport of dangerous wastes - an increasingly rare occurrence - cannot be entirely excluded; such accidents can and do occur independently of the will of the Governments concerned, and steps have been taken to enforce the principle of the return of unwanted products and wastes to the country of origin at the expense of the initial shipper.

76. Germany drew attention to its special fund designed to handle such contingencies; contributions to this fund will actually be reduced for want of claims. The German authorities do not understand why Germany should be censured when in 1999 only two cases of illegal waste exports (to European countries) were brought to light and dealt with (the wastes were re imported and the exporters were prosecuted). The Special Rapporteur notes the utility of such a fund and hopes that other developed countries will set up or report similar mechanisms.

77. Germany and the Netherlands are sympathetic to the argument that developing countries do not always have the means or the qualified personnel to understand the nature of the products entering their territory or to counteract illicit trafficking. Both Governments are resolved to increase technical assistance in this field. The Special Rapporteur also recommends greater information sharing and a multiplication of focal points in order to activate interregional early warning systems.

78. In cases where, for various reasons, it is impossible to trace the path taken by illicit traffic or to determine the country or firm of origin of dangerous products or wastes which have entered a developing country illicitly or illegally, the Special Rapporteur requested her interlocutors to examine ways in which States parties to the Basel Convention could voluntarily help to eliminate such products or wastes through procedures based on the provisions of the Convention.

79. During her mission, the Special Rapporteur took the opportunity to raise her interlocutors' awareness of alleged problems which have arisen in developing countries following the intensive and uncontrolled use of chemicals, agrotoxic products and persistent organic pollutants. There is a risk that this may become a particularly acute problem.

80. She also raised the legal, economic, social, human and environmental problems caused by the export of contaminated ships destined for scrap in developing countries. Both Governments regard such ships as "hazardous wastes" as defined under the Basel Convention, and accordingly they intend to ban their export to non OECD countries. The Special Rapporteur said that she would like to see the various aspects of this issue examined in the appropriate international forums (UNEP, secretariat of the Basel Convention, IMO) with a view to arriving at a satisfactory solution.

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Year

1999

Symbol

E/CN.4/1999/46/Add.1

**Country visited**

**Mission to Paraguay (14 -19 June 1998), Brazil (20-28 June 1998), Costa Rica (17 -20 November 1998) and Mexico (21-30 November 1998)**

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Year

1998

Symbol

E/CN.4/1999/10/Add.1

Country visited

**Mission to South Africa (10-16 August 1997) and Ethiopia (16-19 August 1997)**

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## List of reports by year

Year	Symbol	Countries visited
2013	A/HRC/24/39/Add.1	Mission to Hungary (4 – 11 October 2012)
	A/HRC/24/39/Add.2	Comments by the State
2012	A/HRC/21/48/Add.1	Mission to the Marshall Islands (27-30 March 2012) and the United States of America (24-27 April 2012)
	A/HRC/21/48/Add.2	Comments by the State
2011	A/HRC/18/31/Add.2	Mission to Poland (25-31 May 2011)
2010	A/HRC/15/22/Add.2	Mission to Kyrgyzstan (30 September to 9 October 2009)
	A/HRC/15/22/Add.3	Mission to India (11-21 January 2010)
2009	A/HRC/12/26/Add.2	Mission to Côte d'Ivoire (4 to 8 August 2008) and the Netherlands (26 to 28 November 2008)
2008	A/HRC/9/22/Add.2	Mission to the United Republic of Tanzania (21-30 January 2008)
	A/HRC/7/21/Add.2	Mission to Ukraine (22-30 January 2007)
	A/HRC/7/21/Add.3	Preliminary note on the mission to the United Republic of Tanzania
2007	A/HRC/5/5/Add.1	Preliminary note on the mission to Ukraine
2005	E/CN.4/2005/44	Mission to Turkey (10 to 20 March 2004)
2004	E/CN.4/2004/46/Add.2	Mission to the United Kingdom of Great Britain and Northern Ireland (May-June 2003)
2003	E/CN.4/2003/56/Add.1	Mission to the United States of America (3-14 December 2001)
	E/CN.4/2003/56/Add.2	Mission to Canada (17-30 October 2002)
2000	E/CN.4/2000/50/Add.1	Mission to Germany and the Netherlands
1999	E/CN.4/1999/46/Add.1	Mission to Paraguay, Brazil, Costa Rica and Mexico
1998	E/CN.4/1999/10/Add.1	Mission to South Africa and Ethiopia