

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

*Summary of annual reports 1996-2014*

*January 2015*

## Table of contents

<b>Title (document symbol)</b>	<b>page</b>
Scoping report (A/HRC/27/54) .....	4
Scoping report (A/HRC/24/39) .....	5
Extractive industry (A/HRC/21/48).....	6
Medical waste (A/HRC/18/31) .....	9
Review of the mandate; expansion of the mandate; recommendations for the new mandate holder (A/HRC/15/22).....	14
Summary of communications sent and replies received from Governments and other actors (A/HRC/15/22/Add.1).....	17
Shipbreaking (A/HRC/12/26).....	18
Summary of communications sent and replies received from Governments and other actors (A/HRC/12/26/Add.1).....	20
Basel Convention (A/HRC/9/22).....	21
Summary of communications sent and replies received from Governments and other actors (A/HRC/9/22/Add.1).....	22
SR's activities and the right to information and participation (A/HRC/7/21) .....	23
Summary of communications sent and replies received from Governments and other actors (A/HRC/7/21/Add.1).....	24
Impact of armed conflict on exposure to toxic and dangerous products and wastes (A/HRC/5/5).....	25
Exposure to toxic chemicals in everyday household good and food (E/CN.4/2006/42) .....	27
Summary of communications sent to and replies received from Governments and other actors during 2005 (E/CN.4/2006/42/Add.1) .....	28
Preliminary report (E/CN.4/2005/45) .....	29
Updates of cases contained in previous reports (E/CN.4/2005/45/Add.1) .....	30
SR's activities and analysis of trends ( E/CN.4/2004/46) .....	31
Observations and information received from Governments (E/CN.4/2004/46/Add.1) .....	35
SR's activities and observations (E/CN.4/2003/56).....	36
SR's activities and observations (E/CN.4/2002/61).....	38
SR's activities and observations (E/CN.4/2001/55).....	41
Summary of general observations and information received from governments and other sources (E/CN.4/2001/55/Add.1) .....	45
SR's activities and observations (E/CN.4/2000/50).....	46
SR's activities and observations (E/CN.4/1999/46).....	47

SR's activities and observations (E/CN.4/1998/10).....	48
Summary of general observations and information received from governments and other sources (E/CN.4/1998/10/Add.1) .....	50
SR's activities and observations (E/CN.4/1997/19).....	51
Preliminary report (E/CN.4/1996/17) .....	54
List of reports by year.....	55

## Thematic focus

### Scoping report (A/HRC/27/54)

## Summary

The present report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes is submitted to the Human Rights Council in accordance with Council resolution 21/17.

Recently appointed by the Council, at the end of June 2014, and having assumed the mandate on 1 August 2014, the Special Rapporteur, in his first report to the Council, provides a brief overview of the background, history, scope and context of the mandate, and presents his preliminary strategy for the mandate.

In order to enable the fulfilment of his mandate, which includes an analysis of gaps and ambiguities in international laws, as well as the development of a best practices guide, the Special Rapporteur will hold a number of consultations in the coming months and will undertake country missions as early as possible.

## Recommendations

N/A

---

## Thematic focus

### Scoping report (A/HRC/24/39)

## Summary

This report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste is submitted to the Human Rights Council in accordance with Council resolution 21/17.

Having been appointed by the Council recently in September 2012, the Special Rapporteur in his first report to the Council will provide a summary of the background, context and work of the mandate to date, and present a broad outline of the strategy that will inform his work for the remainder of his mandate.

In particular, he intends to hold a number of consultations as early as possible in order to start the process of developing a guide on good practices in the environmentally sound management of hazardous substances and wastes, including elaborating on the normative content of the human rights obligations therein, as well as developing appropriate criteria with which to identify such good practices.

## Recommendations

N/A

---

## Thematic focus

### Extractive industry (A/HRC/21/48)

#### Summary

In the present report, the Special Rapporteur focuses on the adverse effects on the enjoyment of human rights of the unsound management of hazardous substances and waste used in and generated by extractive industries.

Section II of the report provides information on the various methods of extraction that use hazardous chemicals and current practices in waste management; while section III explores the adverse impact on human rights of the improper management of hazardous substances and waste. Section IV discusses emerging issues in extractive industries, which aggravate or contribute to exposing humans to hazardous substances and waste. In section V, the Special Rapporteur sets out the international normative framework for the sound management of hazardous chemicals and waste, before submitting his conclusions and recommendations in section VI.

#### Recommendations

##### VI. Conclusions and recommendations

68. On the basis of his study of the management and disposal of hazardous substances and waste used in and generated by extractive industries, and their relationship with human rights, the Special Rapporteur makes the following recommendations.

69. In accordance with their obligation to respect, protect and fulfil human rights, States should:

(a) Develop a comprehensive, legally-binding regime to ensure chemical safety throughout the lifecycle of all chemicals, both synthetic and naturally-occurring, with particular attention to the needs of the most vulnerable. In this regard, the Special Rapporteur considers that a treaty on mercury is crucial. The current array of narrowly focused legally-binding agreements for chemicals and wastes do not adequately address, let alone eliminate, exposure to the numerous hazardous substances and wastes generated by extractive industries that result in human rights impacts;

(b) Ratify the Kiev Protocol on Pollutant Release and Transfer Registers (PRTRs) to the Aarhus Convention, if they are not already parties, as global participation in the Protocol would increase corporate accountability, encourage improvements in environmental performance, and increase knowledge about hazardous substances and wastes;

(c) Take a lead in moving towards the universal ratification of relevant International Labour Organization (ILO) conventions;

(d) Move towards the establishment of international standards regarding the amount of allowable negative impacts of extractive industries on health and the environment so as to address the disparate impacts on communities in nations with weak regulations. A central enforcement body to review project proposals would help to uphold such international standards;

(e) Maximize synergies between hazardous chemicals and other environmental regimes, such as climate change and biodiversity;

- (f) Carry out comprehensive environmental, social and human rights impact assessments that examine existing natural resources in the area, cumulative impacts of projects and socioeconomic linkages to environmental issues. Special consideration should be given to how activities might impact the rights of indigenous peoples. Impact assessments must use reliable baseline studies, for both environmental contaminants as well as human health conditions. Impact assessments should be ongoing to effectively monitor the evolving impacts of extractive operations, and they should be carried out by competent, independent third parties;
- (g) Establish permanent spaces for consultation and dialogue in decision-making processes at local and national levels, before issuing the invitation to tender and awarding the concession, where the peoples and communities concerned, companies and local authorities are appropriately represented. Community capacity-building is often required to enable meaningful participation during consultation. Involve intergovernmental and non-governmental organizations focusing on health and the environment in building the capacity of local communities to participate in an informed manner;
- (h) Ensure that the benefits of extractive activities are equitably distributed among affected communities. Greater awareness regarding the potential inadequacy of financial payments is needed, as it can create undue influence and enable adverse impacts. To this end, mechanisms that strengthen the capacity of indigenous and tribal peoples and further their own development priorities should be favoured;
- (i) Promote transparency at country and company level, including the disclosure of production-sharing agreements, host country agreements, power purchase agreements, economic and financial assessments, environmental and social assessments, monitoring and evaluation results, and information on accident prevention and emergency response. Annual, public monitoring reports should be provided;
- (j) Ensure that the “polluter pays principle,” that is, the internationalization of costs by industry and liability regimes for illegal dumping, is implemented in practice;
- (k) Provide greater incentives on green corporate social responsibility initiatives and public-private partnerships;
- (l) Make concerted efforts towards activities under SAICM in order to build the capacity of developing countries for chemicals management – including the capacity to evaluate, monitor and regulate extractive industries – and implementation of international obligations;
- (m) Rigorously evaluate all tailing disposals and ensure ongoing monitoring of waste and tailings dumps;
- (n) Promote sustainable practices and sources of energy with a view to reducing reliance on extractive industries.
70. In accordance with their duty to respect human rights, companies and other private actors should:
- (a) Develop and adopt techniques to reduce the hazardous waste generated by the extractive industry;
- (b) Routinely monitor for associated toxic substances at the mine site as well as in nearby sources of drinking water or aquatic habitat, when hazardous substances that can contaminate water are used, such as cyanide and hydro-fracking solutions;
- (c) Recognize the right of access to information and avoid using the privilege of confidential business information to shield health and safety information on the hazardous substances used and produced by extractive industries, to which humans and wildlife may be exposed, such as chemicals dispersants and hydro-fracking solutions;
- (d) Exercise due diligence so as to avoid becoming complicit in human rights violations committed by host governments;

(e) Adhere to the “polluter pays principle,” by providing insurance and compensation for project-caused sickness, accidents, and toxic legacy issues. Regulations should include adequate, verifiable and participatory precautionary measures to account for transboundary issues, such as river pollution, that may affect communities outside national borders;

(f) Support the United Nations-backed Principles for Responsible Investment Initiative (PRI) devised by the investment community in recognition of the fact that environmental, social and corporate governance issues can affect the performance of investment portfolios;

(g) Adhere to the Protect, Respect and Remedy Framework for Business and Human Rights and best practices such as the International Cyanide Management Code for the gold mining industry; the Environmental Excellence in Exploration (E3); the Extractives Industry Transparency Initiative; the Global Reporting Initiative; the International Council on Mining and Metals (ICMM) Sustainable Development Framework; the OECD Guidelines for Multinational Enterprises; the Towards Sustainable Mining (TSM) Guiding Principles; the United Nations Global Compact.

71. In accordance with their obligations as subject to public international law, development finance institutions should:

(a) Undertake human rights due diligence to ensure that potential impacts on human rights are assessed and addressed. Intermediaries that have substantial local ownership and are equipped to make investments that are in line with the development objectives and approach of the development finance institutions should be prioritized;

(b) Ensure that grievance mechanisms conform fully to principles outlined in the Protect, Respect and Remedy Framework such that they are legitimate, accessible, predictable, equitable, transparent and compatible with internationally recognized human rights standards. The first comprehensive review of the World Bank’s safeguard policies over the next year presents an opportunity to incorporate these recommendations and ensure that its investments in extractive industries do not cause or contribute to human rights impacts.

---



## Thematic focus

### Medical waste (A/HRC/18/31)

#### Summary

In the present report, the Special Rapporteur focuses on the adverse effects that the unsound management and disposal of medical waste may have on the enjoyment of human rights.

While approximately 75 to 80 per cent of the total waste generated by health-care establishments does not pose any particular risk to human health or the environment, the remaining waste is regarded as hazardous and may create a variety of health risks if not managed and disposed of in an appropriate manner. Hazardous health-care waste includes infectious waste, sharps, anatomical and pathological waste, obsolete or expired chemical products and pharmaceuticals, and radioactive materials.

In many countries, significant challenges persist with regard to the proper management and disposal of health-care waste. The amount of waste generated by health-care facilities in developing countries is increasing owing to the expansion of health-care systems and services, a situation exacerbated by the lack of adequate technological and financial resources to ensure that health-care waste is managed and disposed of in a manner that is safe for human health and the environment.

Medical waste is often mixed with general household waste, and either disposed of in municipal waste facilities or dumped illegally. In health-care establishments where hazardous medical waste is incinerated, open burning and widespread deficiencies in the operation and management of small-scale medical waste incinerators result in incomplete waste destruction, inappropriate ash disposal and dioxins emissions, which can be even 40,000 times higher than emission limits set forth in the Stockholm Convention.

Contaminated sharps is the category of medical waste that attracts the most attention. Needle-stick injuries and reuse of infected sharps expose health-care workers and the community as a whole to blood-borne pathogens, including hepatitis B virus, hepatitis C virus and Human immunodeficiency virus (HIV). However, each type of hazardous medical waste presents hazards that jeopardise the enjoyment of human rights.

The present report contains several examples of the adverse impact that the improper management and disposal of medical waste continue to have on the enjoyment of human rights in many countries. Nevertheless, the international community has to date paid little attention to this issue, despite the fact that a significant number of people – including medical staff, patients, workers in support services linked to health-care facilities, workers in waste disposal facilities, recyclers, scavengers and the general public – are potentially at risk of injury and/or contamination through accidental exposure to health-care waste.

#### Recommendations

##### V. Conclusions and recommendations

80. The Special Rapporteur is of the view that time is ripe to give to the impact that the improper management and disposal of medical waste continue to have on the enjoyment of human rights the attention it deserves. He therefore calls on all relevant stakeholders, including States, international

organizations and mechanisms, the donor community, public and private health-care facilities, the pharmaceutical industry and civil society to strengthen their efforts to achieve safe and sustainable management of medical waste.

81. The establishment of a safe and sustainable health-care waste management system requires the adoption of a number of legislative, administrative, policy and educational measures. In order to assist the international community in identifying and prioritizing its action in the field of health-care waste management and disposal, the Special Rapporteur recommends the adoption of the measures below.

A. Awareness-raising

82. The lack of comprehensive information on the risks that hazardous medical waste pose to human health and the environment has hampered the efforts made to date at the national level to protect individuals and communities from the adverse impact of toxic and dangerous health-care waste on their human rights, including the right to life, the right to health and the right to a safe environment. He therefore recommends that States take all appropriate measures to raise awareness of the problems, especially among policymakers and communities living in the vicinity of sites where medical waste is incinerated or landfilled. Non-governmental organizations working in the field of public health or environmental protection should include the promotion of sound health-care waste management in their advocacy and conduct programmes and activities that contribute to sound health-care waste management.

83. In some cases, a healthy lifestyle represents the most efficient way to avoid medical treatment and the waste it generates as a by-product. Access to adequate health-related education and information is, in the Special Rapporteur's view, an essential precondition for the enjoyment of the right to adequate health. He therefore calls on States to disseminate appropriate information relating to healthy lifestyles, nutrition and the state of the environment so that people may make informed choices about their health.

B. National legislation and policy on health-care waste management

84. The Special Rapporteur recommends that States that have not yet adopted a specific law on health-care waste management to protect human health and the environment from the adverse effects of improper management and disposal of hazardous medical waste consider doing so. Such a law may have a stand-alone nature or be part of more comprehensive legislation on hazardous waste management. Relevant international and regional agreements, human rights standards and relevant principles of international environmental law, such as the precautionary and the "polluter pays" principles, should be taken into account when drafting such legislation.

85. A law on health-care waste management should, as a minimum:

- (a) Provide a clear definition of health-care waste and its categories;
- (b) Define clearly the duties and responsibilities of each actor involved in the health-care waste management process;
- (c) Identify the national authority responsible for overseeing the implementation of the law and its enforcement;
- (d) Impose appropriate penalties for contravention.

86. In addition to legislation, States should develop, in accordance with WHO recommendations, a national policy outlining the rationale of safe health-care waste management and its objectives, and a comprehensive strategy identifying the steps to be taken to achieve those objectives. States should also develop technical guidelines for the implementation of the law. This legal package should specify approved methods of treatment and disposal for different waste categories; identify safe practices for the minimization, segregation, collection, storage and transport of medical waste; and outline the

responsibilities of public health authorities, the national environmental protection body, managers of health-care facilities and managers of private or public waste-disposal agencies.

#### C. Occupational health and safety

87. The Special Rapporteur recommends that States strengthen their legal framework on hospital hygiene and occupational health and safety, and provide adequate human, technical and financial resources to national authorities responsible for its enforcement. He also recommends that health authorities organize educational programmes and training opportunities to raise awareness about health, safety and environmental protection issues relating to medical waste management.

88. In view of the fact that persons working within and outside health-care establishments often receive limited information and training opportunities on the occupational risks to which they are exposed and on the correct procedures for handling waste in a safe manner, the Special Rapporteur urges relevant national health authorities to include waste management in the curricula of future medical practitioners and nurses, to provide appropriate information on the occupational risks to which medical and paramedical staff may be exposed, and to organize training opportunities on safe health-care waste management for staff handling medical waste.

89. The Special Rapporteur calls on health-care establishments to take all appropriate measures to improve health and safety conditions for those handling medical waste in and outside health-care establishments. Such measures should include:

(a) Access to information on the specific occupational risks to which different categories of workers are exposed, and the safety measures to minimize such risks;

(b) The provision of appropriate personal protective equipment for persons handling hazardous health-care waste;

(c) Access, on a voluntary basis, to vaccination against such common infectious diseases as tetanus and hepatitis;

(d) The organization of training opportunities and safety workshops designed for and targeting different categories of hospital personnel (such as medical doctors, nurses, hospital cleaners and waste handlers);

(e) Regular drills in emergency prevention, preparedness and response procedures.

#### D. Funding and technical support

90. In many developing countries, the main obstacle to the safe and sound management of medical waste is the limited funding available to public health authorities. The Special Rapporteur recommends that States take all appropriate steps, to the maximum of its available resources, to allocate adequate financial resources to all public and private institutions and bodies responsible for the safe and environmentally sound management of health-care waste. These include health authorities, the national environmental protection body, managers of health-care facilities and managers of private or public waste-disposal agencies.

91. The Special Rapporteur 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 provide developing countries with technical assistance and financial support to help them achieve safe and sustainable management of medical waste. Technical assistance should include the transfer of scientific and technological knowledge, as well as state-of-the-art technologies for the safe disposal of hazardous medical waste, such as autoclaving and non-burn technologies.

92. The Special Rapporteur also encourages relevant international organizations, and in particular WHO, to continue to provide developing countries with technical assistance and support in the design and implementation of their regulatory and policy frameworks on health-care waste management.

#### E. Health-care waste management

93. The safe and sound management of medical waste generated by health-care facilities requires the elaboration of appropriate health-care waste management plans at all relevant levels. Waste management plans should be elaborated in all health-care facilities, taking into account their size, the amount of medical waste they generate on an annual basis and their technical, financial and human resources.

94. The Special Rapporteur recommends that the following principles be taken into account while drafting and implementing such health-care waste management plans:

(a) Prevention/minimization. The Special Rapporteur calls on States, health-care facilities and the private sector to take all appropriate measures, including educational programmes and improved production processes, to ensure that the generation of hazardous medical waste is reduced to a minimum. Hospitals should, whenever feasible, replace hazardous chemicals/products (for example, mercury-containing devices) or disposable instruments (such as scissors and kidney dishes) with alternative products or reusable products. Prescription practices should also be changed so that unnecessary injections in cases where effective oral medical is available may be avoided;

(b) Separation/segregation at source. Hazardous medical waste, which only constitutes 20 to 25 per cent of the total medical waste stream, should be properly separated from non-hazardous medical waste. Segregation should be carried out as close as possible to the point of generation. Sharps should always be collected in puncture-proof containers to prevent injury to and infection of workers handling them. If properly segregated, the amount of medical waste requiring special treatment can be reduced to 1 to 5 per cent of the waste generated in health-care establishments, and the cost for waste treatment can be reduced accordingly;

(c) Packaging and labelling. The use of internationally recognized symbols and signs is essential to ensure the safe handling of hazardous waste. A common system of labelling and coding of packaging should be used in all health-care establishments and be part of the waste management instructions for hospital workers who handle hazardous waste. Medical waste should be packaged in resistant and sealed bags or containers to prevent spilling during handling and transportation. If shipped abroad for treatment, medical waste should be labelled in accordance with international agreements (such as the Basel Convention);

(d) Handling, transportation and storage. Medical waste should be handled and transported in such a way as to prevent unnecessary exposure to staff and others. Handling and transportation should be minimized to reduce the likelihood of exposure to the waste. Medical waste should be held in storage areas that are identified as containing infectious waste. Such areas should always be fitted with a lock in order to prevent access by unauthorized persons;

(e) Recycling. Waste segregation at source is a basic requirement for the recycling of non-hazardous components of health-care waste. Some kinds of hazardous waste can also be recycled. Unused or waste chemicals, for example, can be returned to the supplier for re-processing;

(f) Disposal. The choice of disposal methods depends on a number of factors, including the type and amount of hazardous medical waste generated by the health-care establishment; the existence of appropriate sites for waste treatment and disposal (for example, space on hospital premises and distance from the nearest residential areas); and the availability of human, financial and material resources. Large health-care facilities, for example, may produce amounts of waste sufficient to justify the purchase of a relatively sophisticated health-care waste treatment unit (for example, a medical waste incinerator), but are often located densely populated areas. Furthermore, environmentally friendly and safe options used in high-

income countries (such as autoclaving) may not always be affordable or possible to implement (owing to, for example, lack of electrical supply) in developing countries.

F. Incineration

95. The Special Rapporteur recommends that, in so far as practicable, incineration as a disposal method of hazardous medical waste be substituted with more environmentally-friendly and safe methods of disposal. Autoclaving, for example, is an environmentally sound method to treat infectious waste that requires relatively low investment and operating costs.

96. The Special Rapporteur also recommends that developing countries be provided with adequate financial and technical assistance to design, construct, operate and manage non-incineration medical waste treatment facilities.

---

## Thematic focus

### **Review of the mandate; expansion of the mandate; recommendations for the new mandate holder (A/HRC/15/22)**

## Summary

The present report provides a critical review of the work and activities of the second Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Okechukwu Ibeanu. It consists of three substantive parts.

The first part reviews the scope of the mandate vis-à-vis the norms, standards and principles developed in the field of environmental law to regulate the production, management, trade and disposal of toxic and dangerous products and wastes. It also identifies several areas of continued focus for the mandate, as well as two emerging issues that would need to be carefully studied from a human rights perspective.

The second part provides a critical analysis of the current methods of work of the mandate holder in order to assess to what extent the structure of the mandate is appropriate to enable the Special Rapporteur to carry out the functions described in Human Rights Council resolution 9/1.

The final part contains a set of concrete recommendations to the Human Rights Council and the new mandate holder on how to strengthen the mandate of the Special Rapporteur in order to maximize the protection of those individuals and communities that may be adversely affected by the movement and disposal of hazardous products and wastes.

In particular, the mandate holder recommends that the Council expand the mandate of the Special Rapporteur, so as to request him/her to monitor the adverse effects of hazardous products and wastes during the whole life cycle, from their production to their disposal. He also suggests that the Council request the new mandate holder to develop a set of guidelines on human rights-based approaches to the sound management and disposal of toxic and dangerous products and wastes.

## Recommendations

### V. Conclusions and recommendations

70. In the last six years as mandate holder, the Special Rapporteur witnessed significant changes in the transboundary movement and disposal of hazardous products and wastes. Although hazardous wastes generated in industrialized countries continue to be moved across borders and illegally dumped in developing countries, and in spite of the lack of complete and reliable information in this respect, it appears that the majority of transboundary movements occur nowadays within the same region, and generally involve industrialized countries.

71. The Human Rights Council itself has recognized that the movement and disposal of toxic and dangerous products and wastes have now become global problems, which require global solutions. Resolution 9/1, which strengthened the mandate of the Special Rapporteur so as to include all types of movement and dumping of toxic and dangerous products and wastes, is the first response to these changes.

72. In view of the fact that the many human rights violations related to toxic and dangerous products and wastes derive from their inappropriate generation, management or use, rather than from their

“movement” or “disposal”, the Special Rapporteur recommends that the Human Rights Council consider requesting the mandate holder to monitor the adverse effects of hazardous products and wastes during the whole life cycle, from their production to their disposal. Accordingly, the new title of the mandate would be “Special Rapporteur on the adverse effects of the unsound management and disposal of toxic and dangerous products and wastes on human rights”. The expression “unsound management and disposal” is to be interpreted extensively, so as to encompass the whole life cycle of hazardous products and wastes (cradle-to-grave approach).

73. The Special Rapporteur intended to complete his term by developing a set of guidelines on human rights-based approaches to the sound production, management and disposal of hazardous products and wastes. He discussed this issue informally with a number of delegations, some of which expressly supported the development of such guidelines during the interactive dialogue. Nevertheless, Human Rights Council resolution 12/18 only called for the organization of a panel discussion to inform the future work of the Special Rapporteur.

74. Based on the impetus created by this debate, the Special Rapporteur recommends that the Council request the new mandate holder to develop such guidelines, prior to the renewal of the mandate, due in September 2011. The guidelines should be developed in close consultation with relevant stakeholders, including States, relevant human rights bodies and mechanisms, United Nations specialized agencies, programmes and bodies, the secretariats of multilateral environmental treaties, national human rights institutions, NGOs and representatives of the private sector.

75. The present report identifies some issues that, although not new, would nevertheless continue to deserve the attention of the mandate in view of their scale, their potential or actual adverse impact on human rights and/or the lack of an adequate legal framework.

76. With regard to the human rights impact of ship-breaking, the Special Rapporteur wishes to reiterate the recommendations addressed to States and other relevant stakeholders to consider adopting and implementing voluntary measures to address the negative impacts of ship-breaking that are not covered by the Hong Kong Convention on ship recycling (see A/HRC/12/26, paras. 64–65). He also encourages the new mandate holder to submit his/her preliminary assessment on whether the IMO Convention establishes a level of control and enforcement equivalent to that established under the Basel Convention to the secretariat of the Basel Convention, and to consider attending COP-10 in order to share with the parties to the Basel Convention the views expressed by the mandate with regard to the shortcomings of the Hong Kong Convention.

77. In view of the gaps and ambiguities in the existing international legal framework on the sound production, management and disposal of e-waste, and taking into account the significant increase in the amount of e-waste generated worldwide, the Special Rapporteur encourages the new mandate holder to continue studying this phenomenon, with a view to making appropriate recommendations to the Human Rights Council on adequate measures to control the transfer of obsolete or broken electrical and electronic products to countries that do not possess the capacity to dispose of them in an environmentally sound manner.

78. As far as hazardous chemicals and pesticides are concerned, the Special Rapporteur encourages the new mandate holder to continue participating in international efforts aimed at achieving the sound management of chemicals at all stages of their life cycle. More specifically, he recommends that the new Special Rapporteur continue to work closely with the SAICM secretariat and the secretariats of the Stockholm and Rotterdam Conventions in order to advocate for the inclusion of a human rights-based approach in any initiative to promote chemicals safety.

79. The present report also drew the attention of the Human Rights Council to two emerging issues that in the view of the Special Rapporteur would need to be studied from a human rights perspective.

80. The Special Rapporteur welcomes the initiative undertaken by the UNEP Governing Council to develop a legally-binding instrument on mercury, and calls on States to support the adoption of such an instrument. He also encourages the new mandate holder to consider participating in the negotiating process, in order to ensure that a human rights-based approach to the sound management of mercury throughout its life cycle be included in the new instrument.

81. The Special Rapporteur calls on States, United Nations specialized agencies, programmes and bodies, the secretariats of multilateral environmental treaties, NGOs and representatives of the private sector to take all necessary steps to phase out the use of lead in lead-based paints. Such steps should include: the adoption of national legal frameworks to prohibit the use of lead in household paints; the development of prevention programmes to reduce exposure; allocation of adequate human, technical and financial resources to estimate the prevalence of lead in paints used at the national level and its adverse impact on the health of affected communities; and the organization of awareness-raising campaigns on the toxicity of lead-based paints. The Special Rapporteur also encourages the new mandate holder to assist the Council in clarifying the adverse impact that lead in paint can have on the enjoyment of human rights of affected individuals and communities.

82. The present report reviewed the current methods of work of the mandate holder in order to assess to what extent the structure of the mandate is appropriate to enable the Special Rapporteur to carry out the functions described in resolution 9/1.

83. The Special Rapporteur is of the view that it is useful to continue to devote annual reports to an in-depth analysis of selected thematic issues, chosen on the basis of the criteria identified in his preliminary report to the Commission (E/CN.4/2005/45). Nevertheless, he would encourage human rights treaty bodies, and in particular the Committee on Economic, Social and Cultural Rights, to make better use of the extensive research carried out by the mandate holder, for example during the interactive dialogue with States parties.

84. With regard to country visits, the Special Rapporteur regrets that while certain States have seriously engaged with the mandate, others have shown less commitment, as demonstrated by the limited number of visits that he has been able to undertake during his tenure. He therefore recommends that the Council reiterate its call on States to facilitate the work of the mandate holder by extending him/her an invitation to undertake country visits.

85. The Special Rapporteur also recommends that the new mandate holder consider establishing a formal mechanism to follow up on country visits. He requests that treaty bodies and the Human Rights Council during the Universal Periodic Review pay more attention to the recommendations made by the Special Rapporteur in mission reports, and encourages NGOs to provide information on the measures adopted by the State to implement these recommendations.

86. As is the case for follow up to mission reports, the Special Rapporteur notes that the Human Rights Council and the treaty bodies have only paid limited attention to the information generated by the communication procedure. The Special Rapporteur believes that the review of the country situation during the Universal Periodic Review or in connection with the interactive dialogue with treaty bodies would offer a valuable opportunity to follow up on the effectiveness of the measures adopted by the country to eliminate the human rights violations addressed in the communication procedure.

87. The Special Rapporteur considers that the collaboration with UNEP, relevant United Nations specialized agencies and the secretariats of environmental conventions is of vital importance for the mandate. He therefore encourages the new mandate holder to continue the established cooperation with the secretariats of environmental conventions, in particular the secretariat of the Basel Convention, and to seek ways to establish a closer and more coordinated collaboration with UNEP, ILO and WHO.



88. The Human Rights Council should consider transmitting thematic reports of the Special Rapporteur to the Governing Council of UNEP, and request that the latter extend an invitation to the Special Rapporteur to address its annual sessions.

89. Finally, the Special Rapporteur believes that there is room for strengthened collaboration between the mandate and NGOs. He is aware that the mandate deals with borderline issues that neither human rights NGOs nor their environmental counterparts may be fully familiar with. In order to strengthen the links between the mandate and national and international NGOs working in the field of human rights, environmental protection and chemicals or waste management, the new Special Rapporteur should, in consultation with OHCHR, identify ways and strategies to make civil society organizations more familiar with the mandate in general, and more specifically with the individual communication procedure.

Year

2010

Symbol

A/HRC/15/22/Add.1

**Summary of communications sent and replies received from Governments and other actors  
(A/HRC/15/22/Add.1)**

---

## Thematic focus

### Shipbreaking (A/HRC/12/26)

#### Summary

Shipbreaking is an important industry for developing countries, especially in South Asia. It represents an important source of raw material supply and provides jobs to tens of thousands of persons. The practice is inherently sustainable, given that over 95 per cent of a ship can be recycled: steel is rerolled and used in construction; machinery and equipment are reused; and oils and fuels are reused or recycled. While in principle the recycling of end-of-life vessels constitutes the best option for ships that have reached the end of their operating life, the extremely poor working practices and environmental conditions prevailing in most shipbreaking yards continue to be the source of widespread concern in the international community.

Every year, about 600 end-of-life ships containing large amounts of toxic and hazardous substances and materials, including asbestos, polychlorinated biphenyls, heavy metals, oils and fuels, are sent to the beaches of South Asia, where they are dismantled without concrete covering or any containment other than the hull of the ship itself. This method of ship dismantling, commonly referred to as “beaching”, generates high levels of pollution of coastal soil, air, sea and groundwater resources, and adversely affects local communities, which often rely on agriculture and fishing for their subsistence.

Working in shipbreaking yards is a dirty and dangerous job. Every year, a great number of workers die or are seriously injured because of work-related accidents or occupational diseases related to long-term exposure to hazardous materials present on end-of-life ships. Workers do not usually receive any information or safety training. They live in makeshift facilities which often lack basic minimum requirements such as sanitation, electricity and even drinking water. There is a general lack of medical facilities and social protection, and injured workers or their relatives hardly receive any compensation for work-related accidents resulting in fatal injuries or permanent disabilities.

In the last decade or so, several organizations and mechanisms have contributed to developing an international regulatory framework aimed at addressing these serious concerns. These efforts have culminated in the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, adopted on 15 May 2009 under the auspices of the International Maritime Organization (IMO).

The Special Rapporteur welcomes the adoption of this new Convention, which represents a positive step towards creating an enforceable regulatory regime aimed at ensuring that end of life ships do not pose unnecessary risks to human health or the environment when scrapped. Nevertheless, he considers that the new Convention alone is not sufficient to bring about significant improvements in the working practices prevailing in shipbreaking yards or in the elimination of the serious environmental pollution that shipbreaking yards generate. Therefore, the Special Rapporteur calls on all relevant stakeholders, including shipbreaking States, flag States, the shipbreaking industry and international organizations, to consider adopting and implementing additional measures to address negative impacts of shipbreaking that are not covered by the new Convention.

#### Recommendations

### III. CONCLUSIONS AND RECOMMENDATIONS

63. The Special Rapporteur welcomes the efforts undertaken by the international community to address the growing concerns about the poor working practices and environmental situation prevailing in most shipbreaking yards across the world. These efforts have resulted in the adoption of various sets of recommendatory guidelines which seek to ensure the environmentally sound management of shipbreaking activities and the reduction of accidents, injuries and occupational diseases too often associated with the dismantling of end-of-life vessels. The recent adoption by IMO of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships is also witness to the serious commitment of the international community to the development of a safer and more environmentally sound management and disposal of end-of-life vessels worldwide.

64. The Special Rapporteur regards the new IMO Convention on ship recycling as a positive step towards the creation of an enforceable regulatory regime aimed at ensuring the protection of workers' health and safety and the preservation of the environment, and encourages States members of IMO to take all appropriate steps to ratify the Convention within a reasonable period of time. In the interim period up to the Convention's entry into force, the Special Rapporteur encourages shipbreaking States, flag States and the shipbreaking industry to consider applying the technical requirements of the Convention, as well as existing guidelines and standards, on a voluntary basis. He also recommends that the Conference of the Parties to the Basel Convention, the International Maritime Organization and the International Labour Organization continue working together with a view to avoiding duplication of work and overlapping of responsibilities and competencies.

65. The Special Rapporteur is of the view that shipbreaking is an issue that requires a global solution. The adoption of the new Convention, although representing a step in the right direction, is not sufficient to bring about the significant and urgently needed improvements to the working practices prevailing in shipbreaking yards or the elimination of the serious environmental pollution that shipbreaking yards generate. Therefore, the Special Rapporteur calls on all relevant stakeholders, including shipbreaking States, flag States, the shipbreaking industry and international organizations and mechanisms, to consider adopting and implementing additional measures to address the negative impacts of shipbreaking that are not covered by the new Convention. In particular, the Special Rapporteur recommends the adoption of appropriate measures in the following areas:

(a) Pre-cleaning. Developed countries should consider adopting appropriate measures, including awards for "green" ship dismantling, to prevent, in line with the Basel Convention Ban Amendment, the export of end-of-life vessels containing hazardous materials to developing countries which do not have the capacity to manage them in an environmentally safe manner. Similarly, shipowners are encouraged, in line with the emerging body of norms on corporate social responsibility and the "polluter pays" principle, to consider pre-cleaning their ships in developed countries, prior to their dispatch to recycling facilities in developing countries;

(b) Environmentally sound waste management. Ship-recycling States should endeavour to enforce international obligations and national legislation on environmental protection and develop appropriate infrastructures for ship-recycling activities, including waste management facilities (e.g. landfill sites, incineration plants, etc.). National legislation should, in particular, lay down the conditions under which ships may be accepted into its jurisdiction for recycling. Taking into account that the "beaching" method does not and cannot, by its very nature, offer sufficient guarantees for the environmentally sound management of the hazardous wastes it generates, stakeholders should consider adopting all appropriate measures to ensure the gradual phasing-out of "beaching" and a swift and steady move towards alternative methods of shipbreaking;

(c) Workers' rights. Shipbreaking States should take steps to improve their regulatory and enforcement capacities in the field of labour law and worker safety, health and welfare, so as to strengthen the protection afforded to persons employed in the shipbreaking industry. They should also eliminate obstacles which de facto prevent workers in shipbreaking yards from exercising their freedom of association

and right to collective bargaining, and set up an effective and reliable system of labour inspections, with the participation of workers' representatives. Shipbreaking States should also take immediate steps, to the maximum of their available resources, with a view to realizing fully the right of workers to social security in the event of accidents and occupational diseases. Yard owners should take all appropriate measures, when needed through State support and international assistance and cooperation, to improve health and safety at work (inter alia by providing adequate personal protective equipment and safety training), promote better health care, housing and sanitation facilities for workers, and develop appropriate mandatory insurance schemes to protect workers in the event of accidents and occupational diseases;

(d) Data collection. Ship-recycling States and yard owners should collect disaggregated statistical data on an annual comparative basis on workers who die or become disabled as a result of work-related accidents or occupational diseases, and make these data publicly available;

(e) Ship-recycling fund. States and the shipping industry should consider establishing a ship-recycling fund to support the upgrade of facilities in accordance with the new Convention requirements and promote the development of alternative methods of ship dismantling (with a view to phasing-out "beaching" in the longer term). They should also consider the creation of a fund for victims of accidents and their families, aimed at providing adequate compensation to injured workers or relatives of deceased workers for work-related accidents or occupational diseases resulting in death or permanent disabilities;

(f) International cooperation and assistance. Developed countries, regional integration organizations and international organizations should provide technical assistance to and cooperate with ship-recycling States and other interested parties on projects involving the transfer of technology, or aid funding to provide safety training for workers and support the establishment of basic infrastructure for environmental and human health protection in the recycling facilities.

Year

2009

Symbol

A/HRC/12/26/Add.1

**Summary of communications sent and replies received from Governments and other actors  
(A/HRC/12/26/Add.1)**

---

## Thematic focus

### Basel Convention (A/HRC/9/22)

#### Summary

This report summarizes the activities of 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 since his last report to the Human Rights Council submitted on 18 February 2008 (A/HRC/7/21).

The report also focuses particularly on the Special Rapporteur's participation at the ninth Conference of Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal from 23 to 27 June 2008 in Bali, Indonesia.

In view of the review that the Council will conduct at its ninth session of the mandate on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, the report also outlines some challenges that the Special Rapporteur has faced in the discharge of his mandate and provides some proposals to enhance the mandate for the consideration of the Human Rights Council.

#### Recommendations

#### IV. CONCLUSIONS AND RECOMMENDATIONS

37. The Special Rapporteur would like to warmly thank the Basel Convention secretariat for the invitation to address the ninth Conference of Parties to the Basel Convention. He appreciated the opportunity to hold consultations with delegates working in the environmental area and with other specialized agencies. He greatly appreciated the opportunity to remind delegates of the human rights dimension to waste issues and looks forward to future engagements with the Conference of Parties to the Basel Convention.

38. He would like to explore identical engagements with the Rotterdam and Stockholm Conventions in order to intensify coordination and international cooperation in providing a human rights perspective on the environmentally sound management of toxic chemicals and hazardous wastes. These would complement the Special Rapporteur's earlier involvement in the Strategic Approach to International Chemicals Management (SAICM) process.

39. The Special Rapporteur would like to call upon countries that have not done so to consider ratifying the Basel, Rotterdam and the Stockholm Conventions.

40. The Special Rapporteur calls upon States to provide more resources to the Office of the High Commissioner for Human Rights for the effective implementation of his mandate, particularly in order to enable him to continue to undertake consultations with a variety of stakeholders on the global, multidisciplinary and comprehensive study of existing problems of, and new trends in and solutions to, all forms of movements and dumping of toxic and dangerous products and wastes, with a view to making concrete recommendations and proposals on adequate measures to control, reduce and eradicate their adverse effects on the enjoyment of human rights.

41. The Special Rapporteur would like to request the Council to consider enhancing the mandate to include all forms of movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

Year

2008

Symbol

A/HRC/9/22/Add.1

**Summary of communications sent and replies received from Governments and other actors  
(A/HRC/9/22/Add.1)**

---

## Thematic focus

### SR's activities and the right to information and participation (A/HRC/7/21)

#### Summary

The present report contains a summary of the activities of 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. In view of the review of the special procedure mandates by the Human Rights Council, the Special Rapporteur outlines the main conclusions developed under the mandate concerning the challenges posed by the illicit movement and dumping of toxic and dangerous products and wastes to the enjoyment of human rights.

The report includes a section highlighting the importance of the right to information and participation. The Special Rapporteur notes that the right to information and participation are both rights in themselves and essential tools for the exercise of other rights, such as the right to life, the right to the highest attainable standard of health, the right to adequate housing and others. The section includes a discussion of current legal frameworks on the rights to information and participation that exist at the international and regional levels. Reference is also made to the different forms of implementation and monitoring mechanisms that can be used at the national level.

Lastly, the Special Rapporteur provides some conclusions and recommendations targeted at developing and developed States to fulfil their obligations in adhering more strictly to international normative frameworks with regard to the illicit movement and dumping of toxic and dangerous products. The Special Rapporteur also states that the main obligation in dealing with toxic wastes and dangerous products lies mainly with States, which should not abuse that responsibility by withholding information, given the potential risks and dangers to the health and well-being of the population and the potential impact on the environment.

#### Recommendations

#### V. CONCLUSIONS AND RECOMMENDATIONS

66. The Special Rapporteur would like to stress that the right to participation in public life is linked very closely with the right to information (and to education). The right to popular participation in decision-making is enshrined in article 21 of the Universal Declaration of Human Rights and several other international instruments. The exercise of the right to participation would be meaningless if there was no access to relevant information on issues of concern.

67. The Special Rapporteur believes that the Human Rights Council may want to recognize explicitly the right to information as a precondition for good governance and the realization of all other human rights. States should move towards implementing the right to information enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Special Rapporteur notes that information held by the State should be considered to be held in trust for the public, not as belonging to the Government. Although the State can invoke national security or defence clauses, it is the view of the Special Rapporteur that this responsibility should not be abused by States or used to derogate from their duty to protect and promote the rights of their citizens in relation to the adverse effects of toxic and dangerous products and wastes.

68. The Special Rapporteur would like to appeal to both developed and developing States to adhere more strictly to international normative frameworks, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Special Rapporteur notes that there are currently 170 parties to the Convention and appeals to those States that have not already done so to consider ratifying it. The Special Rapporteur also urges States to take into account, and if possible become parties to, other legal instruments such as the Aarhus Convention, which are central to the full realization of the right to information with regard to environmental matters, which in turn would help combat the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

69. While the Special Rapporteur acknowledges that developing countries are sometimes left with little choice owing to developmental needs and situations of poverty, both developing and developed States need to find alternative solutions to the trade of toxic wastes and dangerous products. Although the income generated by such trade is very attractive, States need to take into account the future costs and long-term consequences of environmental degradation, as well as their obligation to save future generations from a multitude of health problems. The Special Rapporteur is particularly concerned about the consequences of these health problems for women and young persons and appeals to States to put in place adequate means for their protection.

70. The Special Rapporteur would like to emphasize that developed countries must not see developing nations as “cheap dumping grounds” to get rid of unwanted and hazardous products and wastes. While the Special Rapporteur welcomes the high environmental and health standards that often prevail in developed States, at both the national and the regional level, it is his hope that developed countries will consider passing on key knowledge on the safe handling of toxic and dangerous products, and their experience in monitoring safety standards and the effective running of regulatory mechanisms, to developing countries.

Year

2008

Symbol

A/HRC/7/21/Add.1

**Summary of communications sent and replies received from Governments and other actors  
(A/HRC/7/21/Add.1)**

---



## Thematic focus

### Impact of armed conflict on exposure to toxic and dangerous products and wastes (A/HRC/5/5)

#### Summary

This report focuses on the impact of armed conflict on exposure to toxic and dangerous products and wastes. Although war has always had an adverse effect on the environment, the voluntary or incidental release of toxic and dangerous products in contemporary armed conflicts has an important adverse effect on the enjoyment of human rights. The report not only examines the direct impact of armed conflict, but also its consequences on control of the movement and storage of toxic and dangerous products and wastes.

The report also analyses the human rights dimension of this issue in the particular context of armed conflict, notably those rights which can be adversely affected. It sets out the legal framework applicable to this issue and identifies the potential duty bearers.

The Special Rapporteur ends his report with a series of recommendations which aim to prevent or at least to mitigate the adverse effects of exposure to toxic and dangerous products as a result of armed conflict.

#### Recommendations

#### IV. CONCLUSIONS AND RECOMMENDATIONS

58. In conformity with the mandate of the Commission on Human Rights, most of the preceding reports by the Special Rapporteur have focused primarily on the adverse effects on the enjoyment of human rights of populations in developing countries from illicit movements of toxic and dangerous products and wastes. This report focuses not only on violations of human rights occurring in developing countries, but rather seeks to explore the potential violations of human rights in all countries affected by armed conflict. It is important to note however, that a release of toxic chemicals may have more important consequences in developing countries affected by armed conflicts. Indeed, in this context, uncontrolled urban development might place residential areas close to potential military objectives which contain dangerous products at particular risk. Access to medical help for resulting health problems may be more difficult, information about the dangers may not be as accessible and the capacity of the State to conduct an effective clean-up may be jeopardized by lack of resources.

59. Armed conflicts, by their nature, have immediate and grave effects on the enjoyment of many human rights. Naturally, humanitarian organizations, non-governmental organizations and media tend to focus on and respond to these immediate consequences; for example, the killing of civilians, mistreatment of prisoners, rightly receive widespread media attention. This report has sought to show that although the effects might not be as shocking and immediate, the release of toxic products during armed conflicts has grave and long-term impacts on the enjoyment of human rights.

60. There have been many studies on the impact of war on the environment from the legal standpoint, including humanitarian law and environmental law, and also from scientific analysis, such as the studies prepared by the Post-Conflict Branch of the United Nations Environment Programme. However, there have rarely been studies on the impact of this phenomenon on human rights. The Special Rapporteur believes that applying a rights-based approach could contribute to the prevention of such events, while ensuring

better management of their negative effects. A rights-based approach might improve access to health services for victims, knowledge of measures that are to be adopted and chances to obtain redress.

61. In addition to calling for a response to the release of toxic products during armed conflict which integrates a human rights approach, the Special Rapporteur would like to make the following recommendations:

- The Special Rapporteur urges parties to armed conflicts to respect international humanitarian law, notably by taking into account the potential consequences of the release of toxic and dangerous products on the life and health of the civilian population and on the environment. When evaluating the lawfulness of an attack, they must be fully aware of their responsibilities for such attacks;
  - The Special Rapporteur recommends that States identify and conduct assessments of potential “hotspots” in territories under their jurisdiction or control as soon as hostilities permit, or at the latest at the end of hostilities;
  - The Special Rapporteur encourages parties to a conflict to share information about industrial sites containing dangerous and toxic products, which if released could have consequences on the life and health of the civilian population;
  - The local authorities should give notice to the local population as soon as information concerning the risks posed by a deliberate or incidental release of toxic products becomes available, to allow the affected population to take measures to safeguard their health;
  - Sites which have been contaminated following the release of toxic and dangerous products should be the object of a rapid and adequate clean-up procedure. This includes the disposal of contaminated war debris, unexploded ordnance and military equipment in a manner that is consistent with international environmental standards;
  - In order to mitigate damage to the environment, parties to a conflict should facilitate the access of specialized clean-up crews to the site of dispersion, in particular in the case of oil spills, as soon as hostilities allow or at the latest at the end of hostilities;
  - The Special Rapporteur welcomes the work of the Post-Conflict Branch of the United Nations Environment Programme, and invites States to collaborate with this unit and to facilitate its initiatives, notably in the conduct of post-conflict assessments and capacity strengthening initiatives;
  - The Special Rapporteur recommends that technical assistance be provided to States facing non-international armed conflicts or other situations of crisis in order to help them control the flow of toxic and dangerous products and wastes, and encourages regional cooperation in this matter, such as the Environment and Security initiative in Central Asia.
-

## Thematic focus

### Exposure to toxic chemicals in everyday household good and food (E/CN.4/2006/42)

#### Summary

This report focuses on the human rights impact of the widespread exposure of individuals and communities to toxic chemicals in everyday household goods and food. A number of recent studies are cited showing that man-made toxic chemicals are present in the blood of populations around the globe at levels which in some cases are far above the recommended limits. Of particular concern is the risk to unborn and younger children from contamination via the mother. The danger of long-term exposure to a combination of chemicals at low doses has not been thoroughly investigated.

The report analyses the human rights dimension of this chronic, low-level exposure to toxic chemicals, with regard to the right to life, the right to health, the right to access of information and participation in decision-making processes. It sets out the obligations of both governmental and non-governmental duty bearers in respect of those rights, discusses the value added of adopting a human rights approach to chemicals regulation and provides an overview of current efforts to regulate chemicals at the international and regional levels.

The Special Rapporteur ends his reports with a series of recommendations, one of which urges that regulatory bodies at the international, regional and national levels adopt a human rights approach to chemicals management.

#### Recommendations

73. Following from the mandate of the Commission on Human Rights, previous reports by the Special Rapporteur have focused primarily on the adverse effects on the enjoyment of human rights of populations in developing countries from illicit movements of toxic and dangerous products and wastes. While the focus of this report has not predominantly been on the human rights violations occurring in developing countries, it is safe to say that the poor, the vulnerable and the marginalized suffer disproportionately from exposure to toxic chemicals. To name but a few examples, the poor and the vulnerable, particularly in developing countries, are exposed to chemicals banned in other parts of the world, they may lack access to medical help for health problems arising from exposure to toxic chemicals and they are more likely to lack the capacity and resources to seek effective redress for any violations of their human rights as a result of exposure to toxic chemicals. The continuing export of electronic wastes from developed to developing countries for recycling or disposal in conditions which often directly expose workers and communities to toxic chemicals is another example of the particular burden faced by individuals and communities in developing countries. It is a problem which requires urgent attention, both at the international level and at the level of both exporting and importing Governments.

74. However, notwithstanding the particular human rights concerns faced by vulnerable groups, including in developing countries, this report has attempted to illustrate that the impact of toxic chemicals is not one that can easily be contained by boundaries, be they of a geographic, political, socio-economic or generational nature. Given the proliferation of products and foods containing toxic chemicals in a globalized world, where products containing toxic chemicals as often as not are traded internationally or produced locally by subsidiaries of transnational companies, this is a truly global issue, affecting the enjoyment of human rights of individuals and communities in all parts of the world.

75. The Special Rapporteur is of the view that applying a rights-based approach to the issue of toxic chemicals would address many of the problems highlighted in this report. A fully implemented human rights approach to the management of chemicals, both at the international, regional and national levels, would ensure that individuals and communities are informed of the risks posed by hazardous chemicals in their everyday lives and empower them to participate in decision-making processes. With an emphasis on non-discrimination, a human rights approach would also ensure that particular groups and communities are not disproportionately put at risk. Finally, the right to an effective remedy would enable affected individuals and communities to seek redress and to put an end to impunity for human rights violations occurring as a result of the mismanagement of toxic chemicals.

76. In addition to calling for the adoption of a human rights approach to chemicals management, the Special Rapporteur would like to make the following recommendations:

- Victims of human rights violations arising from actions or omissions by transnational corporations should be allowed to seek redress in the home country jurisdiction, and home country Governments should ensure that transnational corporations domiciled in their countries be held to account for violating human rights standards;
- The SAICM outcome documents should include the protection and promotion of human rights among the objectives of SAICM and reflect the links between chemicals management and the effective realization of several human rights;
- Considering the central role of the non-discrimination principle in the human rights framework, it would be advisable that (i) a specific commitment to implement the SAICM in a non-discriminatory way be included in the draft high-level declaration, and (ii) that the principles of equality and non discrimination be included in the draft OPS among the general principles which will guide the development and the implementation of the SAICM;
- The European Union's REACH regulatory framework should be amended to require substitution of dangerous products wherever possible;
- The Special Rapporteur strongly endorses the Africa Stockpile Programme and urges donors and partners to make every effort to ensure its successful implementation;
- The Special Rapporteur also urges States parties to environmental agreements (e.g. the Bamako Convention) in the developing countries to strengthen their implementation mechanisms to ensure the protection of the rights of individuals and communities threatened by the illicit movement and dumping of toxic products and wastes;
- Lastly, to facilitate the successful implementation of his mandate, the Special Rapporteur urges Governments to cooperate and to extend invitations for country visits when approached with requests to do so.

Year

2006

Symbol

E/CN.4/2006/42/Add.1

**Summary of communications sent to and replies received from Governments and other actors during 2005 (E/CN.4/2006/42/Add.1)**

---

## Thematic focus

### Preliminary report (E/CN.4/2005/45)

#### Summary

This report is submitted pursuant to Commission resolution 2004/17. It consists of an introduction and four chapters. It is supplemented by an addendum containing updates on cases reported previously by the Special Rapporteur.

The introduction provides an overview of the history of the mandate and refers to previous reports submitted to the Commission. The introduction also outlines the scope of the present report, lists the activities of the Special Rapporteur, provides an overview of individual communications received by the Special Rapporteur and lists the Governments and non-governmental organizations that have submitted observations and information.

Section I of the report outlines the scope of the mandate entrusted to the Special Rapporteur by the Commission and analyses the value-added of the mandate compared to other international instruments, including in the environmental field. The Special Rapporteur stresses that the value-added of the mandate arises from its human rights focus. The Special Rapporteur intends to adopt a thematic focus in his future reports, and outlines the elements to be covered in the analysis of the main thematic issues to be addressed in his reports to the Commission. The Special Rapporteur intends to rely heavily on information received directly from communities or individuals when identifying the thematic issues to be the focus of his reports, and also to follow up allegations of violations with Governments and others implicated in the alleged violations.

Section II describes relevant legal developments since the submission of the Special Rapporteur's report to the sixtieth session of the Commission. Section III contains summaries of general observations and information received by the Special Rapporteur from Governments and other sources. Section IV contains conclusions and recommendations. In particular, the Special Rapporteur encourages Governments:

- To continue to respond to his requests for comments on the allegations brought to his attention;
- To respond positively to requests for invitations to in situ visits;
- To consider ratifying the range of multilateral and regional environmental instruments relevant to his mandate and ensure their effective implementation.

The Special Rapporteur welcomes information from individuals, communities and non governmental organizations about issues relevant to his mandate in general, and information about particular incidents or situations where illicit movements of dangerous products and wastes have had an adverse effect on human rights.

#### Recommendations

#### IV. CONCLUSIONS AND RECOMMENDATIONS

43. This preliminary report by the new mandate holder has focused on presenting to the Commission his analysis of the mandate, the value-added of the mandate, its relationship to existing multilateral environmental agreements, in particular the Basel Convention on the Control of Transboundary Movements

of Hazardous Wastes and Their Disposal, and on outlining the methodology he intends to adopt in the process of implementing his mandate.

44. In order to assist him in implementing the mandate entrusted to him by the Commission, the Special Rapporteur makes the following recommendations to Governments:

- The Special Rapporteur encourages Governments to continue to respond to his requests for comments on the allegations brought to his attention;
- The Special Rapporteur urges Governments to respond positively to requests for invitations to in situ visits.

45. The Special Rapporteur welcomes the entry into force of the Convention on Persistent Organic Pollutants. He recommends that all Governments not already parties to the range of multilateral and regional environmental instruments relevant to his mandate consider ratifying them and that those already parties undertake measures to ensure their effective implementation.

46. The Special Rapporteur welcomes information from individuals, communities and non-governmental organizations about issues relevant to his mandate in general, and information about particular incidences or situations where illicit movements of dangerous products and wastes have had an adverse effect on human rights. The Special Rapporteur urges all affected individuals and communities to continue to submit information about such cases to him.

Year

2005

Symbol

E/CN.4/2005/45/Add.1

**Updates of cases contained in previous reports (E/CN.4/2005/45/Add.1)**

---

## Thematic focus

### SR's activities and analysis of trends ( E/CN.4/2004/46)

#### Summary

This report is submitted pursuant to Commission resolutions 1995/81, 1996/14, 1997/9, 1998/12, 1999/23, 2000/72, 2001/35, 2002/27 and 2003/20. The Special Rapporteur has already submitted a preliminary report (E/CN.4/1996/17) and progress reports (E/CN.4/1997/90, E/CN.4/1998/10 and Add.1, E/CN.4/1999/46 and E/CN.4/2000/50, E/CN.4/2001/55 and Add.1, E/CN.4/2002/61 and E/CN.4/2003/56 and Add.1 and 2).

She has undertaken missions to Africa, South America and Europe: in 1997 she visited South Africa, Kenya and Ethiopia (E/CN.4/1998/10/Add.2); in 1998, Paraguay, Brazil, Costa Rica and Mexico (E/CN.4/1999/46/Add.1); and in 1999, the Netherlands and Germany (E/CN.4/2000/50/Add.1). She made no in situ visits in 2000. In 2001 she visited the United States of America (E/CN.4/2003/56/Add.1); in 2002, Canada (E/CN.4/2003/56/Add.2); and in 2003, the United Kingdom of Great Britain and Northern Ireland (E/CN.4/2004/46/Add.1).

The main report is supplemented by an addendum containing the general observations communicated to the Special Rapporteur (chap. I), new cases received (chap. II) and a summary of the cases submitted in the last three years (chap. III). Addendum 2 provides an account of the mission to the United Kingdom.

The report consists of six chapters dealing with the activities of the Special Rapporteur. Chapter II describes new national, regional and international developments.

Chapter III contains an analysis of trends. The nature of the problem has not basically changed, despite efforts by the international community to combat the phenomenon.

International movements of wastes have increased via "recycling" programmes that make it possible to circumvent the ban imposed by the 1989 Basel Convention. While reported cases of transfers of wastes from developed to developing countries have declined, the problem has not disappeared, given the persistence of clandestine movements and exports in the guise of recycling.

Added to this is the emergence of new phenomena such as the export of contaminated vessels to developing countries for ship-breaking, trade in electronic waste, the transfer of industries producing large quantities of waste and an increase in the use of pesticides and other chemicals. Products that are banned, taken off the market, strictly regulated or not permitted in industrialized countries continue to be produced and exported to developing countries with incentives to consume them (advertising, linking of project financing and aid, falsification of data).

The cases reported constitute a record of violations of the exercise and enjoyment of basic rights such as the right of peoples to self-determination and permanent sovereignty over national resources, the right to development, the rights to life, health, sufficient food, safe and healthy working conditions, housing, information, participation, freedom of association, the right to form and join trade unions, the right to strike and to bargain collectively, the right to social security, the right to enjoy the benefits of scientific progress and other rights enshrined in the Universal Declaration and other international instruments. The illustrations given (right to life, right to health, right to information, freedom of association, assembly and

expression, right of participation, as well as racism and discrimination) reflect the difficulties faced by the victims in obtaining justice and reparation.

In her recommendations in chapter VI, the Special Rapporteur welcomes the positive developments that have occurred through legislative measures, but calls on States to ratify the international conventions, to cooperate fully in implementing them and to reinforce the capabilities of the secretariats of the international conventions.

Domestic and international regulations should be provided with effective monitoring and implementation mechanisms. The promulgation of stringent laws to control transboundary movements should continue.

States should take more vigorous measures to reduce waste production, combat new flows of illicit trafficking and resolve the challenges posed by chemicals.

The Special Rapporteur requests that chemicals that have been banned or taken off the market in developed countries should no longer be produced for export. She reiterates her conviction that this practice is unlawful in the light of human rights standards.

The domestic capacities of developing countries should be strengthened through financial assistance, technology transfers and diversified technical assistance.

Mutual legal assistance and exchange of information should be facilitated to counter fraud, corruption and organized trafficking networks.

Governments should take steps that include administrative, civil and criminal penalties for individuals, enterprises and transnational corporations involved in illicit trafficking. Special efforts should be made to end impunity. Victims should have access to administrative and judicial procedures of the exporting State.

Domestic compensation funds should be established along with independent national commissions of inquiry endowed with judicial or quasi-judicial powers in alleged cases of illicit transfer or attempted illicit dumping.

States should strengthen the role of national environmental protection agencies and of non-governmental organizations (NGOs), local communities and associations, trade unions, workers and victims and provide them with the legal and financial means to act. The right to information and participation, freedom of expression, the right of association and legal remedies should be consolidated.

The Commission on Human Rights should consider means of implementing the Norms on the Responsibilities of Transnational Corporations adopted by the Sub-Commission and continue its codification efforts with a view to the adoption of a binding legal instrument. Cooperation between the Office of the United Nations High Commissioner for Human Rights and the United Nations Environment Programme and the secretariats of the multilateral environmental conventions should be strengthened and human rights bodies should be more systematic in addressing violations of rights associated with the practices of multinational companies, toxic waste and other environmental problems.

## Recommendations

### VI. CONCLUSIONS AND RECOMMENDATIONS

#### A. Conclusions

89. The nature of the problem has not basically changed, despite efforts by the international community to combat the phenomenon. The OECD countries continue to be the main producers and exporters of



dangerous wastes and toxic products. The stringent legislation they have adopted has led to an increase in the cost of waste-processing and elimination in these countries and has given rise to transboundary movements, initially to Africa, then to Latin America and South Asia and, more recently, to the Baltic States, Russia, Ukraine, Georgia, Slovenia, Romania, Poland and Albania.

90. International movements of wastes have increased owing to waste “recycling” programmes that make it possible to circumvent the ban introduced by the 1989 Basel Convention. The 1995 amendment banned exports of hazardous wastes, including waste for recycling, from OECD to non-OECD countries. The genuine application of the ban, in particular by the countries of the European Union, would seem to have contributed to a decrease in transfers from OECD countries to non-OECD countries.

91. While reported cases of transfers of wastes from developed to developing countries have declined, the problem has not been eliminated, given the persistence of clandestine movements and exports in the guise of recycling. Added to this is the emergence of new phenomena such as the export of contaminated vessels to developing countries for ship breaking, trade in electronic waste and the transfer of “dirty” industries.

92. Another problem is the increased use of pesticides and other chemicals. Products that are banned, taken off the market, strictly regulated or not permitted continue to be produced and exported to developing countries with incentives to consume them (advertising, linking of project financing and aid, falsification of data). The most alarming cases concern intensive, uncontrolled use of chemicals, toxic agricultural products and persistent organic pollutants.

93. Similarly, there has been little change in the legal, economic, social and political factors contributing to illicit trafficking.

94. Disparities continue to exist between the legal standards of developed and developing countries. The latter have endeavoured to develop their domestic legislation, which continues to be difficult to implement in the absence of trained human resources, technical and financial means and an adequate infrastructure.

95. Trade liberalization, deregulation of international financial markets and the creation of new free trade zones are factors which, together with globalization, have furthered the removal of obstacles restricting trade in hazardous products and wastes.

96. There have been positive developments in the area of legislation, with the elaboration of new conventions (Stockholm Convention, Rotterdam Convention and Aarhus Convention) and the strengthening of existing ones (amendment of the Basel Convention and establishment of a monitoring mechanism for its implementation).

97. The majority of these instruments, however, have not yet entered into force. Major States have not ratified them and many developing countries do not have the means to implement them without international cooperation and assistance.

98. These instruments have no international control system to fully involve the representatives of civil society in the monitoring of their implementation. The conventions are blind to the victims’ perspective and do not provide for any remedies in the event of human rights violations.

99. Many countries do provide for remedies at the national level, although these may not always produce results.

100. The Basel Convention and national legislation in many cases consider illicit trafficking a criminal act liable to civil, administrative and criminal proceedings. In practice, the wrongful acts are rarely prosecuted or punished because of the difficulty of identifying all the links in networks, detecting the origin of the waste

or products and attributing responsibility. Many prosecutors and judges are reluctant to bring legal proceedings and to sentence businessmen and firms for environmental crimes.

101. The communications received clearly show the adverse impact that these practices have on human rights and the role played by transnational corporations. They describe the difficulties the victims face in obtaining justice and reparation.

#### B. Recommendations

102. The Special Rapporteur welcomes the positive legislative developments that have occurred. She calls on States to ratify the international conventions, to cooperate fully in implementing them and to reinforce the capabilities of the secretariats of the international conventions.

103. Domestic and international regulations should be provided with effective control and implementation mechanisms. The promulgation of stringent laws to control transboundary movements should continue.

104. States should take more vigorous measures to reduce waste production, combat new flows of illicit trafficking and resolve the challenges posed by chemicals.

105. The Special Reporter welcomes the forthcoming entry into force of the Rotterdam Convention and calls on developed countries, few of which have ratified it, to become parties to this instrument. She calls on States to remain vigilant to the risks of fraudulent transfers, vitiated consent and relocation of activities.

106. Chemicals that have been banned or taken off the market in developed countries should no longer be produced for export. This practice is unlawful in the light of human rights standards.

107. The domestic capacities of developing countries should be strengthened through financial assistance, technology transfers and diversified technical assistance. The regional centres that have been established should be adequately financed.

108. Mutual legal assistance and exchange of information should be facilitated to counter fraud, corruption and organized trafficking networks.

109. Governments should take preventive and deterrent measures, including administrative, civil and criminal penalties for individuals, enterprises and transnational corporations involved in illicit trafficking. Special efforts should be made to end impunity.

110. Illicit trafficking in wastes is a crime under the Basel Convention and the Bamako Convention. States should adopt measures to qualify wrongful acts, including those committed by legal entities, as criminal offences.

111. Transnational corporations should be required to comply with the laws of the host country and, if necessary, be held accountable for their acts under the law of the country of origin when it has more stringent standards. The countries of origin of multinational corporations should help countries that are victims prosecute and punish, inter alia with criminal sanctions, the perpetrators of offences.

112. Victims should have access to administrative and judicial proceedings in the exporting State. Non-resident victims should have access to the same remedies and benefit from the same treatment as residents.

113. Seminars should be organized for judges to raise their awareness of environmental offences.

114. Domestic compensation funds should be set up to deal with the obligation to re export wastes and products exported in breach of regulations back to the country of origin. States should provide this fund

with a facility to ensure the financing of the restoration of the environment and the compensation of victims when the authors of offences are unknown, cannot be found or declare bankruptcy.

115. Independent national commissions of inquiry endowed with judicial or quasi judicial powers should be established in alleged cases of illicit transfer or attempted illicit dumping.

116. States should strengthen the role of national environmental protection agencies and of NGOs, local communities and associations, trade unions, workers and victims and provide them with the legal and financial means to act. The right to information and participation, freedom of expression, the right of association and legal remedies should be consolidated.

117. The Commission on Human Rights should consider means of implementing the Norms on the Responsibilities of Transnational Corporations adopted by the Sub Commission and continue its codification efforts with a view to the adoption of a binding legal instrument.

118. Human rights bodies should be more systematic in addressing violations of rights associated with the practices of multinational companies, toxic waste and other environmental problems.

119. Cooperation between the Office of the United Nations High Commissioner for Human Rights, the United Nations Environment Programme and the secretariats of the multilateral environmental conventions should be strengthened in order to give impetus to the environmental approach to human rights and the human rights dimension of environmental standards.

120. To these recommendations are added those appearing in previous reports and the addenda thereto concerning in situ visits.

Year

2004

Symbol

E/CN.4/2004/46/Add.1

#### **Observations and information received from Governments (E/CN.4/2004/46/Add.1)**

---

## Thematic focus

### SR's activities and observations (E/CN.4/2003/56)

#### Summary

The present report is submitted pursuant to Commission resolution 2002/27. It comprises five sections relating to the activities of the Special Rapporteur; the observations, comments and information submitted by Governments and other sources; new cases; follow-up of cases included in previous reports; and conclusions and recommendations.

The Special Rapporteur reports on her attendance at the World Summit on Sustainable Development, as well as her participation in a hearing before the Inter-American Commission on Human Rights on environment and human rights. The Special Rapporteur also makes reference to her participation in the Sixth Conference of Parties to the Basel Convention.

Replies to a letter sent by the Special Rapporteur have been received from the Governments of Argentina, Qatar, the Syrian Arab Republic and Tunisia. Additional information from the Government of Venezuela, submitted too late for inclusion in the Special Rapporteur's report to the Commission in 2002, is included in the present report.

Substantive replies to a letter sent by the Special Rapporteur have been received from the Food and Agriculture Organization of the United Nations, the United Nations Population Fund, and the Secretariat for the Convention on Biological Diversity. Replies have also been received from various non-governmental organizations.

Another section contains summaries of communications concerning six new cases brought to the attention of the Special Rapporteur, involving 11 countries.

The Special Rapporteur provides follow-up information about the case concerning the contamination of a paracetamol syrup by impure glycerine resulting in the death of at least 88 children in Haiti between 1997 and 1998 (Case 1999/41).

In the final section, the Special Rapporteur refers to the conclusions and recommendations contained in her previous reports which remain valid.

The Special Rapporteur also draws the attention of the Commission on Human Rights to the conclusions and recommendations contained in the reports from her in situ missions to the United States and Canada (E/CN.4/2003/56/Add.1 and E/CN.4/2003/56/Add.2, respectively).

The Special Rapporteur highlights a new trend in the area falling within her mandate, which is the export of hazardous electronic waste from developed countries for recycling in developing countries in Asia. The Special Rapporteur shares the view that the gravity of the problem points to the need for the strict application of existing international instruments and for the elaboration if necessary of international standards to ensure that electronic wastes are recycled in a manner that is neither harmful to worker, nor destroys the environment.

The Special Rapporteur notes her continuing concern about the problems posed by pesticides and persistent organic pollutants (POPs). She welcomes the decision of Mexico to ban the use of DDT.

It is the intention of the Special Rapporteur to present to the next session of the Commission on Human Rights a substantive report accompanied by her observations, conclusions and recommendations concerning the last three years of her mandate.

## Recommendations

### V. CONCLUSIONS AND RECOMMENDATIONS

88. In her previous reports, referred to in paragraph 1, the Special Rapporteur has presented a series of analyses as well as conclusions and recommendations, which are still valid.

89. The Special Rapporteur draws the attention of the Human Right Commission to the conclusions and recommendations contained in the addenda to this report relating to the field missions conducted in the United States of America and Canada.

90. She would also like to underline a new trend concerning the export of hazardous electronic waste from developed countries to countries in Asia. As documented by many reports received from different sources, these wastes are being processed in operations that are extremely harmful to human health and the environment, with severe implications for human rights. Improper disposal of electronic waste that contains heavy metals and pollutants poses a significant threat to human health. The Special Rapporteur shares the view that the gravity of the problem points to the need for the strict application of existing international instruments and for the elaboration of international standards to ensure that electronic wastes are recycled in a manner that is neither harmful to worker, nor destroys the environment.

91. The problems posed by pesticides, particularly POPs, remain very serious and the majority of the incidents reported relate to this issue. The Special Rapporteur notes with satisfaction that DDT is banned from use in Mexico.

92. It is the intention of the Special Rapporteur to present to the next session of the Commission on Human Rights a substantive report accompanied by her observations, conclusions and recommendations concerning the last three years of her mandate.

---

## Thematic focus

### SR's activities and observations (E/CN.4/2002/61)

#### Summary

The present report is submitted pursuant to resolution 2001/35 of the Commission on Human Rights. It comprises six chapters relating to the activities of the Special Rapporteur; the observations, comments and information submitted by Governments and other sources; new cases; follow-up of cases included in previous reports; cooperation with treaty monitoring bodies; and conclusions and recommendations.

Replies to the letter sent by the Special Rapporteur have been received from the Governments of Morocco, Mauritius, Belarus, Venezuela, Argentina, the Netherlands and the United Kingdom, and from a number of governmental and non-governmental organizations.

The Special Rapporteur has received 16 cases submitted by Venezuela. The dossier sent by this country reveals the interest aroused by this question among the authorities and in civil society, and also the efforts made to enable the victims and rightful claimants to initiate a complaint procedure through a body which has been given competence for this purpose.

Another chapter contains summaries of the communications concerning cases mentioned in previous reports and, where appropriate, the solutions found for problems. However, the Special Rapporteur draws attention to the absence of tangible results, except in the case of the Haitian children in which there was an amicable settlement. She does not intend to express an opinion on this until she has acquainted herself with its content.

In the final chapter, the Special Rapporteur recalls that, in her previous reports, she presented a number of analyses on major trends, the characteristics of illicit traffic, multinational corporations, the implications for the enjoyment of human rights, and conclusions and recommendations which remain valid.

She notes the seriousness of the problems relating to the question of pesticides and persistent organic pollutants (POPs). She calls for financial contributions to permit the implementation of the programme of action adopted by the First Continental Conference for Africa on the Environmentally Sound Management of Unwanted Stocks of Hazardous Wastes and their Prevention, held in Rabat from 8 to 12 January 2001.

She considers that the adoption of international conventions, which are necessary and useful, is not sufficient to effectively combat illicit traffic, prosecute and punish the perpetrators, compensate the victims and rehabilitate the environment. She stresses the need to combat impunity, to provide the victims with effective remedies and fair and equitable compensation, and to make transnational corporations subject to an international code of conduct.

The Special Rapporteur encourages States to describe their national experience and emphasizes the importance of field missions.

#### Recommendations

## VI. CONCLUSIONS AND RECOMMENDATIONS

In her previous reports, the Special Rapporteur has presented a series of analyses on major trends, the characteristics of illicit traffic, transnational corporations and effects on the enjoyment of human rights. Similarly, she has discussed the basic principles, standards and instruments which should be put into effect in order to ensure - at the national, regional and international levels - effective action to combat the illegal transfer of, and illicit traffic in, toxic wastes and products which are harmful to the life, health and other rights of the individual and to the environment. In the absence of new elements, and being unable to exploit the substantive reports and documents received through lack of human and financial resources, the Special Rapporteur can at this stage only reiterate her previous conclusions and recommendations, while emphasizing the following points.

The seriousness of the problems relating to the question of pesticides and POPs. All observers agreed that this is a major problem which should be given priority. Recently (May 2001), the Food and Agriculture Organization of the United Nations (FAO) published an alarming report stating that the volume of pesticide wastes endangering the population and the environment was five times higher than had been estimated two years before. FAO states that approximately 500,000 tonnes of expired or banned pesticides or pesticides withdrawn from sale have accumulated in fields, agricultural land and villages all over the world and are contributing to the poisoning of soil and water.

The First Continental Conference for Africa on the Environmentally Sound Management of Unwanted Stocks of Hazardous Wastes and their Prevention showed the extent of the problem in Africa and enabled the continent's needs to be evaluated. The Special Rapporteur appeals for adequate financial contributions to enable the action programme adopted by the Conference to be put into effect.

The adoption of international conventions such as the Rotterdam Convention and the Stockholm Convention constitute remarkable advances. However, the conventions contain lacunae which prevent effective action to combat clandestine transfers, and to prosecute and punish traffickers and corrupt dealers. In fact, the lacunae themselves may open the way to the "legal" transfer of products which may prove dangerous for humans and the environment and which must accordingly be considered to constitute unlawful transfers in the context of human-rights and environmental standards. Furthermore, these conventions omit any reference to victims, who are refused access to information and have no or few means of recourse. Lastly, these instruments are not ratified by a large number of States and are not always effectively implemented, either through lack of political will or through lack or absence of technical, administrative, legal, human and financial control measures.

The role, place and importance of transnational corporations in activities liable to give rise to unlawful movements and spillages of toxic products and wastes, and consequently the need to make these corporations subject to an international code of conduct that makes them responsible for their reprehensible acts, permits the prosecution and punishment of such acts, opens the way to compensation, redress and rehabilitation of victims, and enables environmental damage to be remedied.

The need to combat impunity and to provide victims with effective remedies, together with just and equitable redress.

On the question of communications, the Special Rapporteur notes that the number of complaints brought to her attention cannot serve as a parameter for evaluating the problem, analysing major trends or drawing conclusions, for the following reasons: first the mandate is not known to all the victims who might wish to transmit complaints; secondly, there is a definite reluctance, including on the part of Governments, to reveal cases of unlawful transfer in order to conceal internal dysfunction, avert social tension and avoid discouraging investment; thirdly, and by definition, unlawful transfers are a clandestine area where the

withholding of information is acceptable; and lastly, the disastrous effects of the use of a toxic product are often felt only in the long term, when the victims have dispersed or disappeared and the evidence has been destroyed.

The Special Rapporteur thanks the States and organizations which have kindly submitted information under more than one heading. Thus, the dossier submitted by Venezuela shows the strength of feeling about the question of toxic wastes and the environment in that country. It provides information on the existence of an ombudsman authorized to deal with the problem and the option given to victims, their assigns or any other person having an interest to initiate a complaint procedure.

The Special Rapporteur notes with interest the amicable settlement reached in the Netherlands in the case of the Haitian children (case 1999/41), but does not intend to comment on this settlement until she learns of its content. At the same time, she notes with satisfaction that many attempted illegal exports of wastes to European countries and developing countries have been blocked through preventive or remedial action on the part of the Netherlands authorities. The Special Rapporteur encourages States to report their national experience.

The Special Rapporteur reiterates the importance of field missions as an irreplaceable means of learning about the experience of a particular country or region, discussing with the national authorities mandate-related questions, and specific cases concerning them, gathering information at first hand and meeting representatives of civil society.

---



## Thematic focus

### SR's activities and observations (E/CN.4/2001/55)

#### Summary

This report is being submitted in accordance with resolutions 1995/81, 1996/14, 1997/9, 1998/12, 1999/23 and 2000/72 of the Commission on Human Rights. The Special Rapporteur has already submitted a preliminary report (E/CN.4/1996/17) and reports on her activities (E/CN.4/1997/19, E/CN.4/1998/10 and Add.1, E/CN.4/1999/46 and E/CN.4/2000/50). She has visited Africa, South America and Europe. In 1997 she visited South Africa, Kenya and Ethiopia (E/CN.4/1998/10/Add.2); in 1998 Paraguay, Brazil, Costa Rica and Mexico (E/CN.4/1999/46/Add.1); and in 1999 the Netherlands and Germany (E/CN.4/2000/50/Add.1). She made no field visits in 2000.

This report consists of six chapters dealing with the activities of the Special Rapporteur (chap. I), relevant instruments and standards (chap. II), trends in and characteristics of illicit traffic (chap. III), transnational corporations (chap. IV), human rights impacts (chap. V), and conclusions and recommendations (chap. VI). The main report is supplemented by an addendum (in English only) listing the general comments communicated to the Special Rapporteur (chap. I) and new cases received (chap. II). The bulk of the addendum consists of a summary of the cases submitted since the beginning of the Special Rapporteur's mandate; these have been numbered in order to facilitate identification and reference (chap. III, paras. 15 to 129).

A study of trends shows that there has been an increase in exports of dangerous products and wastes from industrialized countries to the third world via "recycling" programmes, which enable producers to circumvent the ban imposed by the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The supervised implementation of the Basel amendment, which prohibits exports for recycling purposes, should help to reduce major transfers of wastes from States members of the Organization for Economic Cooperation and Development (OECD) to non-member States.

However, the transfer of polluting industries, industrial activities and technologies that generate dangerous wastes is another aspect of the problem. Prohibited exports are disposed of as recycling material or under cover of bogus development projects. The transfer of "dirty" industrial operations from OECD member States to non-member States has apparently increased. The export of contaminated ships for shipbreaking is a new aspect of waste trafficking. Products which are either banned or strictly regulated in industrialized countries continue to be produced and exported to developing countries. The most alarming cases involve the intensive and uncontrolled use of chemicals, toxic agricultural products and persistent organic pollutants (POPs). The stockpiling of obsolete chemicals in developing countries is a major cause of concern.

Traffickers in wastes resort to fraudulent practices and even corruption. Corporations make use of front companies. In at least one case, humanitarian aid apparently served as a cover for the attempted export of hazardous products from a rich to a poor country. In other cases, transfers have been linked to the trafficking in weapons, nuclear material or drugs, suggesting that there exist international trafficking networks with dangerous ramifications.

A combination of legal, economic, social and political factors is contributing to the emergence, development and intractability of the problem. These include the disparity between the standards applied in different countries; the absence of effective international regulatory mechanisms; the ambiguities in international instruments and the difficulties experienced by developing countries which lack the necessary resources to apply domestic and international legislation; and the liberalization of trade and the deregulation of international financial markets and the economies of developing countries.

The communications received by the Special Rapporteur highlight the negative impact of such practices on the fundamental human rights enshrined in the Universal Declaration of Human Rights and the International Covenants of 1966, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Declaration on the Right to Development, and the Declaration on Human Rights Defenders.

The cases and incidents which have been brought to the Special Rapporteur's attention constitute a record of violations of the exercise and enjoyment of basic rights such as the right of peoples to self-determination and permanent sovereignty over national resources; the right to development, the rights to life, health, an adequate standard of living and sufficient food, safe and healthy working conditions, housing, information, participation, and freedom of association; the right to enjoy the benefits of scientific progress and its applications; trade union rights; the right to strike; the right to bargain collectively; and the right to social security.

Reference is made to numerous examples of violations of the right to life, health, and safe and healthy working conditions; racism; discrimination; and breaches of the rights of migrant workers, minorities and indigenous peoples, of the rights to freedom of association and freedom of information; and of the rights of human rights defenders. The Opinion of the Working Group on Arbitrary Detention dated 20 May 1999, namely that the freedom to make environmental criticism is part of the freedom of expression, is also cited.

The question of impunity and that of the rights of victims merit further study. The transboundary nature of the problem, with transnational corporations resorting to fraudulent practices, shell companies and corruption, is a complicating factor. It is difficult to trace the origin of products, to apportion blame, to establish a causal link between the offence and the injury, or to identify the victims. Given the lack of acknowledged provisions regarding the concept of corporate liability, it is practically impossible to bring a successful prosecution against a corporation. The codification work being undertaken by United Nations bodies should continue, and defence of the rights of victims, including their procedural rights and rights relating to breach of the right to a healthy environment, must be assured.

In her recommendations, the Special Rapporteur refers to the appeal made in the Vienna Declaration and Programme of Action and the objectives of Agenda 21.

The ban imposed by the amendment to the Basel Convention will remain ineffectual unless it is backed up by concrete measures to detect illicit practices and combat new transfer patterns. International conventions need to be ratified. The draft convention on POPs should be finalized as soon as possible.

Domestic and international regulations would be ineffectual without effective control and implementation mechanisms. The promulgation of stringent national laws should continue, particularly in developing countries. These countries' capacity needs to be strengthened through financial assistance, technology transfer, provision of laboratory equipment, assistance in setting up national databases, the establishment of regional and international data and information exchange centres, assistance in the

educational sphere, and training for professionals in the areas of health care, environment, trade, customs, the police, anti-fraud operations and the judicial system.

Mutual legal assistance and exchange of information should be facilitated to counteract fraud and corruption in producer countries, importing countries, and transit countries alike. Regional and international cooperation in combating organized trafficking networks should be encouraged.

Governments should pass legislation that prevents the scourge of illicit trafficking and includes deterrent measures, including administrative, civil and criminal penalties for individuals, enterprises and transnational corporations involved in this trade.

Transnational entities must comply with the laws of the importing country, and when necessary should be held accountable for their actions under the law of their home country if its standards and regulations are stricter. Victims should have access to administrative and judicial proceedings in the exporting State. National model laws and regional arrangements could be proposed to Governments which so wish.

The Special Rapporteur calls for a code of conduct to be elaborated for transnational corporations on the basis of human rights standards and the nine principles of the global compact for human rights, labour and the environment proposed by the Secretary-General.

Human rights bodies must deal with rights violations associated with the activities of multinational corporations, toxic wastes and other environmental problems. Supervisory mechanisms should be strengthened and codification efforts continued.

Independent national commissions of inquiry endowed with judicial or quasi-judicial powers should be established in alleged cases of illicit transfer or attempted illicit dumping.

The role of non-governmental organizations (NGOs), local communities and associations, trade unions, workers and victims should be strengthened. Freedom of expression, the right of association and effective legal remedies should be consolidated.

## Recommendations

93. The Special Rapporteur reiterates the appeal made in the Vienna Declaration and Programme of Action and restates the objectives adopted in the framework of Agenda 21 concerning the prevention of the illegal transboundary movement of toxic and dangerous products.

94. The capabilities of the secretariats of the universal and regional conventions should be strengthened and States should be encouraged to ratify those instruments and cooperate fully in applying them.

95. Domestic and international regulations would be ineffectual without effective control and implementation mechanisms. The promulgation of strict laws to control transboundary movement of hazardous wastes should be continued, so as to reduce the differences between the standards applied in developed and developing countries and thus combat the new illicit trafficking patterns.

96. Developing countries' capacity needs to be strengthened through financial assistance, transfer of appropriate technology, provision of analytical laboratories, assistance in setting up national databases, establishment of regional and international data and information exchange centres, assistance in the educational sphere, and training for professionals in the areas of health care, environment, trade, customs, the police, anti-fraud operations and the judicial system.

97. Mutual legal assistance and exchange of information should be facilitated to counteract fraud and corruption in producer countries, importing countries and transit countries alike. Regional and international cooperation in combating organized trafficking networks should be encouraged. Developing countries should be helped to obtain the necessary information on illicit trafficking, in which regard there is a need to establish early warning systems, as well as databases accessible to the developing countries containing information on: the nature of hazardous products and toxic wastes; the enterprises engaging in unlawful practices; any organized networks that are detected.
98. Governments should pass legislation that will prevent the scourge of illicit trafficking and includes deterrent measures, including administrative, civil and criminal penalties for individuals, enterprises and transnational corporations involved in it.
99. Illicit trafficking in toxic waste and hazardous products is a crime under the Basel Convention and the Bamako Convention. States should take appropriate steps to make unlawful acts connected with illicit trafficking in such waste and products crimes under their own law. They should consider providing for the prosecution of juridical persons and for the imposition of criminal penalties on enterprises on whose behalf one of their organs, a member of one of those organs or any other representative commits an offence linked to illicit trafficking in waste.
100. Transnational corporations should, as a minimum, comply with the laws of the importing country. When necessary, they should be held accountable for their actions and practices under the law of their home country if its environmental standards are stricter. Transnational corporations' home countries should help affected countries bring proceedings against, and punish, including through criminal penalties, the perpetrators of offences.
101. Model laws and regional arrangements could be proposed to Governments which so wished.
102. Victims should have access to administrative and judicial proceedings in the exporting State. Non-resident victims should have the same remedies and receive the same treatment as residents.
103. The Special Rapporteur calls for an international code of conduct to be elaborated for transnational corporations on the basis of the relevant human rights standards and the nine principles relating to human rights, labour and the environment of the global compact proposed by the United Nations Secretary-General.
104. Human rights bodies must remain vigilant for rights violations associated with the activities of multinational corporations, toxic wastes and other environmental problems. Supervisory mechanisms should be strengthened and codification efforts continued.
105. Independent national commissions of inquiry endowed with judicial or quasi-judicial powers should be established in alleged cases of illicit transfer or attempted illicit dumping of toxic waste.
106. The role of non-governmental organizations, local communities and associations, trade unions, workers and victims should be strengthened. Freedom of expression, the right of association and legal remedies should be consolidated.

**Summary of general observations and information received from governments and other sources  
(E/CN.4/2001/55/Add.1)**

---

## Thematic focus

### SR's activities and observations (E/CN.4/2000/50)

#### Summary

Activities of the Special Rapporteur, Summary of information submitted to the Special Rapporteur, review of cases and incidents submitted to the Special Rapporteur

#### Recommendations

#### IV. CONCLUSIONS AND RECOMMENDATIONS

116. The Special Rapporteur wishes to draw the attention of the Commission on Human Rights to the conclusions and recommendations expressed in her previous reports, especially those in her report E/CN.4/1998/10 (paras. 53-106) and its addendum 2 containing the recommendations arising from her visit to Africa (paras. 54-63), and in the report E/CN.4/1999/46 (paras. 94-110) and its addendum 1 relating to her mission to Latin America (paras. 107-125). The present report should be seen in the light of those conclusions and recommendations, which remain valid. She also draws the Commission's attention to the conclusions and recommendations appearing in the addendum to this report, which arose from her visit to Germany and the Netherlands (E/CN.4/2000/50/Add.1).

117. The Special Rapporteur further draws the Commission's attention to the absence of any tangible results regarding a solution to proven cases of illicit transfer of toxic products and regarding compensation for the victims and their families.

118. It emerges from the analysis of communications received by the Special Rapporteur in recent years that the most alarming cases are related to the intensive and uncontrolled use of chemical substances, toxic agricultural products and persistent organic pollutants. The Special Rapporteur hopes that the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade will enter into force as soon as possible.

119. The Special Rapporteur welcomed the adoption by the Fifth Meeting of the Conference of the Parties to the Basel Convention (December 1999) of the Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal. The Special Rapporteur hopes that the Special Fund set up under the aegis of the Basel Convention to settle damage covered by the Protocol will help resolve outstanding cases and others which may arise in the future.

120. The Special Rapporteur draws the attention of the Commission on Human Rights to the problems which arise from the export of contaminated ships due for scrapping to developing countries. There is an urgent need for this problem to be addressed in all its aspects by the appropriate international bodies. The Commission on Human Rights for its part should consider the human rights aspects of the problem.

---

## Thematic focus

### SR's activities and observations (E/CN.4/1999/46)

#### Summary

Activities of the Special Rapporteur, Summary of information submitted to the Special Rapporteur, review of cases and incidents submitted to the Special Rapporteur

#### Recommendations

#### IV. CONCLUSIONS AND RECOMMENDATIONS

95. The Special Rapporteur draws the attention of the Commission on Human Rights to the conclusions and recommendations set out in her previous reports, and in particular those in the report E/CN.4/1998/10 (paras. 53 to 106) and its addendum 2, which contains recommendations in connection with her visit to Africa (paras. 54 to 63). Those conclusions and recommendations remain valid and should be referred to during the consideration of the present report. She also draws the Commission's attention to the conclusions and recommendations contained in the addendum to the present report concerning her visit to Latin America (E/CN.4/1999/46/Add.1). The Special Rapporteur submits below a number of additional observations and recommendations based on her work.

96. While expressing thanks to all Governments for their cooperation, the Special Rapporteur wishes to express her dissatisfaction with the substance of the replies to the allegations brought to their attention. A number of them confined their replies to statements challenging the competence of the Special Rapporteur and developing procedural arguments that evade the substance of the problem. Others stated that inquiries were being conducted at the national level but gave no further details. One Government said that exports of materials that might be dangerous had been suspended temporarily, but failed to indicate how long this suspension would last.

97. Two Governments in their replies once again emphasized the need to follow adversary procedure, namely, that States should be given a reasonable amount of time to reply to allegations and their replies included in the report containing the allegations. The Special Rapporteur wishes to point out that this procedure was indeed respected except in the case of replies to the allegations contained in the report (E/CN.4/1997/19). The reason for that exception, namely, administrative delays in the transmission of mail due to the restructuring of the Centre for Human Rights and staff redeployment, were explained to the Commission at the time the report was submitted (see also paragraph 20 of the report submitted to the Commission at its fiftythird session E/CN.4/1997/19). The Special Rapporteur feels it her duty to recall that she furnished proof to the delegations concerned with which she spoke that the letters transmitting allegations to Governments had been drafted and signed by her in July 1997 when she visited Geneva at her own expense.

---

## Thematic focus

### SR's activities and observations (E/CN.4/1998/10)

#### Summary

Activities of the Special Rapporteur, Summary of information submitted to the Special Rapporteur, review of cases and incidents submitted to the Special Rapporteur

#### Recommendations

##### B. Recommendations

92. It should be recalled that, in the Vienna Declaration and Programme of Action, the international community recognized that "illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone". The Special Rapporteur therefore recalls the commitment made by all States "to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping".

93. Prevention is of crucial importance in avoiding adverse effects for the life and health, not only of individuals but of whole communities, and irreparable damage to the environment. Experience shows that, despite the provisions of such international conventions as the Basel Convention and the Bamako Convention, requiring the country of origin to reimport hazardous products illicitly transported into a country, few Governments, either through political opportunism or for economic reasons, are prepared to implement this provision. This merely underlines the importance of preventive measures to halt the occurrence or recurrence of illicit dumping of wastes.

94. It is important to reinforce countries' ability to detect and suppress any attempt to import toxic and dangerous products into their territory. International judicial cooperation and exchanges of information must be facilitated in order to mount an effective defence against fraud and corruption in the countries of origin, the importing countries and the transit countries. International cooperation should be encouraged in efforts to combat organized trafficking networks.

95. It is important to develop regional and international cooperation in this area and to help countries, particularly developing countries, to obtain the necessary information on illicit trafficking and in that regard to set up databases that are accessible to those countries on the nature of dangerous products and toxic wastes, the companies that indulge in illicit practices and any organized networks that may be uncovered.

96. The capabilities of the secretariat of the Basel Convention and, at an opportune moment, those of the secretariat of the Bamako Convention should be strengthened and States should be encouraged to ratify these conventions and to cooperate fully in the implementation of their provisions, including those prohibiting the export of dangerous goods, even for recycling, from the industrialized countries to the developing countries.

97. The Special Rapporteur wishes to highlight the fact that scant information and few communications have thus far been submitted to the secretariat of the Basel Convention by Governments. It is important to



strengthen the mechanisms for international monitoring of the implementation of the Convention as amended and to encourage the States parties to report contraventions.

98. The greatest difficulty for the developing countries is to detect the true nature of products entering their territory. To effectively counter fraudulent manoeuvres, it is necessary to strengthen these countries' domestic capabilities by, for example, giving financial assistance, transferring appropriate technology, providing analytical laboratories, helping to set up domestic databases, establishing regional and international centres for the exchange of data and information, and providing substantial assistance in education for the wider public and training for professionals in health, environment, business, customs, the police, antifraud services and the judicial system.

99. Wastes tend to be sent to regions where environmental legislation is rudimentary, non-existent or poorly enforced. It is important, therefore, for Governments to promulgate specific domestic legislation in order to avert this pernicious practice, and to take measures, including administrative, civil and penal sanctions to deter individuals, companies and transnational corporations involved in illicit trafficking.

100. Transnational corporations should at least be obliged to respect the laws of the host country and, when necessary, be held accountable for their actions and practices under the law of the country of origin, where stricter environmental standards are applied. Transnational corporations' countries of origin should assist countries that are the victims of criminal practices relating to the movement of toxic wastes in prosecuting and punishing the perpetrators of such offences, inter alia by criminal penalties.

101. Under the Basel Convention and the Bamako Convention, illicit trafficking in toxic wastes and dangerous products is a crime. States should take appropriate steps to classify offences relating to illicit movement of such wastes and products as criminal offences under their own domestic law. Following the example of the draft convention for the protection of the environment through criminal law, prepared by the Council of Europe in 1995, States should consider recognizing the criminal responsibility of legal persons and thus taking steps to impose penal sanctions on companies in cases where their agents, one of their agents, or other representatives have committed an offence connected with illicit trafficking in wastes on their behalf.

102. Framework domestic legislation and regional arrangements could be suggested to Governments that request them by the bilateral and multilateral cooperation agencies, UNEP, the Office of the High Commissioner for Human Rights (Advisory Services, Technical Assistance and Information Branch), the United Nations Crime Prevention and Criminal Justice Programme and the secretariats of the Basel Convention and the Bamako Convention.

103. The Special Rapporteur recommends that independent national commissions of inquiry with judicial or quasijudicial powers should be instituted in cases of alleged illicit movement or attempted dumping of toxic wastes or dangerous products in order to shed light on the circumstances surrounding the events, to expose any fraud or bribery, to prosecute the alleged perpetrators, to assess the impact on the environment and on the rights of the persons or communities affected, to guarantee effective means of redress so that victims can obtain adequate compensation or reparation, and to propose remedies to rectify the situation and to prevent the recurrence of illicit practices.

104. The role of education is of crucial importance. Raising the level of environmental understanding is a way of developing the means to conserve the environment while creating the conditions for victims to exercise their rights and defend themselves against the adverse effects of the deterioration of their living environment and their working and health conditions. Education also brings about a better understanding of the environmental costs of harmful practices and in this way makes it possible to take preventive and

remedial action. While it is important to know that a child is sick, it is even more important to know why and what ails it in order to apply suitable remedies and avoid a relapse.

105. It is important to strengthen the environmental defence organizations, local associations and nongovernmental organizations. Experience shows that the nongovernmental organizations play an indispensable role in alerting public opinion and giving the necessary impulse to government reaction in cases of illicit movement and dumping of toxic wastes in a country. In some cases, such awareness has given rise to preventive measures making it possible to prevent wastes from being despatched to and/or stored in the country. In others, such action has made it possible to help victims, if not to fully exercise their rights, at least to make themselves heard.

106. Some Governments have granted associations the right to act on victims' behalf, including the right of defence and the power to bring actions, allowing the effective exercise of administrative and judicial redress. This trend should be encouraged and more States should adopt domestic measures to strengthen the judicial remedies exercised by such associations on victims' behalf, if necessary through the courts of the country of origin of the transnational corporation concerned.

107. The Special Rapporteur draws attention to her supplementary recommendations contained in addendum E/CN.4/1998/10/Add.2 to the present report, dealing with her visit to Africa.

Year

1998

Symbol

E/CN.4/1998/10/Add.1

**Summary of general observations and information received from governments and other sources  
(E/CN.4/1998/10/Add.1)**

---

## Thematic focus

### SR's activities and observations (E/CN.4/1997/19)

#### Summary

Activities of the Special Rapporteur, Summary of information submitted to the Special Rapporteur, review of cases and incidents submitted to the Special Rapporteur

#### Recommendations

74. In her first report to the Commission, the Special Rapporteur carefully noted the main trends in the illicit movement and dumping of toxic products and wastes, and clarified their characteristics as well as their disastrous effects on the enjoyment of human rights, particularly the rights to life and health. The Special Rapporteur also reviewed the legal framework of her mandate, the historical background to the problem, the factors contributing to the development of the phenomenon and the special difficulties encountered by the African and other developing countries. Consequently, the present report focuses primarily on the preliminary results of the analysis of the information transmitted to her concerning particular cases affecting individuals, groups or countries.

75. In order to evaluate the data brought to the attention of the Commission in the present report, the conclusions and observations contained in the first report should be borne in mind.

76. The illicit traffic in toxic and dangerous products and wastes can assume various forms, the principal characteristic being the ability of the persons engaged therein to adapt to the changing international situation. For example, from 1986 to 1988, more than 3.6 million tonnes of waste were apparently dispatched from the OECD countries to other countries purely and simply in order to be dumped with a view to their disposal or permanent storage.

77. In recent years, however, there has been a notable increase in the movement of waste from the developed countries to the developing countries in the form of recycling or recovery operations. According to some sources, 95 per cent of the dangerous wastes forming the subject of transboundary movements between OECD and other countries are intended for recovery operations. In addition to the dangerous recycling operations, such as the installation of incineration and lead recycling plants or the export of highly pollutant industries and technologies, numerous transboundary movements of dangerous wastes for recycling purposes are apparently of a fictitious nature.

78. In the face of international pressure, the waste traffickers resort to fraudulent manoeuvres and even bribery. Enterprises use buffer companies and dangerous wastes are exported, in violation of the legislation of the exporting and importing countries, in the form of material intended for recycling or products forming part of development projects. Humanitarian assistance has also apparently been used as a cover in at least one evident case of attempted export of dangerous products from a wealthy to a poor country.

79. In this regard, at their third meeting in 1995, the States parties to the Basel Convention took a wise decision to amend the Convention in such a way as to prohibit the export of hazardous wastes, even for recycling purposes, from OECD member countries to non-member countries. The ban on recycling is due to enter into force at the end of 1997.

80. The States parties to the Basel Convention unanimously recognized that there was a high risk that transboundary movements of hazardous wastes, especially to developing countries, might not constitute an environmentally sound management of those wastes. In that regard, the amendment that was adopted by consensus should make it possible to rectify some shortcomings and ambiguities through which, in the past, exports of wastes deemed harmful by developing countries, some of which had refrained from acceding to the Convention, were considered as legal. Since that time, there has been a revival of interest in the Convention. By 11 December 1996, 106 States, of which 17 were in the African region, 30 in Asia and the Pacific and 22 in Latin America and the Caribbean, had become parties to the Convention (as compared with 73 in 1994, of which only 9 were African countries).

81. The ban on the export of hazardous products, including those intended for recycling, which has now been imposed by the Basel Convention would remain a dead letter if it were not accompanied by practical measures for the detection of illicit practices. This can be achieved only by strengthening the capacities of the developing countries.

82. Various factors of a legal, economic, social and political nature are contributing to the illicit traffic, transfer and dumping of toxic and dangerous wastes and products in African and other developing countries (see the preliminary report of the Special Rapporteur, E/CN.4/1996/17, paras. 103115,149 and 150).

83. In this regard, the promulgation of strict legislation to control transboundary movements of dangerous wastes should be continued and, in particular, encouraged in the developing countries in order to reduce the discrepancies between the national legal norms applied in the developed and the developing countries. International cooperation remains crucial.

84. The developing countries should be provided with legal aid and assistance for the purpose of training their magistrates and agents concerned with a view to the formulation of national legislation that would make it possible to effectively combat the illicit traffic and strengthen national capacities to detect, prevent and punish fraudulent practices.

85. States should develop their penal legislation in this field and introduce administrative, civil and penal sanctions in order to prosecute and punish this illicit traffic. Regional initiatives, such as that of the Council of Europe which is formulating a convention for the protection of the environment through criminal law, should be encouraged. States should develop legislative provisions concerning the civil and criminal liability of individuals and bodies corporate.

86. In the case of transboundary movements of toxic wastes which have proved harmful to residents of a State other than the exporting country, the victims should have access to the administrative and judicial procedures of the exporting country. Nonresident victims should be able to avail themselves of the same means of redress and should enjoy the same treatment as residents. This is all the more necessary since the movement of toxic wastes often assumes a transnational character. Failing such redress, the entities involved in illicit transboundary traffic would be able to contravene the regulations of their country of origin with impunity and benefit from local deregulation.

87. National and international regulations would be ineffective in the absence of efficient control and implementation mechanisms.

88. For its part, the Basel Convention made provision for monitoring mechanisms, including a system for the transmission of information by States parties in accordance with article 13. This arrangement, which is largely voluntary, is only partly enforced. The States parties seem hesitant to report incidents and to notify the Secretariat of the Convention of illicit movements of toxic wastes. A working group is studying the

questions relating to the establishment of a mechanism to monitor the application of the Convention and compliance therewith. It is to give an account of its conclusions to the fourth session of the Conference of States Parties. Hopefully, the Convention's monitoring system will be strengthened following that examination.

89. The role of non-governmental organizations and associations, local communities and associations, trade unions, workers and victims should be overt and should be consolidated. Freedom of expression, freedom of association and access to effective means of redress could contribute, in conjunction with the efforts made by governmental authorities, to effectively combating transboundary movements of toxic and dangerous wastes and products which are detrimental to the environment, to development and to the lives and health of the persons who are victims thereof. However, the communications addressed to the Special Rapporteur show that, far from being deemed complementary, that role is, if not thwarted, at least underestimated.

90. Nevertheless, the communications dealt with in this report remain preliminary and the Special Rapporteur cannot draw conclusions therefrom before the governmental replies and comments have been analysed. The Special Rapporteur would appreciate any cooperation received in this regard.

91. As requested in the Commission's resolutions concerning her mandate, and through the communications that she has received, the Special Rapporteur has endeavoured primarily to identify the country of origin of illicit movements and/or the countries to which the corporations involved belong and, at the same time, to list the countries of destination of the toxic wastes and dangerous products. In cases in which the country of origin has not been identified, only the country of destination or export is mentioned. Wherever possible, the number and type of the victims, as well as the violations of human rights to which they were apparently subjected, have also been indicated. In some cases, the information submitted to the Special Rapporteur did not permit such identification.

92. Finally, in most of the communications dealt with, it was possible to determine the name and, as appropriate, the country of origin of the transnational corporation involved. However, objective reasons relating to shortage of time and staff made it impossible, at this stage, to produce a list of the countries and transnational corporations engaged in the illicit dumping of toxic and harmful products and wastes in the developing countries, particularly as the communications that were examined seemed to refer to only a very small proportion of the transboundary flow of toxic wastes and dangerous products. In view of the workload and the research that such a task involves, the Special Rapporteur wishes to point out that such a list could not be produced unless she were provided with adequate human resources.

93. The Special Rapporteur also wishes to reemphasize the importance of in situ visits for the discharge of her mandate. Consequently, she hopes that, as in the case of the Commission's other thematic rapporteurs, the financial resources appropriated to that end will be released in order to enable her to fulfil her mandate.

## Thematic focus

### Preliminary report (E/CN.4/1996/17)

#### Summary

Preliminary report: mandate and working methods of the Special Rapporteur, review of legal framework and international standards, etc.

#### Recommendations

151. The Special Rapporteur has intended in this first report to provide a general overview of the issues relating to the illicit movement and dumping of toxic and dangerous products and wastes. Subsequent reports will deal more specifically with situations, incidents and cases involving the human rights of the victims. They will contain detailed recommendations and proposals on measures to control, reduce and eradicate the phenomena and their adverse consequences on the enjoyment of human rights.

152. As a preliminary recommendation, the Special Rapporteur reiterates the call, contained in the Vienna Declaration and Programme of Action, on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and wastes and to cooperate in the prevention of illicit dumping.

153. The Special Rapporteur wishes to draw the attention of the international community to the following objectives adopted within the framework of Agenda 21 to prevent the illegal transboundary movement of hazardous wastes:

- (a) To reinforce national capacities to detect and halt any illegal attempt to introduce toxic and dangerous products into the territory of any State, in contravention of national legislation and relevant international legal instruments;
- (b) To assist all countries, particularly developing countries, in obtaining all appropriate information concerning illegal traffic in toxic and dangerous products;
- (c) To cooperate in assisting countries that suffer the consequences of the illegal traffic.

154. On matters relating to her mandate, the Special Rapporteur recommends:

- (a) The implementation of the Commission's request to establish in the Centre for Human Rights a focal unit with the specific task of following up on the findings of the Special Rapporteur and other related issues (resolution 1995/81, para. 9);
  - (b) For practical reasons, and bearing in mind the mandate given by the Commission in resolution 1995/81, to choose an appropriate short title such as "Special Rapporteur on human rights and hazardous wastes and products".
-

## List of reports by year

Year	Symbol	Thematic Focus
2014	A/HRC/27/54	Scoping report
2013	A/HRC/24/39	Scoping report
2012	A/HRC/21/48	Extractive industry
2011	A/HRC/18/31	Medical waste
2010	A/HRC/15/22	Review of the mandate
	A/HRC/15/22/Add.1	Communications report
2009	A/HRC/12/26	Shipbreaking
	A/HRC/12/26/Add.1	Communications report
2008	A/HRC/9/22	Basel Convention
	A/HRC/9/22/Add.1	Communications report
	A/HRC/7/21	SR's activities and the right to information and participation
	A/HRC/7/21/Add.1	Communications report
2007	A/HRC/5/5	Impact of armed conflict on exposure to toxic and dangerous products and wastes
2006	E/CN.4/2006/42	Exposure to toxic chemicals in everyday household good and food
	E/CN.4/2006/42/Add.1	Communications report
2005	E/CN.4/2005/45	Preliminary report
	E/CN.4/2005/45/Add.1	Communications report
2004	E/CN.4/2004/46	SR's activities and analysis of trends
	E/CN.4/2004/46/Add.1	Communications report
2003	E/CN.4/2003/56	SR's activities and observations
2002	E/CN.4/2002/61	SR's activities and observations
2001	E/CN.4/2001/55	SR's activities and observations

	E/CN.4/2001/55/Add.1	Communications report
2000	E/CN.4/2000/50	SR's activities and observations
1999	E/CN.4/1999/46	SR's activities and observations
1998	E/CN.4/1998/10	SR's activities and observations
	E/CN.4/1998/10/Add.1	Communications report
1997	E/CN.4/1997/19	SR's activities and observations
1996	E/CN.4/1996/17	Preliminary report