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**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Adverse effects of the illicit movement and dumping of toxic and dangerous  
products and wastes on the enjoyment of human rights**

**Report of the Special Rapporteur, Okechukwu Ibeanu**

**Addendum**

**Summary of communications sent to and replies received  
from Governments and other actors during 2005\*\***

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\* In accordance with General Assembly resolution 53/208B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

\*\* Revised for technical reasons.

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## **Introduction**

1. 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 is mandated by the Commission on Human Rights to receive communications from individuals and groups who allege that their human rights have been violated by illicit movements and dumping of toxic and dangerous products and wastes. In accordance with resolution 2005/15, the Special Rapporteur transmits information received which is considered to contain credible allegations of human rights violations to the Governments concerned - either together with other special procedure mandate holders or independently - inviting comments on the allegation, seeking clarification, and requesting information, where relevant, on steps being taken by the authorities to redress the situation in question.
2. The present addendum contains summaries of communications sent by the Special Rapporteur - some jointly with one or more special procedures of the Commission on Human Rights - to Governments and other actors, responses received from Governments and other actors, as well as updates on previously reported cases (see E/CN.4/2005/45/Add.1 and E/CN.4/2004/46/Add.1). The addendum also contains summaries of information submitted by Governments, United Nations bodies and non-governmental organizations on issues of relevance for the mandate of the Special Rapporteur.

### **I. NEW CASES SUBMITTED TO THE ATTENTION OF THE SPECIAL RAPPORTEUR**

#### **Israel - Case 2006/87**

3. This case referred to alleged incidents of poisoning of Palestinian fields located in the West Bank by Israeli settlers.
4. On 30 May 2005, the Special Rapporteur sent a joint letter with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the right to food and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, regarding the spread of toxic chemicals on fields located near the villages of Tuwani, Umm Faggara and Kharruba in the southern Hebron region.
5. According to analyses carried out by the Centre for Environmental and Occupational Health Sciences at Bir Zeit University and by the Israeli Nature Protection Authority, two types of toxic chemicals were spread in the area: 2-Fluoracetamide, which is banned in several countries including Israel and severely restricted in international trade, and Brodifacoum, an anticoagulant used as rodenticide. Both chemicals endanger human health. Reportedly, on 12 April 2005, one of the toxins was found in a field in the northern West Bank village of Yasouf. It was alleged that the toxic chemicals were found in areas under full control of the Israeli authorities.
6. The Special Rapporteur regrets that at the time of the finalization of the present report, the Government had not transmitted any reply to his communication.

### **Philippines - Case 2006/88**

7. This case refers to severe damage allegedly caused by a multinational mining company to the local communities and the natural environment of the Marinduque island (the Philippines).

8. The Marcopper Mining Corporation - a joint venture of Placer Dome, the sixth largest gold mining company in the world, and the Government of the Philippines - operated a copper mine on the Marinduque island from 1975 to 1996. The waste disposal strategies associated with the mine reportedly included the construction of a dam on the upper section of the Mogpog River. This was designed to hold silt run-off from a waste rock dump at the San Antonio Pit. In December 1993, the dam collapsed, and allegedly released a flood of toxic silt and water in the Mogpog River. Two children are said to have died in this accident. The flooding is also alleged to have destroyed homes, drowned livestock and contaminated farmland. Three years later a mine drainage tunnel burst, releasing 3 million tons of waste into the river.

9. The dam that collapsed in 1993 was subsequently rebuilt, but has not been maintained. Structures left behind are now reportedly filled with sediment and silt and there seems to be an ongoing liquid discharge into the river system and a continuing risk of dam failure. Allegedly, an environmental clean-up has not been completed, nor have affected communities been adequately compensated.

10. On 29 June 2005, the Special Rapporteur addressed a letter to the Government of the Philippines, requesting information concerning these allegations. Regrettably, no reply was received in time for inclusion in the Special Rapporteur's report.

### **United Nations Interim Administration Mission in Kosovo - Case 2006/89**

11. This case concerns the conditions of a group of internally displaced persons (IDPs) in camps located on highly toxic land in northern Kosovo.

12. On 13 October 2005, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the right to health and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, regarding the relocation of Roma, Ashkali and Egyptian IDPs affected by severe lead contamination in camps located near Mitrovica, northern Kosovo. According to information received, IDPs continue to live in camps that were built on highly toxic land. Reportedly, the camps were built as an ad hoc, temporary response (expected to last 45-90 days) to the flow of refugees in 1999. It was alleged that these individuals have been, and continue to be, exposed to serious lead poisoning and other environmental health problems. Concern was expressed that IDPs and their children face serious health problems due to high levels of lead contamination in the soil. Concern was also expressed that the search for new campsites has not been exhaustive or speedy.

13. By a letter dated 21 October 2005, the United Nations Interim Administration Mission in Kosovo (UNMIK) explained that there are ongoing measures to address the health issues. These measures are coordinated by the Ministry of Health through the Health Task Force, and include medical teams that are working full-time in the camps to provide regular and consistent health care. UNMIK confirmed that consensus had been reached among health professionals on how to

treat the affected children, and that the public health situation had improved after repairs and renovation to the water and sewage infrastructure had been carried out. Furthermore, UNMIK emphasized that although some funding had been secured and a communication plan involving consultation had been developed to inform affected communities about the emergency relocation and to solicit their cooperation, funding and consultation remained a challenge and were critical to the eventual success of the relocation.

14. At the time this report was finalized, a temporary relocation camp in northern Mitrovica/Mitrovicë was about to be opened for temporary relocation of the Roma, Ashkali and Egyptian communities currently living in the highly lead-poisoned camps of northern Kosovo.<sup>1</sup> Camp Osterode, recently vacated by the French Kosovo Force (led by the North Atlantic Treaty Organization) has been refurbished for lead-safer environment with contributions from several international donors. The Camp offers access to health and hygiene infrastructure, social support, children's programmes, as well as employment and training opportunities for IDPs who can be temporarily housed there until the ongoing reconstruction of their permanent homes is completed. A regular cleaning regime has been set in place, and the Camp management team, in collaboration with the IDP community, will implement a comprehensive risk management strategy to reduce levels of lead exposure in accordance with World Health Organization recommendations.

15. The Special Rapporteur wishes to thank UNMIK and donor Governments for their efforts aimed at improving the health situation of the Roma communities living in the contaminated camps. He welcomes the forthcoming relocation of the Roma, Ashkali and Egyptian communities to a lead-safer environment, and calls for the adoption of prompt and effective medical treatment for lead toxicity for the affected Roma communities. The Special Rapporteur will continue to monitor the situation of the Roma communities closely, especially with regard to the situation of children and pregnant women exposed to critical levels of lead poisoning. The Special Rapporteur looks forward to the reconstruction of the permanent homes in the Mitrovica/Mitrovicë Roma Mahala, and the elaboration of durable solutions for those IDPs who do not originate from the Mahala.

## **II. UPDATES ON CASES CONTAINED IN PREVIOUS REPORTS OF THE SPECIAL RAPPORTEUR**

### **India - Case 2004/79**

16. In October 2005, the Special Rapporteur made another attempt to enter into a dialogue with the Government of India concerning information he continues to receive alleging ongoing adverse human rights effects as a result of the Bhopal disaster. The Special Rapporteur had previously brought to the attention of the Government information alleging that significant amounts of highly toxic chemical stockpiles remained in several of the buildings of the now abandoned Union Carbide (India) Ltd. pesticides factory in Bhopal (the communication by the Special Rapporteur was reflected in E/CN.4/2004/46/Add.1, paragraphs 44-45). Additional information about the issue was received in 2005, as reflected in E/CN.4/2005/45/Add.1, paragraph 3. The Government of India had not replied to any previous communications in relation to the Bhopal case.

17. In his communication to the Government of India in 2005, the Special Rapporteur referred to further allegations related to the Bhopal case that, if confirmed, would imply violation of several human rights and fundamental freedoms, including the right to life; the right to the highest attainable standard of physical and mental health; the right to an adequate standard of living; the freedom from discrimination; freedom of association; freedom of expression; the right of access to information; and the right to an effective remedy for the victims of human rights violations. More specifically, the allegations brought to the attention of the Government included the following:

(a) According to Amnesty International, exposure to the toxins that leaked on the night of 2-3 December 1984 has resulted in chronic, debilitating illness for at least 120,000 people for whom treatment has proved largely ineffective. It is alleged that the extent and the quality of medical research has not been adequate to meet the level necessary to make decisions about action on detoxification, short- and long-term treatment, long-term health consequences and the implementation of a programme to compensate victims. This inadequate research has been further weakened by the lack of information about the nature of the gases released during the leak and their toxicity;

(b) According to the Indian Council for Medical Research studies, 68 to 86 per cent of the population in the severely affected areas belong to a "very depressed socio-economic class". The economic and social consequences of the gas leak were therefore largely borne by those with the least resources. Many survivors complain of reduced earnings because of their inability to work as a result of various health problems or injuries. Women affected by the gas are said to be particularly disadvantaged;

(c) People living in the neighbourhood around Bhopal continue to drink heavily contaminated water from the local pumps in the absence of any other source of water. This means that people who were not exposed to the gas have developed health problems similar to those who had been exposed, probably from drinking contaminated water. It is alleged that the state government has yet to implement a Supreme Court order from May 2004 to supply fresh drinking water through tankers to peoples whose potable water supplies are contaminated by pollutants from the plant;

(d) Police in Bhopal used excessive and unnecessary force against some 300 protesters who on 17 May 2005 were opposing what they considered the failure of the Madhya Pradesh state government to provide clean drinking water to the communities affected by the ongoing contamination of the former Union Carbide plant in Bhopal;

(e) Compensation settlements agreed between the Union Carbide Corporation and the Government of India, endorsed by the Indian Supreme Court in 1989, were allegedly inadequate to cover the claims and provide an effective remedy by the victims. It is also alleged that the sum has not been distributed in full to the victims. In addition, the Government has rejected about 30 per cent of claims for injuries, around 16,000 claims are outstanding, and most of the successful applicants are said to have received minimal amounts of compensation. Twenty years after the disaster, around US\$ 330 million of the US\$ 470 million settlement remained held by the Reserve Bank of India.

18. The Special Rapporteur regrets that, to date, the Government of India has not replied to any of these or previous allegations. The Special Rapporteur is hopeful that requests to the Government to issue an invitation for a country visit, which would provide an opportunity to discuss these allegations, will be met with a positive response.

#### **Mexico - Case 2004/76**

19. The Special Rapporteur referred in the addendum to his previous report to the Commission (E/CN.4/2005/45/Add.1, paras. 4-8) to a case concerning alleged health problems caused by the use of pesticides to the communities and the environment of the Yaqui nation, Mexico.

20. On 7 January 2005, the Government of Mexico transmitted additional information provided by the Ministry of Agriculture, Livestock-rearing, Rural Development, Fisheries and Food (SAGARPA) and the Ministry of Health on existing national policies and programmes concerning the use of pesticides in the Yaqui area.

21. The Government reported that three cases of pesticide poisoning were reported in 2003 in the Yaqui valley, and five cases in 2004. According to reports issued by the Directorate-General for Health Regulation and Promotion, no complaints concerning illnesses deriving from pesticides or other toxins in the Yaqui valley have been filed with the local health authorities. Consequently, no studies or comparative analyses on the incidence of pesticide-related diseases has been carried out in the Yaqui Valley.

22. The Government of Mexico informed that the Federal Commission for Protection against Health Risks (COFEPRIS) is the authority responsible for the issuance of regulations concerning the labelling of pesticides. Pesticides must be registered in a health register. Pesticides labels must contain information concerning poisoning risks relating to the use of the pesticide concerned, steps to be taken in the event of poisoning, warning symbols as well as warning notices concerning the risks posed by the ingestion and inhalation of the pesticide and contact of the pesticide with the skin or eyes.

23. The Government of Mexico also reported that SAGARPA, in coordination with the Ministries of Health and the Environment and Natural Resources, has established the National Programme against Risks from Pesticide Use (PNCRUP). The main purpose of PNCRUP is to protect the health of agricultural workers who are directly or indirectly exposed to pesticides and preserve the environment through the organization of training on various pesticide-related subjects and dissemination of information on pesticides. In 2002, a training-of-trainers course was held in Ciudad Obregón, Sonora State, with a view to facilitating dissemination of information among all persons directly and indirectly involved in agricultural activities on the risks associated with the handling of farm pesticides. In 2003, 179 training events were organized in the region of Yaqui, at which a total of 2,389 persons were trained. The Government informed that an inventory of the training activities organized during 2004 was being drawn up.

24. On 14 October 2005, the Special Rapporteur sent a joint letter of allegation with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, drawing the attention of the Government to additional information received by the

Special Rapporteur, concerning the use of pesticides in the Yaqui nation. According to the information received, the community was allegedly not aware of any training-of-trainers workshop on pesticides organized in the State of Sonora, nor was the community informed that any such event would take place in the Yaqui Valley area. Furthermore, it was alleged that regulations concerning labelling of pesticides and precautions to be taken in handling them are not complied with, nor has any training on pesticide management been organized to provide information to Yaqui agricultural workers or the surrounding Yaqui community. Finally, it was submitted that the relevant Mexican environmental laws on pesticide use had not been observed.

25. The Special Rapporteur is grateful to the Government of Mexico for the information provided in response to earlier communications, and looks forward to receiving the Government's reply to the letter of 14 October 2005.

### **United States of America/Colombia - Case 2003/70**

26. The previous Special Rapporteur referred in the addendum to her final report to the Commission (E/CN.4/2004/46/Add.1, paras. 83-87) to the "Plan Colombia coca eradication programme" carried out by the Governments of the United States and Colombia in the departments of Cauca and Narino in south-eastern Colombia. This programme - which is part of the US\$ 2.5 billion "Plan Colombia" war on drugs - entails widespread aerial spraying of a broad-spectrum herbicide, which is a combination of glyphosate and other efficacy-enhancing adjuvants including Cosmo-Flux ® 411 F and polyethoxylated tallowamine, on coca and poppy crops. The fumigation programme is said to have a significant adverse effect on the Colombian ecosystem and the rural and indigenous communities living in the affected areas. According to information received, rural farmers and indigenous peoples in Colombia have filed more than 6,000 complaints, alleging that the fumigation programme has caused harm to human health and livestock, crop damage and contamination of surface waters.

27. In order to minimize the harm caused by the spraying, the United States Congress decided that the Secretary of State should certify each year that the herbicide mixture used for fumigation of illicit crops in Colombia be used in accordance with Environmental Protection Agency (EPA) label requirements for comparable use in the United States and in accordance with Colombian laws, and would not pose unreasonable risks or adverse effects to humans or the environment. The Secretary of State should furthermore certify that complaints of harm to health or licit crops caused by such fumigation be evaluated and fair compensation be paid for meritorious claims, and that programmes be implemented, in consultation with local communities, to provide alternative sources of income for small-acreage growers whose illicit crops are targeted for fumigation.<sup>2</sup>

28. According to information received, the Senate Appropriations Committee decided in June 2005 that further studies regarding the environmental impacts of the Plan Colombia coca eradication programme were needed, and requested the Secretary of State in consultation with EPA and appropriate Colombian authorities, to submit a report, not later than 180 days after enactment of the (Foreign Operations Appropriations) Act, assessing the potential impact of the coca eradication programme on the affected ecosystems.<sup>3</sup>



**United States of America/United Kingdom of Great Britain and Northern Ireland - Case 2004/74**

29. The previous Special Rapporteur referred in the addendum to her final report to the Commission (E/CN.4/2004/46/Add.1, paras. 21-31) to a decision by the United States Maritime Administration (MARAD) to tow four obsolete naval vessels across the Atlantic Ocean from the James River Reserve Fleet site in Virginia to the Able UK company in Teesside, England, for scrapping.

30. According to information received, MARAD decided that it will not export any vessel to the United Kingdom unless the Government of the United Kingdom licenses the scrapyard and consents to the hazardous waste imports. MARAD also decided to carry out an environmental impact assessment to examine some of the environmental and health hazards posed by its export proposal, and applied to EPA for a public ruling to determine whether its proposed export of obsolete naval vessels to the United Kingdom would be prohibited by the long-standing Federal prohibition on PCB exports.

**III. SUMMARY OF GENERAL OBSERVATIONS AND INFORMATION RECEIVED FROM GOVERNMENTS AND OTHER ACTORS**

**A. Governments**

**Georgia**

31. The Government of Georgia reported that in May 1999 Georgia acceded to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The illegal handling, transit and import of nuclear materials, devices or radioactive wastes represent criminal offences under the Criminal Code of Georgia.

32. The Government of Georgia expressed its readiness to cooperate with the Special Rapporteur on issues falling within the scope of his mandate. Georgia also informed that the Ministry of the Environment and Natural Resources stands ready to provide relevant information to the Special Rapporteur.

**Togo**

33. The Government of Togo reported that the right to a healthy environment is included among the fundamental rights and freedoms that the State undertakes to protect and promote in accordance with the revised Constitution of 31 December 2002. Togo is a party to the Bamako Convention on the ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Togo is also party to other environmental treaties that deal with toxic and hazardous products and wastes, including the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants, both of which Togo ratified on 2 July 2004.

34. The Environment Code (Law No. 14/88 of 3 November 1988) contains several provisions relating to the illicit transboundary movement and dumping of wastes and products. The Code introduces a stringent regulatory regime for the import of hazardous products and wastes (art. 40). The Code expressly prohibits the import of toxic nuclear wastes or radioactive products (art. 42). The introduction in the country of other radioactive materials or toxic products or substances is subject to the previous authorization of the Ministry for the Environment (art. 53).

## **B. Non-governmental organizations**

### **Earthjustice**

35. Earthjustice reported that in April 2005 a Lima civil court upheld the requests made by Peruvian Society for Environmental Law (SPDA) in collaboration with Earthjustice International Programme in a case concerning air pollution caused by a United States-owned company in the town of La Oroya, situated on the Andes mountains in Peru.<sup>4</sup> The court ruled that Government authorities had failed to comply with existing legislation on public health and environmental and air quality standards, and requested the Peruvian Ministry of Health and the General Directorate for Environmental Health to take immediate steps to, inter alia, improve air quality in La Oroya and to design and implement a public health strategy to protect vulnerable groups such as pregnant women, infants, and the elderly.

### **Greenpeace/FIDH**

36. Greenpeace and the International Federation for Human Rights (FIDH) brought to the attention of the Special Rapporteur a joint report recently published in cooperation with Young Power in Social Action (YPSA) entitled *End of life ships - the human cost of breaking ships*.<sup>5</sup> The report aims to shed light on the extremely poor working and environmental conditions that still prevail at ship-breaking yards all over the world. At ship-breaking yards, ships are scrapped primarily for their steel content. This industry provides employment to thousands of workers in Asia and allows the recycling of many materials used in the ship's construction. However, it also involves serious health risks for those working in ship-breaking yards, since almost all of the vessels dismantled contain hazardous substances such as asbestos, oil sludge, paints containing lead, other heavy metals like cadmium and arsenic, poisonous biocides as well as polychlorinated biphenyls and even radioactive substances. It is alleged that every year many workers become disabled or die because of accidents related to ship-scraping activities, and many others also die in the long run as a result of illnesses related to the toxic fumes and materials to which they are exposed the whole day.

## **Notes**

<sup>1</sup> United Nations Mission in Kosovo press release, "*Roma leaders called on for emergency relocation of IDPs to Camp Osterode*", UNMIK/PR/1474, 5 January 2006.

<sup>2</sup> Certification related to Aerial Eradication in Colombia under the Andean Counterdrug Initiative Section of the Foreign Operations, Export Financing, and Related Programmes Appropriations Act, Division D, Consolidated Appropriations Act, 2005, (H.R. 4818).

<sup>3</sup> Report of the United States Senate Committee on Appropriations to the United States Senate, 30 June 2005.

<sup>4</sup> Decision No. 14 of 1 April 2005.

<sup>5</sup> Greenpeace and FIDH, *End of life ships - the human cost of breaking ships*, 12 December 2005.

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