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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report 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, Okechukwu Ibeanu***

* The present report was submitted later in order to include additional information.

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.

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I. INTRODUCTION

1. The present report is submitted in accordance with General Assembly resolution 60/251 and Human Rights Council resolution 5/1.
2. The Commission on Human Rights adopted its first resolution on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights in 1995. In its resolution 1995/81, the Commission affirmed that the illicit traffic and the dumping of toxic and dangerous products and wastes constituted a serious threat to the rights to life and health, and it established the mandate of the Special Rapporteur to analyse the adverse effects on human rights of such phenomena. The Commission adopted yearly resolutions on this issue. By its resolution 2004/17, it extended the mandate of the Special Rapporteur for an additional three years.
3. In his first report as mandate-holder (E/CN.4/2005/45), the Special Rapporteur, Okechukwu Ibeanu, informed the Commission that he intended to adopt a thematic focus in his forthcoming reports. He identified criteria such as the extent and gravity of actual or potential human rights violations arising from a particular issue, and whether an analysis from the perspective of victims of human rights violations could add impetus to international efforts to address a particular issue, to be applied when choosing the thematic issues on which to focus his reports.
4. Previous reports submitted to the Commission pursuant to the Special Rapporteur's mandate have addressed a variety of issues, including the adverse effects on human rights resulting from exposure to hazardous chemicals, particularly pesticides. Other reports have included information about the elaborate, multilateral legal framework adopted or being developed in the sphere of international environmental law with a view to preventing adverse effects on humans and the environment from exposure to some of the most dangerous chemicals. In his previous report to the Council, the Special Rapporteur chose to focus 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.
5. In the present report, the Special Rapporteur has chosen to focus on the right to information and participation. Access to and communication of information about toxic and dangerous products and wastes and their effects on the environment are essential to guarantee certain other rights, such as the rights to life, to health and to adequate food.
6. The first addendum to the present report contains a summary of communications sent to and replies received from Governments and other stakeholders in 2006 and 2007.

II. UPDATE ON THE ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Country missions

7. The Special Rapporteur carried out a country visit to Ukraine from 22 to 30 January 2007 (A/HRC/7/21/Add.2). During his mission, he visited Kyiv, Lviv and the Zakarpatya regions. The Special Rapporteur would like to thank the Government of Ukraine for its invitation, which showed its commitment to human rights and environmental matters. He would like to thank, in particular, the Ministry of Environmental Protection for the openness and transparency demonstrated during the visit, which gave him the opportunity to meet all relevant public authorities.

8. The Special Rapporteur would like to recall, as in his previous reports, the importance of country visits. He believes that country visits provide an invaluable opportunity to obtain information from different interlocutors at the national level and to engage in an in-depth study of different phenomena related to the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on human rights. Country visits also provide the opportunity to share experiences of best practices in combating the illicit movement and dumping of toxic wastes and to understand this multidimensional problem from a national, regional and international perspective.

9. In this context, the Special Rapporteur would like to call on Governments to respond positively to his requests for in situ visits. In 2006 and 2007, the Special Rapporteur sent several requests for official invitations mainly to the African and Asian regions, since both regions had not yet been visited by the current mandate-holder.

10. The Special Rapporteur thanks a number of Governments for responding positively to his requests. The Special Rapporteur is looking forward to his visits to the Côte d'Ivoire and India in 2008. He would like to thank the Government of the United Republic of Tanzania, where he recently concluded a country visit, for their invitation.

11. The Special Rapporteur has submitted to the Council a preliminary note on his recent mission to the United Republic of Tanzania.

B. Statements and interventions

12. The Special Rapporteur conveyed a statement to the expert group meeting on indigenous peoples and the protection of the environment held from 27 to 29 August 2007 in Khabarovsk, Russian Federation. The Special Rapporteur would like to thank the government of Khabarovsk, the United Permanent Forum of Indigenous Peoples and the Association of Indigenous Peoples of the Russian North, Siberia and the Far East for the opportunity to contribute to that initiative. In his statement, the Special Rapporteur stressed the importance of receiving information from a variety of interlocutors, including indigenous groups and peoples. He noted his concern about allegations he had received concerning health problems affecting areas populated by indigenous communities caused by the use of pesticides or other toxins. He explained that such incidents had resulted in significant adverse effects on the ecosystem, the rural and indigenous communities living in the affected areas complaining of deterioration in the health of humans and livestock, crop damage and contamination of surface waters.

13. He called on the national authorities and the international community to recognize the specific challenges and difficulties confronting indigenous people as a result of the illicit movement and dumping of toxic and dangerous products and wastes, and urged action at the local, national, regional and international levels to address those problems and to involve indigenous peoples and other groups in decision-making processes related to issues such as the extraction of natural resources and development generally.

III. ADVERSE EFFECTS ON HUMAN RIGHTS OF THE ILLICIT MOVEMENT AND DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES

14. In order to facilitate the review of the mandate by the Human Rights Council, the Special Rapporteur wishes to recall some basic information about the illicit movement and dumping of toxic and dangerous products and wastes, and highlight their impact on fundamental human rights.

15. In recent decades, the movement of hazardous wastes and products across the globe, and particularly from developed to developing countries, has continued to flourish, often without appropriate safeguards, despite international standards and norms which prohibit dumping or illicit movements. Disparities in domestic legal standards and the high costs of disposing of toxic waste effectively and safely have resulted in the regular movement of wastes across borders and frontiers, often illegally.

16. In 1980, 80 per cent of the trade in hazardous wastes was between developed countries.¹ In 1988, between 2 and 2.5 million tons of waste were transported among the European members of the Organization for Economic Cooperation and Development (OECD). In 1987 and 1988, the existence of a number of contracts between Western companies and African countries was made public. The information on the contracts showed that transnational corporations based in developed countries were selling toxic wastes and hazardous products to States in the South, in particular in Africa, where small payments could secure ample land on which to dump such wastes.² Transfers of waste were justified initially on the grounds that African countries had adequate land for safe disposal of such wastes and that the income generated could serve development needs. However, the limited technical capacity of such countries to dispose of it was ignored, as were the long-term consequences of burying and incinerating waste, which were the common disposal methods. Increasing global attention to this type of waste transfers led to

¹ See A.E. Fry, "International Transport of Hazardous Waste" in *Environmental Science and Technology*, 1989, p. 509; see also the final report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1994/9 and Corr. 1).

² See fact file compiled by the Centre Europe-Tiers Monde, "Nos déchets toxiques. L'Afrique a faim: v'la nos poubelles", 1989. See also Pambou-Tchivounda, "L'interdiction de déverser des déchets toxiques dans le tiers monde; le cas de l'Afrique", *Annuaire français de droits international*, 1988, p. 709.

greater regulation and the emergence of global norms. Unfortunately, regulation then led many companies to increasingly resort to illegal or illicit movement and dumping of wastes and dangerous products, with far-reaching consequences for human rights.

17. The Special Rapporteur notes that, apart from direct transfers of waste and dangerous products, there appears to have been an increase in indirect transfers through the relocation of polluting industries, industrial activities and/or technologies which generate hazardous wastes from OECD to non-OECD countries. High environmental and health standards coupled with strong opposition from local authorities or community and labour organizations in OECD countries have also fuelled such relocation.

18. Although the Special Rapporteur acknowledges that developing countries trade in hazardous products and toxic wastes owing to the poverty and the dire developmental situation of the countries concerned, the overall risks to life, health and the environment always outweigh short-term monetary benefits. The disposal of hazardous products and wastes requires technical knowledge for safe handling, technology which is often not available in destination countries. Advanced technology is needed for the safe disposal of waste, such as that generated by industrial chemicals, pesticides, poison, drugs, “e-wastes” (such as computers, refrigerators and cell phones) and for ship-breaking. Ironically, developed countries that have such technology are increasingly less likely to dispose of such wastes, but instead send them to developing countries that lack the necessary know-how.

19. Given the current scenario, the human rights of local populations in countries that are net receivers of toxic products and wastes are threatened by the dumping of hazardous wastes for disposal or storage and by the trade in hazardous waste for recycling or further use. Such risks are also involved in the selling of wastes to poor countries under the waste-to-energy plants that are often promoted to produce free energy.³ Other forms of exposure for the local population are generated by lead recycling factories, the export of plastic residues, the export of ships for recycling operations, and the export of waste-intensive industries such as asbestos-related industries, cyanide heap-leaching and chlorine-related facilities in the chlor-alkali industry and tanneries.

20. The Special Rapporteur notes that, because of structural conditions in many developing countries, women and the young are particularly at risk from transfers of toxic and dangerous products and wastes. Women, children and the young are often among the poorest and therefore likely to work in polluting industries and scavenge dumps of waste for reusable materials. They are also most likely to have limited access to information on waste products and to health facilities in the event of contamination. The Special Rapporteur calls for greater global attention to the gender and age dimensions of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

³ See the report on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (E/CN.4/2001/55), para. 26.

21. The prevalence of low environmental standards, weak or no regulatory institutions and poor monitoring, poverty and development needs in developing countries continue to serve as pull factors for the dumping of hazardous products and wastes. The Special Rapporteur would also like to highlight that corruption, both in the developing and developed countries, is sadly a factor in the transboundary movement of hazardous wastes and products.

22. In spite of relevant international normative frameworks related to both the environment and human rights, the trade in hazardous wastes and products persists and is on the increase. The Special Rapporteur notes with disappointment that, where regional mechanisms such as the Bamako Convention⁴ exist, the norms and standards they have established are often observed only in the event of breach. Consequently, such regional mechanisms have become ineffective in curbing the illicit transboundary movement of wastes.

23. The impact of the illicit movement and dumping of toxic and dangerous products and wastes can be particularly severe on the enjoyment of the rights to life, health, food and work. The right to a remedy should also be seen as central to the relationship between toxic wastes and human rights.

A. Right to life

24. The right to life, which is enshrined in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights, is seen as a right which is “non-derogable” and the most important, since without it, all other rights would be devoid of meaning.⁵ The Human Rights Committee has said that it is a right that should not be interpreted narrowly and that States should take positive measures to guarantee, including measures to reduce infant mortality and to increase life expectancy.⁶

25. The right to life involves, at the very least, a prohibition on the State not to take life intentionally or negligently. The right to life is one of the first rights to be affected by the production, use, trading and temporary or final disposal, including dumping, of toxic wastes and products. In extreme cases, where environmental disasters such as Chernobyl and Bhopal occur, this right can be invoked by individuals to obtain compensation from the State insofar as it is responsible for the disaster.

26. According to information gathered by the mandate over the years, many of the violations in various parts of the world involve violations of that right in the form of immediate death,

⁴ See www.ban.org/Library/bamako_treaty.html.

⁵ M. Nowak, *United Nations Covenant on Civil and Political Rights - CCPR Commentary*, second revised edition (Kehl am Rhein, N.P. Engel, 2005), p. 121.

⁶ See Human Rights Committee, general comment No. 6 (article 6: Right to life), paras. 1 and 5, reprinted in document HRI/GEN/1/Rev.4 (Part II), paras. 1 and 5.

life-threatening diseases such as cancer, infant mortality, sterility and other major handicaps and diseases. One such example of such a violation of this right is the Chernobyl incident, which has claimed many victims and displaced populations.

B. Right to the highest attainable standard of health

27. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living in dignity. The Committee on Economic, Social and Cultural Rights noted that the right to health was closely related to and dependent upon the realization of other human rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition of torture, privacy, access to information and the freedoms of association, assembly and movement.⁷ Furthermore, the Committee recognized that the highest attainable standard of physical and mental health was not confined to the right to health care, but embraced a wide range of socio-economic factors that promoted conditions in which people could lead a healthy life and extended to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment.⁸

C. Right to adequate food

28. The right to adequate food is part of the broader right to an adequate standard of living, which also includes housing and clothing, and the distinct fundamental right to be free from hunger, which aims at preventing people from starving and is closely linked to the right to life. As is the case for other human rights, this right is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other universal guarantees enshrined in the International Bill of Human Rights. The Committee on Economic, Social and Cultural Rights considers that the core content of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.⁹

D. Right to work

29. The right to work is enshrined in article 23 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Economic, Social and Cultural Rights. Every individual has the right to be able to work, allowing the person to live in dignity. According to the Committee on Economic, Social and Cultural Rights, the right to work is a fundamental right

⁷ Committee on Economic, Social and Cultural Rights, general comment No. 14 (The right to the highest attainable standard of health) in *Official Records of the Economic and Social Council, 2001, Supplement No. 2 (E/2001/22)*, para. 3.

⁸ *Ibid.*, para. 4.

⁹ Committee on Economic, Social and Cultural Rights, general comment No. 12 (The right to adequate food), *ibid.*, 2000, *Supplement No. 2 (E/2000/22)*, para. 8.

which is essential for realizing other human rights and forms an inseparable and inherent part of human dignity.¹⁰ The right to work plays an important role in the survival of the individual as well as that of his or her family.

E. Right to remedy

30. Where there is a right, there is a remedy.¹¹ This principle is expressed in article 2, paragraph 3 (a), of the International Covenant on Civil and Political Rights, which guarantees victims of human rights violations an effective remedy. There are two aspects to the right to a remedy: access to justice and substantive redress. They require the existence of independent and impartial bodies with the capacity to afford redress after a hearing which respects due process guarantees. More and more national administrative and judicial bodies throughout the world are giving effect to the right to a remedy in cases of alleged violations of constitutional rights to a sound environment, related in some cases to the right to life or to health. While the International Covenant on Economic, Social and Cultural Rights has no provision comparable to article 2 (3) of the International Covenant on Civil and Political Rights, it has been argued that the rights it recognizes also require that remedies be available for victims of violations. The Committee on Economic, Social and Cultural Rights has noted, for example, that any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both the national and international levels and should be entitled to adequate reparation.¹²

IV. RIGHT TO INFORMATION AND PARTICIPATION

31. The Special Rapporteur has decided to focus the present report on the importance of the right to information and participation in relation to his mandate. He continues to receive information and communications with regard to the violation of the right to information in environmental matters. Trends show that States, corporations and other private entities generally do not share vital information about the potential effects of pollution and irreversible damage to the environment until an incident has occurred. In such cases and when an incident has occurred, the relevant authorities and/or actors are often reluctant to disclose information of vital importance to the victims and their defence. Such information is either withheld, falsified,

¹⁰ Committee on Economic, Social and Cultural Rights, general comment No. 18 (The right to work), *ibid.*, 2006, *Supplement No. 2* (E/2006/22), para. 1.

¹¹ On the right to remedy, see also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147.

¹² Committee on Economic, Social and Cultural Rights, general comment No. 14, (The right to the highest attainable standard of health) in Official Records of the Economic and Social Council, 2001, *Supplement No. 2* (E/2001/22), para. 59.

provided after a delayed amount of time or given piecemeal in order to confuse or be deemed unusable. Governmental authorities often justify this behaviour on national security grounds, transnational corporations for considerations of trade secrecy.

32. The Special Rapporteur considers that the right to information and participation are both rights in themselves and also essential to the exercise of other rights, such as the right to life, the right to the highest attainable standard to health and the right to adequate food, among others. Lack of information denies people the opportunity to develop their potential to the fullest and realize the full range of their human rights.

33. The Special Rapporteur considers the right to information and participation highly relevant in the context of the adverse effects of the illicit movement and dumping of toxic and dangerous products on the environment and on the enjoyment of basic human rights. Public access to information when requested and the obligation of public authorities to disclose and inform, irrespective of requests, are imperative for the prevention of environmental human rights problems and the protection of the environment.

34. The Special Rapporteur notes that there are many cases that have been brought to his attention of disputes between citizens and Governments in developing countries and between developing countries and transnational corporations over the movement of toxic and dangerous products and wastes. Disputes often arise owing to a lack of information or the failure of the State or of corporations to ensure full disclosure of the potential dangers of activities carried out by those corporations to individuals, communities and the environment. He notes that, in many cases, even Governments claim not to have access to the necessary information on the potential dangers to human beings and the environment.

35. The Special Rapporteur would like to stress that the responsibility of States is particularly important when dealing with the issue of toxic waste, including the disposal of nuclear wastes, and the production or use of pesticides, chemical products and toxins because of the dangers to the health and well-being of human beings that they pose.

36. National security, “trade secrets”, the principle of confidentiality of matters *sub iudice*, or other grounds invoked against reasonable requests for information on toxic and dangerous products and wastes must be applied with caution. The Special Rapporteur stresses that Governments may only invoke such grounds insofar as they are in conformity with the relevant derogation or limitation clauses of international human rights instruments. The use of such concepts must be regularly reviewed to ensure that the public’s right to information is not unduly restricted.¹³

37. The Special Rapporteur considers it important that individuals, communities and neighbouring countries have information regarding hazardous materials and conditions at industrial facilities located in their vicinity in order to undertake disaster risk reduction and preparedness wherever there is a danger of large-scale industrial accidents, like those in

¹³ See the final report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1994/9), para. 213.

Chernobyl and Bhopal. Individuals, communities and neighbouring countries must have information regarding the full extent of environmental impact of proposed development projects in their regions in order to participate meaningfully in decisions that could expose them to increased pollution, environmental degradation and other such effects. Individuals, communities and neighbouring countries must have information regarding pollutants and wastes associated with industrial and agricultural processes. The Special Rapporteur considers it a clear duty of the State to disclose such information.

38. In developing countries, the Special Rapporteur notes the frequent violation of the right to information regarding the transboundary movement of wastes and dangerous products. Among other things, the Special Rapporteur notes with great concern that toxic wastes and dangerous products are often not labelled in the local language, which further exposes the population to severe health and environmental risks. In addition, it must be mentioned that hazardous products and wastes in developing nations are frequently dumped in rural and isolated areas, where there is a high prevalence of illiteracy and inadequate information.

39. Widespread political instability in many developing countries means that vital information that is necessary to the health, environment and well-being of the population is often withheld from the public, apparently on the grounds that it is necessary to uphold national security, and prevent civil unrest. In his previous report to the Council (A/HRC/5/5), the Special Rapporteur stated that one of the consequences of armed conflicts was the trafficking of dangerous products and wastes and their illicit dumping. Armed conflicts can also have a negative impact on the right to information and participation, which in turn increases the likelihood that toxic wastes and products will be illicitly moved and dumped.

40. Although the media could play an indispensable role in information dissemination in communities, countries and regions, as well as both the rural and urban areas about the illegal movement of hazardous products and wastes, it is often the case in developing countries that the freedom of the press is severely curtailed or simply does not exist.

41. The rights to information and participation, and their particular importance for both human rights and environment matters, are, however, well reflected in the international legal framework, in both human rights law and environmental law. Some basic elements of that legal framework and the importance of monitoring mechanisms are described below.

A. Legal framework

1. International instruments

42. The right to information is frequently presented as an individual and group right that constitutes an essential feature of democratic processes and of the right to participation in public life. Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression; that right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. Article 21 of the Declaration would be rendered meaningless unless individuals and groups have access to relevant information on which to base the exercise of the vote or otherwise express the will of the people.

43. The right as a legally binding treaty obligation is enshrined in article 19 of the International Covenant on Civil and Political Rights. Article 19 (2) stipulates that everyone should have the right to freedom of expression; that right should include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Article 19 (3) does allow certain restrictions, but they should only be such as are provided by law and are necessary (a) for the respect of the rights and reputations of others; (b) for the protection of national security or of public order, or of public health and morals. Article 25 of the Covenant in turn prescribes that every citizen should have the right and the opportunity to take part in the conduct of public affairs.

44. While there are no explicit references in the core international human rights treaties to the right to information and participation with regard to environmental matters, the Special Rapporteur would like to recall that the Rio Declaration on Environment and Development¹⁴ focused on the right to information, participation and remedies with regard to environmental conditions. Principle 10 of the Rio Declaration stipulates that participation of all concerned citizens should be practised when environmental issues are concerned. At the national level, it calls for each individual to have appropriate access to all appropriate information concerning the environment held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. It further calls upon States to facilitate and encourage public awareness and participation by making information widely available. It further calls upon States to ensure that access to judicial and administrative proceedings, including redress and remedy, is provided.

45. Principle 18 of the Declaration calls upon States to immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. It reminds States that efforts should be made by the international community to help States that are afflicted by such calamities. Principles 20, 21 and 22 call for the wide participation of women, youth, indigenous peoples and other communities in protecting the environment and fostering development.

46. Article 15 (2) of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 10 September 1998¹⁵ requires each State party to ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in annex III to the Convention.

¹⁴ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

¹⁵ Available from www.pic.int.

47. The Stockholm Convention on Persistent Organic Pollutants of 22 May 2001 aims at protecting human health and the environment from persistent organic pollutants. Article 10 (i) provides that each party should, within its capabilities, promote and facilitate provision to the public of all available information on persistent organic pollutants and ensure that the public has access to public information and that the information is kept up to date. The Convention also calls for education and public awareness programmes to be developed, in particular for women, children and the poorly educated (art. 10 (1) (c)). Parties to the Convention are also obligated to make accessible to the public, on a timely and regular basis, the results of their research, development and monitoring activities pertaining to persistent organic pollutants (art. 11 (2) (e)). The Convention stipulates that, although parties that exchange information pursuant to the Convention should protect any confidential information, information on health and safety of humans and the environment should not be regarded as confidential (art. 9 (5)).

48. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal sets out obligations for the exchange of information for both the State concerned and interested parties. In article 4 (2) (f), the Convention clearly requires that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned and that it clearly state the effects of the proposed movement on human health and the environment. In article 4 (2) (h), it encourages cooperation through activities with other parties and/or interested organizations for the dissemination of information on transboundary movements in order to improve environmentally sound management and to work towards the prevention of illegal traffic. Article 13 (1) provides that parties to the Convention should ensure that, should an accident occur during the transboundary movement of wastes and other wastes or their disposal and that is likely to present risks to human health and the environment in other States, those States are immediately informed.¹⁶

49. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus, Denmark, on 25 June 1998,¹⁷ takes a very comprehensive approach to the recognition of the importance of the right to information and public participation. As at 17 September 2007, there were 41 parties to the Convention. Although it was open for signature only to State members of the Economic Commission for Europe and those with consultative status with it (art. 17), article 19 of the Convention opens the door to accession by other States on the condition that they are members of the United Nations and that the accession is approved by the meeting of the parties to the Convention. In the preamble, it states that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations”. In the following paragraph, it states that, in order to be able to assert that right and observe that duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and, in that regard, citizens may need assistance in order to exercise their rights.

¹⁶ The text of the Convention is available from the Basel Convention website, www.basel.int.

¹⁷ The text of the Convention is available from the website of the Economic Commission for Europe, www.unece.org.

50. Articles 4 and 5 of the Convention obligates States parties to collect and publicly disseminate information, and to make such information available to the public in response to requests. Each party to the Convention is to publish a national report on the state of the environment every three to four years. In addition to the national report, the party is obliged to disseminate legislative and policy documents, treaties and other international instruments relating to the environment. Each party must ensure that public authorities, upon request, provide environmental information to a requesting person without the latter having to state an interest. Information should be made public within one month, or, in exceptional cases, in not more than two months (art. 4 (2)). In addition to providing information on request, each State party must be proactive, ensuring that public authorities collect and update environmental information relevant to their functions. This requires States parties to establish mandatory systems to obtain information on proposed and existing activities which could significantly affect the environment. (art. 5 (1)). The Convention does provide for a number of exceptions in article 4 (4) to the duty to inform, in the light of other political, economic and legal considerations, but they are to be interpreted in a restrictive way and take into account the public interest served by disclosure.

51. Public participation is guaranteed by articles 6 to 8 of the Convention. Public participation is required in regard to all decisions on whether to permit or renew permission for industrial, agricultural and construction activities listed in annex I to the Convention, as well as other activities which may have a significant impact on the environment (art. 6 (1) (a)-(b)). The public must be informed in detail about the proposed activity early in the decision-making process and be given time to prepare and participate in the decision-making (art. 6 (2)-(3)). In addition to providing for public participation in decisions on specific projects, the Convention calls for public participation in the preparation of environmental plans, programmes, policies, laws and regulations (arts. 7 and 8).

Regional instruments

(a) Africa

52. Article 9 of the African Charter on Human and Peoples' Rights stipulates that every individual has the right to receive information (art. 9 (1)) and to express and disseminate his opinions within the law (art. 9 (2)).

53. In 2002, the African Commission on Human and Peoples' Rights adopted a declaration of principles, in which it stated that "public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information" (principle IV). Principle IV (2) guarantees the right to information. Although the declaration is not legally binding, the Special Rapporteur notes that it reflects the thoughts of African people and has considerable moral force.

(b) Arab States

54. The Arab Ministerial Conference on Environment and Development adopted in 1991 the Arab Declaration on Environment and Development and Future Perspectives (see A/46/632), in which the League of Arab States stressed the right of individuals and organizations to acquire information about environmental issues and to participate in the formulation and implementation of decisions that could affect their environment.

(c) Asia-Pacific

55. The Ministerial Declaration on Environmentally Sound and Sustainable Development in Asia and the Pacific, of 1990, affirms the right of individuals and non-governmental organizations to be informed of environmental problems relevant to them, to have the necessary access to information, and to participate in the formulation and implementation of decisions likely to affect their environment (A/CONF.151/PC/38, para. 27).

(d) Latin America and Caribbean States

56. Article 13 (1) of the American Convention on Human Rights of 1969 states that “everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice”.

57. Principle 4 of the Inter-American Declaration of Principles on Freedom of Expression, approved by the Inter-American Commission on Human Rights in October 2000, specifically recognizes that “access to information held by the State is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies”.

58. On 10 June 2003, the Organization of American States (OAS) General Assembly adopted a resolution on access to public information: strengthening democracy. In its resolution, OAS considers that access to public information is a requisite for the very functioning of democracy, greater transparency, and good governance. It also reaffirms that everyone has the freedom to seek, receive, have access to and impart information and that access to public information is a requisite for the very exercise of democracy.

(e) Europe

59. In article 10 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Council of Europe states that everyone has the right to freedom of expression, a right that includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

60. Article 11 (1) of the [Charter of Fundamental Rights adopted in 2000 by the European Union](#) explicitly guarantees the right to receive and impart information and ideas without interference by public authorities and regardless of frontiers.

61. For the European Union, the principle of openness was introduced by the Treaty of Maastricht in 1991; the Council and the Commission then adopted a code of conduct on public access to their documents. In 1996, public right of access was enshrined in article 255 of the Treaty, establishing the European Community as amended by the Treaty of Amsterdam. Regulation (EC) No. 1049/2001, which became applicable in December 2001, gave effect to the right of European Union citizens to obtain documents of the European Parliament, Council and

Commission, thus leading to a significant increase in requests for access. Possible amendments to the regulation were under consideration in 2007, also to reflect adoption of a regulation applying the Aarhus Convention to the European Union institutions.

B. Implementation and monitoring mechanisms for the realization of the right to information

62. The Special Rapporteur notes that, although the list of standards mentioned above is not exhaustive, it provides for several examples of legal norms and standards that do exist on the right to information both at the international and regional levels. There are several projects that monitor access to information held by national authorities and international or supranational organizations, such as the Access to Information Monitoring Tool of the Open Society Justice Initiative.¹⁸

63. The Special Rapporteur would like to appeal to States to implement the right to information by establishing specific legislation conforming to international norms and standards. Ensuring effective implementation of the right to information requires proper training in their responsibilities for persons involved in implementing the law in how to deal with requests for information and how to interpret the law.

64. The Special Rapporteur also encourages Governments to be proactive in promoting the right to information and to educate the public on how to claim it. He would like to remind States that right to information laws should not only require public authorities to provide information upon request but also impose a duty on public bodies to actively disclose, disseminate and publish information. One such example of facilitating proactive disclosure of information would include the creation of systems informing the public on right to information laws. The implementation of right to information laws would also entail the setting up of systematic records management, including managing, recording and archiving.

65. States should also set up information commissions as general oversight bodies to regulate the implementation and oversight of right to information laws, or ensure that such functions, together with the necessary capacity and resources, are entrusted to national human rights institutions. The Special Rapporteur notes that, although many models of information commissions already exist in different regions, they usually have similar functions, acting as external independent authorities with a clear mandate to supervise the implementation of the right to information.

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

¹⁸ www.justiceinitiative.org/activities/foifoe/foi/foi_aimt.

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.
