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**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

Informe del Relator Especial sobre los efectos nocivos para el goce de los derechos humanos del traslado y vertimiento de productos y desechos tóxicos y peligrosos, Calin Georgescu

Adición

Misión a Polonia (25 a 31 de mayo de 2011)* **

Resumen

El Relator Especial sobre los efectos nocivos para el goce de los derechos humanos del traslado y vertimiento de productos y desechos tóxicos realizó una visita a Polonia, por invitación del Gobierno, del 25 al 31 de mayo de 2011. La finalidad de la visita era examinar los progresos realizados por el país, y las dificultades con que tropezaba, para cumplir sus obligaciones dimanantes de la normativa de derechos humanos y del derecho ambiental de velar por que el manejo y la eliminación de los productos y desechos peligrosos fueran inocuos y ecológicamente racionales. En particular, el Relator Especial se centró en las medidas adoptadas por Polonia para garantizar, de conformidad con la Convención de Aarhus, el derecho de acceso a la información, la participación del público en la toma de decisiones y el acceso a la justicia en asuntos relacionados con el medio ambiente.

El Relator Especial celebra los progresos considerables realizados por Polonia en la protección de su población frente a los efectos nocivos que las sustancias químicas peligrosas y los desechos tóxicos pueden tener en el goce efectivo de los derechos humanos. Polonia es parte en diversos tratados de derechos humanos internacionales y regionales y en varios acuerdos multilaterales sobre el medio ambiente, y se ha ido dotando

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho figura en el anexo del resumen y se distribuye únicamente en el idioma en que se presentó.

** Documento presentado con retraso.

de un impresionante marco jurídico e institucional para velar por el manejo ecológicamente racional de los productos y desechos tóxicos y peligrosos durante todo su ciclo de vida.

No obstante, pese a los avances realizados, hay una serie de problemas relacionados con el manejo de las sustancias químicas y los desechos a los que es preciso encontrar solución para reducir al mínimo los riesgos que las sustancias químicas peligrosas y los desechos tóxicos acarrearán para el goce efectivo de los derechos humanos. A tal efecto, el Relator Especial formula una serie de recomendaciones.

Anexo

Report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights on his mission to Poland

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I. Introduction

1. The Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights carried out a country visit to Poland from 25 to 31 May 2011. He would like to express his gratitude to the Government of Poland for the invitation, as well as for the support provided to him throughout the visit.
2. The purpose of the visit was to examine the progress made and the difficulties encountered by the country in implementing its obligations under human rights and environmental law to ensure the safe and environmentally sound management and disposal of hazardous products and wastes. In particular, the aim of the mission was to gather first-hand information on the measures adopted by Poland to guarantee, in accordance with the Aarhus Convention, the rights of access to information, public participation in decision-making, and access to justice in environmental matters.
3. During his visit, the Special Rapporteur met with senior representatives of the following: the Ministry of Environment; the Ministry of Foreign Affairs; the Department of Customs Policy under the Ministry of Finance; the Department of Waste Management of the Institute of Environmental Protection; the National Atomic Energy Agency; the Bureau for Chemical Substances; the Chief Inspectorate for Environmental Protection; the National Labour Inspectorate; and the Office of Technical Inspection. The Special Rapporteur also met with the Sejm (lower house of the Parliament) Commission for Justice and Human Rights; the Sejm Commission for Environment Protection, Natural Resources and Forestry; the Environment Commission of the Senate; the Commissioner for Civil Rights Protection (Ombudsman) and his staff; academics, members of civil society organizations, and the private sector. The Special Rapporteur had the opportunity to visit an industrial and hazardous wastes incineration plant in Dabrowa Górnicza.

II. Legal and institutional framework

A. International obligations

4. Poland is a party to six core international human rights treaties and five protocols, including the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its Optional Protocol. Pursuant to these treaties, the country has undertaken an obligation to protect individuals and communities within its jurisdiction by eliminating, or reducing to a minimum, the risks that hazardous products and wastes pose to the enjoyment of several human rights, including the rights to life, health, safe and healthy working conditions, adequate food, safe drinking water, adequate housing, access to information and public participation.
5. Poland has ratified a number of regional human rights treaties adopted under the auspices of the Council of Europe, including the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter. Poland has only signed the Revised European Social Charter, and has not taken any action with regard to the Additional Protocol to the European Social Charter, which creates a system of collective complaints.
6. It is a party to a number of multilateral environmental agreements regulating the sound management and disposal of toxic and dangerous products and wastes, including the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and

their Disposal, 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.

7. Poland is also a party to a number of conventions developed under the auspices of the International Labour Organization (ILO) to protect workers from health and safety hazards associated with dangerous working activities. These include the Convention concerning the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration, 1977 (No. 148) and the Convention concerning Safety in the Use of Chemicals at Work, 1990 (No. 170). It has not yet ratified the Convention concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents, 1974 (No. 139), the Convention concerning Occupational Safety and Health and the Working Environment, 1981 (No. 155) and the Convention concerning the Prevention of Major Industrial Accidents, 1993 (No. 174).

8. Poland is also a party to several conventions negotiated under the auspices of the United Nations Economic Commission for Europe (UNECE), including the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention"), the Convention on Environmental Impact Assessment in a Transboundary Context ("Espoo Convention) and the Convention on the Transboundary Effects of Industrial Accidents. Poland has signed, but not yet ratified, the Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention ("PRTR Protocol").

9. International agreements ratified by Poland become part of the domestic legal order and can be directly applied in national courts, unless their application depends on the enactment of a statute (article 91 of the Constitution). In its decision of 8 February 2000, the Supreme Court ruled that the provisions of the International Covenant on Economic, Social and Cultural Rights could not be invoked by individuals before national courts in view of their programmatic nature.¹

B. Constitutional, legislative and policy framework

10. Chapter II of the Polish Constitution recognizes a number of human rights and fundamental freedoms, including the right to life (art. 38), the right to have access to information held by public authorities (art. 61), the right to safe and hygienic conditions of work (art. 66, paragraph 1) and the right to health (art. 68). The Constitution also stresses the need to protect the natural environment in accordance with the principles of sustainable development (art. 5). It requires public authorities to protect the environment in the interest of present and future generations, and provides the right to be informed about the quality of the environment and the measures adopted by public authorities to protect and improve it (art. 74).

11. The provisions of the Constitution concerning the freedoms, rights and obligations of persons are directly applicable in the domestic legal order, unless the Constitution provides otherwise (art. 8, paragraph 2). Some rights, such as those specified in articles 66, paragraph 1, and 74, can only be asserted subject to limitations specified by statute (art. 81). Article 77 of the Constitution grants every person the right to compensation for damage caused by unlawful actions of an organ of public authority. Everyone whose constitutional rights or freedoms have been infringed has the right to lodge a complaint with the Constitutional Tribunal (art. 79) or to apply to the Commissioner for Civil Rights

¹ E/C.12/POL/5, paras. 851-855.

Protection (Ombudsman) for assistance in the protection of his/her rights or freedoms infringed by public authorities (art. 80).

12. Poland has adopted a number of legislative and regulatory acts to transpose the European Union (EU) directives on waste management into its domestic legal order.²

13. The Act of 27 April 2001 on environmental protection is the cornerstone of Poland's environmental legislation. It establishes a comprehensive regulatory framework for the protection of the environment, and includes a number of general principles of environmental law (e.g. the principle of sustainable development, the precautionary principle and the polluter-pays principle) which are also relevant in the field of waste management.

14. The National Environmental Policy Programme 2007–2015 is an implementation component of the Act on environmental protection. It includes the main objectives, principles and directions for environmental protection in Poland. It also sets specific targets and objectives to protect human health and the environment from the adverse effects of hazardous substances, chemicals and waste, including: limiting exhaust emissions from industrial and municipal sources; limiting emissions from large combustion sources; increasing municipal waste recycling to 10 per cent by 2010; limiting threats to human health and environmental conditions caused by the use of chemicals; and supervising sources of ionizing radiation.³

15. The Act of 27 April 2001 on waste is the main legal instrument on waste management. It aims to prevent the adverse impact that the generation and improper management of waste may have on human health and the environment. It includes a definition of waste and general rules concerning minimization, reuse, recycling, recovery and disposal of various types of waste. Other laws aimed at ensuring the transposition of the *acquis communautaire* on waste management include the Act of 11 May 2001 on packaging and packaging of waste and the Act of 11 May 2001 on economic operators' obligations in the scope of managing certain types of waste and on the product and deposit charges.

16. In recent years, Poland has strengthened its legislation and policies to prevent and punish the illegal import and export of hazardous waste for final disposal. The Basel Convention and its amendment,⁴ ratified by Poland in 2003, Regulation (EC) No 1013/2006 on shipments of waste,⁵ and Act of 29 June 2007 on the international shipment of waste establish procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination.

² According to article 288 of the Treaty on the Functioning of the European Union, directives are legally binding as to the result to be achieved, but leave to the national authorities the choice of form and methods for their implementation.

³ World Health Organisation (WHO), Environment and health performance review: Poland, 2009, p. 59.

⁴ Decision III/1 of the Conference of the Parties to the Basel Convention bans all transboundary movements of hazardous wastes from countries of the Organization for Economic Cooperation and Development (OECD) to non-OECD countries. The "Ban Amendment" has not yet received a sufficient number of ratifications for its entry into force, but has already been given effect within the European Union. See UNEP/CHW.3/35.

⁵ According to article 288 of the Treaty on the Functioning of the European Union, EU regulations are binding in their entirety and directly applicable in all Member States.

17. Poland has also adopted a number of laws and regulations dealing with particular type of hazardous wastes. These acts, which introduce the principles of extended producer responsibility and reduction of hazardous substances in Polish law,⁶ include:

- (a) the Act of 20 January 2005 on recycling of end-of life vehicles;
- (b) the Act of 29 July 2005 on waste electrical and electronic equipment; and
- (c) the Act of 24 April 2009 on batteries and accumulators.

18. The national waste management plan 2014 sets the main objectives and targets for waste management for the period 2011-2014.⁷ It covers waste generated domestically, including municipal waste and different types of hazardous waste, as well as waste imported to the national territory. The plan identifies the main problems faced by Poland in the field of waste management. It aims at reducing the amount of waste generated through appropriate waste prevention strategies and more sustainable production and consumption patterns. It also identifies, in line with the principle of waste hierarchy, specific targets for waste reduction, reuse, recycling, recovery and disposal, including deadlines for their achievement.⁸

19. The Parliament is finalizing the text of a new Act on waste, which should come into force in January 2012.⁹ The new Act aim to transpose a number of directives, in particular directive 2008/98/EC on waste, into the domestic legal order. A new act on waste management, entered into force on 1st July 2011, transfers the ownership of municipal waste to local authorities, which are now responsible for tendering contracts to private companies for collection and treatment. They are also responsible for improving infrastructure, particularly for waste collection and recovery. Up until the new Act on waste management, waste management was in the hands of private companies operating in each area (see paragraph 32 below).

20. The regulatory framework on chemicals management includes the Act of 25 February 2011 on Chemical Substances and Their Preparations and a number of EU regulations, which according to EU law are binding in their entirety and directly applicable in all Member States.¹⁰ These regulations include:

⁶ EU legislation requires member States to appropriate measures to ensure that the producer's responsibility is extended to the post-consumer stage of a product's life cycle (extended producer responsibility). Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable. The principle of reduction of hazardous substances requires members of the European Union to take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products. Such measures may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

⁷ Resolution of the Council of Ministers No. 217 of 24 December 2010.

⁸ The waste hierarchy generally lays down a priority order of what constitutes the best overall environmental option in waste legislation and policy. According to article 4 of EU directive 2008/98/EC on waste, the priority order is the following: (a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery, e.g. energy recovery; and (e) disposal. When applying this waste hierarchy, Member States should take measures to encourage the options that deliver the best overall environmental outcome.

⁹ News from Poland, "New law anything but trash...", 5 July 2011. Available from <http://www.thenews.pl/1/12/Artykul/51059,New-law-anything-but-trash>

¹⁰ See footnote 4.

(a) Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (“REACH Regulation”), which aims to ensure a high level of protection of human health and the environment while enhancing the competitiveness of the EU chemicals industry;

(b) Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (“CLP Regulation”), which establishes harmonized criteria for the classification of substances and mixtures and rules on labelling and packaging for substances and mixtures hazardous to human health and the environment; and

(c) Regulation (EC) No. 689/2008 concerning the export and import of dangerous chemicals, which aims to implement the Rotterdam Convention within the EU.

C. Institutional framework

21. The Ministry of Environment has general responsibilities concerning the design and implementation of national legislation and policies relating to the protection and the sustainable management of the environment and natural resources. Its department of waste management prepares relevant acts and regulations, and develops and coordinates the implementation of appropriate strategies, plans and programmes, including the national waste management plan. The department of environmental education designs and implements educational and promotional campaigns on the environment, coordinate the implementation of the national strategy for environmental education and serves as the Government focal point for the implementation of the Aarhus Convention.

22. The Bureau for Chemical Substances is a governmental institution with overall responsibility on chemicals management. It carries out administrative tasks and duties resulting from several European regulations on chemicals management, including the collection of data on hazardous chemicals and mixtures and cooperation with other EU members States and the European Commission in the field of export and import of dangerous chemicals. The Bureau also performs the tasks of the national focal point for the Rotterdam Convention and for the Strategic Approach to international Chemicals Management (SAICM). It is managed and represented by the Inspector for Chemical Substances, who reports directly to the Minister of Health.

23. The Institute of Environmental Protection appointed by the Minister of Environment conducts research on environmental protection. The Institute covers a wide range of activities including standard setting, environmental monitoring, environmental education and environmental impact assessment of hazardous substances, products and waste. It also disseminates information on the state of the environment. The Institute is the national focal point for the implementation of the Stockholm Convention.

24. Other ministries are responsible for policymaking and/or for the implementation of legislation and policies in areas of concern to the mandate of the Special Rapporteur. They include: the Ministry of Foreign Affairs, the Ministry of Health, the Ministry of Labour, the Ministry of Agriculture and Rural Development and the Ministry of Finance.

25. A number of national authorities at the central, regional and local levels have responsibilities for the enforcement of national legislation on environmental protection, chemicals and waste management health and safety at work and public health.

26. The Chief Inspectorate for Environmental Protection is responsible for monitoring implementation and enforcement of laws and administrative decisions concerning environmental protection and the use of the natural resources, assessing the state of the environment and preventing severe accidents. It is headed by the Chief Inspector for Environmental Protection, who reports directly to the Minister of Environment. The

primary responsibility for monitoring compliance with environmental legislation lies with the 16 voivodship (regional) inspectorates, while the Chief Inspectorate is only responsible for general co-ordination. The Inspectorate monitors the state of the environment and prepares reports focusing predominantly on air quality, inland surface water and groundwater, soil and land, noise, hazardous waste, electromagnetic fields and ionizing radiation. It also serves as the Government focal point for the implementation of Poland's obligations under the Basel Convention.

27. The Chief Sanitary Inspectorate runs surveillance and control of compliance with legislation on public health and environmental hygiene, and checks the conditions of food production, transport, storage and sale. The Chief Inspector is appointed by the Prime Minister and reports to the Minister of Health. Through its regional epidemiological stations, the Chief Sanitary Inspectorate performs sanitary controls and carries out sanitary inspections. It also provides information to the public on the quality of the environment.

28. The National Labour Inspectorate is responsible to supervise and control compliance with the labour law, in particular of occupational health and safety regulations and principles. Its competencies partially overlap with the responsibilities entrusted to other monitoring bodies, such as the sanitary inspectorates and the Office of Technical Inspections. Inspections are planned by the Chief Labour Inspectorate, and carried out by regional inspectorates. All enterprises are subject to regular inspections every three years; industrial and agricultural enterprises with high pollution potential are inspected on an annual basis. The National Labour Inspectorate reports directly to the Sejm (lower house of the Parliament).

29. The Customs Service has been established under the Ministry of Finance. Its main tasks, in addition to fiscal duties, include customs control of foreign trade and prevent smuggling and customs fraud. In collaboration with the Bureau for Chemical Substances and the Chief Inspectorate for Environmental Protection, the Customs Service also exercises control over compliance with national and international regulations related to trade in hazardous chemicals and to the transboundary movement of hazardous waste.

30. The Commissioner for Civil Rights Protection (Ombudsman) is responsible for safeguarding the rights and freedoms set forth in the Constitution and other legal acts. The main task of the office of the Ombudsman, established in 1987, is to consider applications from individuals within the State's jurisdiction concerning alleged human rights violations perpetrated by public officials and State institutions, and to recommend the adoption of appropriate measures to eliminate the consequences of such violations. In carrying out his function, the Ombudsman is independent from other State institutions, and only accountable to the Sejm (lower house of the Parliament). The office of the Ombudsman has been accredited A status by the International Coordinating Committee of National Institutions since 1999.

31. The majority of complains addressed to the Commissioner focus on alleged human violations of civil and political rights. However, between 2006 and mid-2011, the Ombudsman's office considered over 1,500 cases concerning environmental pollution, including a number of complaints relating to the illegal import of municipal and hazardous waste; the removal of asbestos from existing buildings and its environmentally sound disposal; the liquidation of existing stocks of obsolete pesticides; and dumping of municipal waste in illegal dumpsites or protected areas.

III. Waste and chemicals management: current practices

A. Municipal waste management

32. Municipal waste accounts for 8 per cent of total waste generation in Poland. Its generation increased in the mid-1990s as a result of the improvement of economic and living conditions in the country, but stabilized over the past few years at around 10 million tons. About 70 per cent of municipal waste consists of household waste, with a growing share of plastic packaging, while the remaining 30 per cent is waste generated from public buildings, schools, restaurants, health-care facilities, etc. As far as its morphological composition is concerned, municipal waste consists mainly of glass, paper, packaging material, metal, food or other wastes that do not pose any risk to human health and the environment.

33. Nevertheless, a fraction of this waste is regarded as hazardous, and may pose serious threats to human health and the environment. Such category includes a wide range of wastes generated by households, including obsolete pesticides, expired chemicals and pharmaceutical products, end-of-life vehicles and their components (used batteries, accumulators, lubricating oils) and electrical and electronic waste. The adverse impact that these types of waste may have on the enjoyment of human rights, including the rights to life and to the enjoyment of the highest attainable standard of physical and mental health, has been considered in depth in previous reports prepared by the mandate.¹¹ In view of their hazardous nature, these types of waste should be segregated at the point of generation from “common” municipal waste and disposed of in a safe and environmentally sound manner.

34. According to the Act on municipal waste management of 13 September 1996, each real estate owner is required to conclude an agreement with a private company authorized by the municipality to carry out municipal waste management, including collection, segregation at source and disposal in accordance with the voivodship (regional) waste management plan. Waste management enterprises are required to provide information on the contracts concluded with real estate owners to the municipality, which keeps a register of these agreements. Where the real estate owner has not concluded an agreement with a private waste management company, or where no such company exists in the area, municipalities directly arrange for the collection of the waste. In 2008, 78 per cent of the population was covered by an organized system of municipal waste management.

35. Poland has made limited progress with regard to the separate collection of municipal waste. In 2008, less than 7 per cent of municipal waste was separately collected for recycling or recovery.¹² In particular, only negligible amounts of hazardous waste generated by individual households (about 0.03 kilos per inhabitant per year) was segregated at source and disposed in a safe and environmentally sound manner.¹³

36. Approximately 86 per cent of municipal waste is landfilled, one of the highest percentage in Europe.¹⁴ Landfilling of biodegradable municipal waste poses serious

¹¹ See A/HRC/18/31 (medical waste); A/HRC/15/22/Add.2 and E/CN.4/2006/42 (obsolete and expired chemicals/pesticides); A/HRC/15/22/Add.3 (e-waste).

¹² National waste management plan 2014, Annex to resolution No. 217, Council of Ministers of 24 December 2010.

¹³ Ibid.

¹⁴ With approximately 40 per cent of the total municipal waste sent to landfills, landfilling is still EU’s predominating waste management activity. However, a big difference exists between old member states, which landfill less than 40 per cent of the total municipal waste generated, and new member states, where this percentage is about 80 per cent of the total. See Ecologic Institute, A report on the implementation of Directive 75/442/EEC on waste, May 2009, p. 21.

environmental and health concerns. As biodegradable waste decomposes, toxic liquids can leach the landfill and pollute soil, surface water and groundwater resources. During the decomposition process, municipal waste also releases greenhouse gas emissions which contribute to global warming. Poland has obtained a special derogation period for the implementation of Directive 1999/31/EC on landfill of waste.¹⁵ However, the country seems to be far at present from meeting its obligations under this directive.

37. Technical conditions and maintenance of landfills for municipal waste are generally unsatisfactory. Despite the efforts by Poland to close landfills that do not comply with the legal and technical requirements set out in the landfill directives, a number of landfill sites without leachate and rainwater drainage systems continue to operate.

38. The number of illegal dumping sites for municipal waste has decreased in recent years, but remains a matter of serious concern which needs to be addressed urgently. Since fines for illegal dumping are rarely imposed, unscrupulous waste management companies or households continue to dump municipal waste, including hazardous waste, in illegal dumpsites to minimise costs.¹⁶ Illegal dumping sites, some of which are situated in protected areas, pose significant threats to human health and the environment.

B. Hazardous waste

Obsolete pesticides

39. Obsolete pesticides are pesticides that can no longer be used for their intended purpose and need therefore to be disposed of. They include expired pesticides and formulations, deteriorated products and pesticides that have been withdrawn from the market due to their adverse impact on human health and the environment, such as those containing persistent organic pollutants (POPs).¹⁷

40. In recent years, Poland has made significant progress with regard to the disposal of existing stockpiles of obsolete pesticides. As of 30 June 2010, Poland destroyed approximately 17,000 tons of obsolete pesticides stored in 180 burial sites and 97 warehouses built in the 1970s or 1980s.¹⁸ Until recently, obsolete pesticides were exported to other European countries (mainly Germany and the Netherlands) to be incinerated.

41. According to the National Waste Management Plan, 5,200 tons of obsolete pesticides stored in 62 burial sites and one warehouse still had to be eliminated in June 2010. There is only one installation for incineration of industrial hazardous waste, including obsolete pesticides. The incineration plant operates in Dabrowa Gornicza, and has a disposal capacity of 30,000 thousand tons per year.

¹⁵ According to the landfill directive, Member States must reduce the amount of biodegradable municipal waste going to landfill to 75 per cent of the total amount of biodegradable municipal waste generated in 1995 by 2006; to 50 per cent of 1995 levels by 2009; and to 35 per cent of 1995 levels by 2016. The directive also sets stringent technical requirements for the authorization, design, operation, closure and aftercare of landfills, as well as the prohibition of materials to be accepted in landfills.

¹⁶ Organisation for Economic Co-operation and Development (OECD), Environmental Performance Reviews: Poland, 2003, p. 79.

¹⁷ Persistent organic pollutants (POPs) are highly hazardous chemical pollutants that remain intact in the environment for long periods, become widely distributed throughout the environment, accumulate in the fatty tissue of living organisms and are found at higher concentrations at higher levels in the food chain. They can be divided into three categories: (a) pesticides, such as DDT; (b) industrial chemicals, such as polychlorinated biphenyls (PCBs); and (c) by-products, such as dioxins and furans. They are toxic to both humans and wildlife. Specific effects of these pollutants can include cancer, damage to the nervous system, reproductive disorders and disruption to the immune system.

¹⁸ National waste management plan 2014, cit.

42. The “Rudna Gora” landfill in the town of Jaworzno, Upper Silesia, is a serious, unresolved problem with transboundary implications. The landfill, owned by the Organika-Azot chemical plant, stores approximately 160,000 tons of obsolete pesticides, of which 88,000 tons is hazardous. The plant used to produce DDT and plant protection products manufactured with POPs. Regular monitoring of the site and surrounding areas show significant releases of POPs in the environment. In particular, water samples collected from surface and underground waters in the Vistula river basin, which flows into the Baltic Sea, show the presence of a number of POPs, in particular DDT, aldrin and hexachlorobenzene (HCB).

43. Over the years, Organika-Azot has taken a number of measures to improve the drainage system of the landfill and prevent contamination of soil, surface- and groundwater resources. However, the plant does not possess sufficient financial and technical resources to identify a long-term solution to this problem. The plant’s ownership of the landfill makes it difficult to obtain outside funding for remedial action, due to the EU competition legislation which prohibits the use of public funding to support private enterprises.

Polychlorinated biphenyls (PCBs)

44. Polychlorinated biphenyls (PCBs) are a family of chemicals that have in the past been used as dielectric and coolant fluids, for example in transformers, capacitors, and electric motors, because of their good electrical insulation properties, fire resistance and chemical stability. Due to their toxicity, the production and use of PCBs is banned or severely restricted under the Stockholm Convention, and their transboundary movement is subject to the prior informed consent procedure of the Rotterdam Convention. EU Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) requires member States “to take the necessary measures to ensure that used PCBs and equipment containing PCBs are disposed of at the latest by the end of 2010”.

45. By the end of 2009, about 1,000 tons of PCBs was still used in transformers and capacitors.¹⁹ While domestic capacity for disposal of PCB contaminated oil is adequate, no installation for destruction or decontamination of equipment containing PCBs exists. PCB capacitors are exported to France for safe disposal at incineration plants capable of sound decomposition of halogenated organic substances. In view of the lack of capacity to dispose of solid PCBs in the country, Poland did not manage to eliminate all PCB-containing equipment by the end of 2010.

Medical waste

46. The term medical waste refers to all types of waste generated by health-care establishments. Most of this waste, approximately 75 to 80 per cent of the total amount, is similar to household wastes, and does not pose any particular risk to human health or the environment. However, the remaining 20 to 25 per cent of health-care is regarded as hazardous and may create a variety of health risks if not managed and disposed of in an appropriate manner. In 2008, health-care establishments generated around 36,000 tons of waste, including more than 29,000 tons of hazardous waste.²⁰

47. Most health-care facilities separate hazardous medical waste (e.g. infectious waste or sharps) from non-risk waste at the point of generation, by using special containers or bags. Incineration is the method most commonly used in Poland to dispose of hazardous medical waste, and non-burn technologies such as autoclaving are increasingly being used for the treatment of infectious waste prior to their final disposal. In 2008, 45 medical waste

¹⁹ Ibid.

²⁰ Ibid.

incineration plants with a total disposal capacity of 40,000 tons operated in Poland. However, the distribution of these plants at the regional level is uneven, and does not always allow for the disposal of medical waste in accordance with the proximity principle.

E-waste

48. The rapid technology development and improved economic conditions have increased the replacement frequency of electronic products, and have in turn led to a dramatic growth in the generation of waste electrical and electronic equipment, commonly referred to as “e-waste”. This category includes obsolete, broken or discarded appliances using electricity, such as computers, mobile phones and household appliances. E-waste also contains a number of hazardous substances, such as lead, mercury, arsenic and PCBs, which can adversely affect human health and the environment if not managed and disposed of in a safe and environmentally sound manner.

49. In line with EU legislation restricting the use of hazardous substances in electrical and electronic equipment (Directive 2002/95/EC) and promoting the collection and recycling of such equipment (Directive 2002/96/EC), Polish legislation provides for the creation of collection schemes where consumers return their used e-waste free of charge to its manufacturer (extended producer responsibility). The objective of these schemes is to increase the recycling and/or re-use of such products. It also requires heavy metals (such as lead, mercury and cadmium) and flame retardants to be substituted by safer alternatives.

50. The EU legislation on e-waste also requires member States to adopt appropriate measures in order to minimise the disposal of e-waste as unsorted municipal waste and to collect at least four kilograms on average per inhabitant per year of waste electrical and electronic equipment from private households. Due to the limited information and low awareness on the importance of sound management and disposal on e-waste, Poland did not manage to meet this deadline. In 2009, only 2.70 kilograms of waste electrical and electronic equipment were collected from private households for recycling or recovery.²¹ A significant amount of e-waste continues to be mixed with municipal waste and disposed of in landfills or illegal dumpsites, while some kinds of electronic products, such as washing machines and refrigerators, are sold as metal scrap.

C. Transboundary movement

51. In the early 1990s, Poland was the recipient of significant amounts of municipal and hazardous waste, mainly obsolete chemicals and allegedly recyclable materials, from Germany. The strengthening of national legislation and policies on the transboundary movements of waste, including hazardous waste, and the effective co-operation among the Inspectorate for Environmental Protection, the Road Transport Inspectorate, the Customs Office and the Border Police have led to a significant decrease in the amount of hazardous waste illegally imported to Poland for final disposal.

52. Import of hazardous waste is subject to the prior inform consent procedure. In 2010, the Chief Inspectorate for Environmental Protection authorised the import of 136,000 tons of specific types of hazardous waste for recovery (1.7 per cent of the total amount of imported waste). In 2010, the Chief Inspectorate for Environmental Protection reported 22 cases of illegal transboundary movement of waste to Poland, including 6 cases concerning hazardous waste (2 cases of illegal import of waste batteries and 4 cases of illegal shipment of mixed waste).

²¹ Ibid.

53. Export of hazardous waste from Poland for final disposal is limited to certain types of waste and to OECD countries. In recent years, Poland exported asbestos and pesticides to Germany and PCB capacitors to France. In 2010, the Chief Inspectorate for Environmental Protection issued 34 permits for a total of 77,000 tons of specific types of hazardous waste for recovery.

54. The Basel “Ban Amendment” (see paragraph 16 above) prohibits the export of hazardous waste to non-OECD countries. Increased costs for the environmentally sound disposal of toxic waste have led to an increase in the number of cases of illegal export of hazardous waste from Poland for final disposal. In 2010, custom authorities reported 10 cases of illegal export of hazardous waste to non-OECD countries. Many cases of transboundary movement concern e-waste, illegally exported as used electrical and electronic products. No cases of illegal export of hazardous waste to non-EU countries sharing the borders with Poland (Ukraine and Belarus) have been reported so far.

IV. Right to information and public participation

55. The Aarhus Convention, which is directly applicable in Poland pursuant to article 91 of the Constitution, is the main legal instrument to guarantee the rights of access to information held by public authorities, public participation in decision-making, and access to justice in environmental matters. Issues relating to access to information, participation in decision-making and access to justice are also dealt with in the Constitution (see paragraph 10 below) as well as in a number of legislative and regulatory acts, including the Act of 27 April 2001 on environmental protection, the Code of administrative procedure and the Act of 3 October 2008 on access to environmental information.

56. Poland has not yet ratified the Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention, which aims to facilitate public participation in environmental decision-making as well as contribute to the prevention and reduction of pollution of the environment. An integrated pollutant release and transfer register (“European PRTR”) has been established at Community level pursuant to Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register. The European PRTR is a publicly accessible electronic database which includes information on releases of pollutants referred in air, water or soil, transfer of hazardous waste for operation of recovery or disposal and releases of pollutants in waste waters destined for waste-water treatment.

57. Article 74, paragraph 3, of the Constitution reads: “Any person shall have a right to information on the state of the environment and on environmental protection”. The modalities for exercising this right and the corresponding obligations of national authorities are specified in the Act on environmental protection. The act does not include a clear definition of environmental information. At times, public authorities have interpreted the concept of environmental information in a restrictive way in order to reject requests from the public.²²

58. Detailed statistical data on the number of requests for environmental information received by public authorities and on the number of requests that are rejected is not available. Few authorities keep statistics on requests for environmental information. Many local offices lack technical and human resources, and a number of them have reported to have received no or few requests for environmental information. NGOs report cases of authorities lacking the information they should have, requesting the applicant to

²² ECE/MP.PP/2005/18/Add. 17, p. 7.

demonstrate a legal interest or refusing requests on the basis of misinterpretation of copyright laws.²³

59. According to the Act on public access to information, public authorities and State-funded institutions are required to collect and disseminate information on the state of the environment and to make information available to the general public through all appropriate means. Legal acts and law proposals are available on the websites of the Ministry of Environment and the Sejm. The Chief Inspectorate for Environmental Protection collects information on the quality of the environment, the state of natural resources, emissions, and waste generation and management and makes it available on its website. It also prepares a national report on the state of the environment every four years. Such reports are available in both hard and electronic copies.

60. The Act on environmental protection requires polluting industries to collect information on air, soil and water emissions and waste collection, storage and disposal and make it available to the regional authorities (voivodship marshals). The Act on waste requires waste holders to collect information on waste management and submit reports to the regional inspectorates on an annual basis.

61. Everyone can participate in decision-making processes relating to environmental impact assessment (EIA) procedures or to the issuance of permits for activities which may have a significant adverse impact on the environment. Public authorities have an obligation to provide information on projects which may have a significant adverse impact on the environment in an adequate and timely manner. Applications for permits and accompanying relevant documentation should be made available on the website of competent authorities. Any person can submit comments on a proposed project in writing within a 21-day period and orally at the public hearing. Decisions of the competent public authorities should also be notified to the public. National courts can quash administrative decisions concerning the issuance of permits if public participation requirements are not complied with.²⁴

62. There is no statistical data on public participation in the development and implementation of projects which may have an adverse impact on the environment. At times, the strict deadline for the submission of written comments and limited accessibility to relevant documentation de facto prevents the general public from participating in a meaningful manner in decision-making processes concerning the environment.

63. Poland has enacted a standard procedure to enable interested entities, including environmental NGOs and the general public, to provide comments on proposed normative acts. Hard copies of draft acts are sent to national and local NGOs and also made available on the Ministry's website, along with information concerning the deadline for submitting comments. Other forms of consultation may include public hearings to which interested NGOs and members of the public can participate. After considering the comments, the Ministry prepares a chart with the comments which were not taken into account and the reasons for this.

64. According to the Ministry of Environment, there are more than 1,000 environmental NGOs in the country, although only a few have national coverage. The Special Rapporteur was not able to identify any NGOs working in the field of human rights and the environment, or focusing on the linkages between environment and health. The NGOs he met had limited expertise on issues falling within the scope of his mandate, and were generally not aware about the major problems associated with the implementation of national legislation in these areas.

²³ Ibid.

²⁴ ECE/MP.PP/2005/18/Add. 17, p. 12.

65. Nationally, the role of NGOs is mostly seen in raising awareness rather than influencing the change of regulations related to environment and health. Generally this is felt to be the responsibility of other associations or institutions. Ministries do not fund NGOs, and collaboration clearly depends on the type of project.²⁵

V. Conclusions and recommendations

A. International obligations

66. The Special Rapporteur shares the concerns expressed by the Committee on Economic, Social and Cultural Rights that Poland has not yet taken the necessary measures to ensure that the Covenant is given full effect in its domestic legal order.²⁶ In this regard, he notes that some of the economic and social rights enshrined in the Constitution, including the right to safe and healthy working conditions and the right to a healthy environment, cannot be directly invoked before national courts and tribunals.

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

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

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

B. Legislative and policy framework

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

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

²⁵ World Health Organisation (WHO), Environment and health performance review: Poland, 2009, p. 48.

²⁶ E/C.12/POL/CO/5, para. 8.

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

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

C. Institutional framework

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

75. The Special Rapporteur notes in particular that while the Ministry of the Environment has general responsibilities with regard to environmental protection and waste management, issues pertaining to chemicals management fall within the mandate of the Bureau for Chemical Substances. He also notes that three different authorities perform the tasks of national focal points for the implementation of the Basel Convention, the Rotterdam Convention and the Stockholm Convention, respectively, despite the common objectives and the strong synergies existing between these multilateral environmental agreements.²⁷

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

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

²⁷ While the Stockholm Convention deals with the production and use of certain hazardous chemicals; the Rotterdam Convention concerns their trade, sharing of information and responsibilities; and the Basel Convention deals with environmentally sound management and disposal of those substances when they become wastes. Several chemicals are covered by two or all three of the conventions, such as polychlorinated biphenyls (PCBs), aldrin or toxaphene. For the implementation of the three conventions, national frameworks, coordination mechanisms and enforcement structures need to be in place. Those frameworks and mechanisms provide an opportunity for coordinated implementation of the three conventions.

only big industrial and agricultural enterprises with high pollution potential are subject to more regular controls.

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

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

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

D. Municipal waste management

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

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

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

84. In line with the landfill directive, the Special Rapporteur recommends that Poland adopt all appropriate measures, including the use of appropriate economic incentives, such as annual charges on landfilled waste, to discourage landfilling of

waste in favour of safer and more environmentally sound methods of management of municipal waste. In particular, the Special Rapporteur urges Poland to reduce, as a matter of priority, the amount of biodegradable waste deposited in landfills by developing appropriate selective collection schemes to increase its recycling or recovery for energy production.

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

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

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

E. Hazardous waste

Hazardous waste generated by households

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

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

Obsolete pesticides

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

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

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

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

and for the remediation of the environmental contamination of surface and underground waters in the Vistula river basin.

Polychlorinated biphenyls (PCBs)

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

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

Medical waste

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

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

F. Right to information and participation

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

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

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

101. The Special Rapporteur is concerned that despite the efforts undertaken by Poland to transpose the Aarhus Convention into national legislation, some challenges still exist in the implementation of the country's normative framework on access to

information, public participation in decision-making and access to justice on environmental matters. He notes in particular that the general public is still not sufficiently familiar with the Aarhus Convention, as evidenced by the limited number of requests for environmental information received by public authorities, and that the lack of training opportunities on the Convention for civil servants hinders public involvement in the decision-making process.

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

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

104. The Special Rapporteur is aware that many NGOs have been adversely affected by the financial crisis of 2007, which forced many of them to reduce their personnel or close their activities. Nevertheless, he is of the opinion that much more needs to be done in order to ensure public participation of civil society organizations in the design and implementation of legislation and policies concerning chemicals and waste management. In this regard, he urges national authorities and relevant European institutions to provide additional non-earmarked funds to NGOs so as to enable civil society participation and ensure strengthened scrutiny of Governmental action in these areas.

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

105. The Special Rapporteur is aware that Poland is highly dependent on coal for energy generation, with more than 90 per cent of electricity generated from combustion of hard coal and brown coal, and needs to diversify its sources for energy production. He is also conscious that nuclear power is and will remain a controversial topic, and that it would not be appropriate for him to take a position on the debate currently underway on the use and safety of nuclear energy. Proponents of nuclear power contends that a shift from coal combustion processes for energy and heat production to nuclear power would contribute to the reduction of Poland's CO₂ emissions in the atmosphere, while its opponents highlights the threats that nuclear power pose to human health and the environment, as the recent nuclear accident in Fukushima has showed.

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

and on the solutions envisaged for the safe storage and environmentally sound disposal of nuclear waste generated by the power plant.

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