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**PROMOTION ET PROTECTION DE TOUS LES DROITS DE L'HOMME,
CIVILS, POLITIQUES, ÉCONOMIQUES, SOCIAUX ET CULTURELS,
Y COMPRIS LE DROIT AU DÉVELOPPEMENT**

**Rapport du Rapporteur spécial sur les conséquences néfastes des mouvements
et déversements illicites de produits et déchets toxiques et nocifs
pour la jouissance des droits de l'homme, Okechukwu Ibeanu**

Additif

MISSION EN UKRAINE^{*}, ^{}**

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale et en russe.

** La soumission tardive de ce document s'explique par le souci d'y faire figurer des renseignements aussi à jour que possible.

Résumé

Le Rapporteur spécial sur les conséquences néfastes des mouvements et déversements illicites de produits et déchets toxiques et nocifs pour la jouissance des droits de l'homme s'est rendu en mission en Ukraine du 22 au 30 janvier 2007, à l'invitation du Gouvernement ukrainien. Le Rapporteur spécial était appelé à examiner les effets du trafic illicite de produits et déchets toxiques et nocifs pour la jouissance des droits de l'homme, à donner suite aux communications qui lui avaient été adressées et à étudier les règlements et les mesures de sauvegarde applicables au trafic illicite de produits et déchets toxiques et nocifs. Le Rapporteur spécial a eu l'occasion de rencontrer de nombreuses personnes à Kiev, Lviv et Uzghorod, et a visité des sites dans les régions de Lviv et de Zakarpatska. Il a eu des entretiens avec toute une série d'interlocuteurs, membres du Gouvernement ou représentants de la société civile.

L'Ukraine est dotée d'un cadre législatif très complet sur les questions qui touchent aux mouvements et aux déversements illicites de produits et déchets toxiques et nocifs, mais le Rapporteur spécial relève que l'application des textes devrait être surveillée plus étroitement. Il se félicite des projets de modification ou de renforcement de la législation en la matière.

Le Rapporteur spécial présente une analyse de deux cas de transfert illicite de déchets toxiques et de produits nocifs vers l'Ukraine. Il invite instamment les pays d'exportation à accepter le retour de ces déchets et produits nocifs. Il se dit également inquiet de voir que ce genre de transport existe toujours. À côté des mouvements transfrontières de produits et déchets toxiques et nocifs, le rapport fait une place aux problèmes liés à l'existence de stocks importants de déchets toxiques produits dans le pays, à la question des pesticides obsolètes et au droit à l'information dans le domaine environnemental.

Le Rapporteur spécial présente un certain nombre de recommandations visant à renforcer l'efficacité des mesures destinées à prévenir les mouvements illicites de déchets toxiques et de produits nocifs. Il salue ce qui a été fait par le Bureau du Procureur en ce qui concerne les crimes environnementaux et présente des recommandations de nature à rendre son action encore plus efficace. Il formule également des recommandations en ce qui concerne le droit à l'information, l'action des autorités sanitaires, les pesticides obsolètes et l'assistance technique étrangère.

Annexe

**REPORT SUBMITTED BY 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, ON HIS MISSION TO UKRAINE
(22-30 January 2007)**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 4	4
I. LEGAL FRAMEWORK	5 - 12	4
II. INSTITUTIONAL FRAMEWORK AND LAW ENFORCEMENT	13 - 20	6
III. ISSUES BROUGHT TO THE ATTENTION OF THE SPECIAL RAPPORTEUR	21 - 48	8
A. General challenges faced by Ukraine	21 - 22	8
B. Ukraine as a target for illegal traffic in hazardous wastes from neighbouring countries	23 - 37	9
C. Obsolete pesticides	38 - 42	12
D. Spent nuclear fuel storage	43 - 44	13
E. Goldmine near Muziehovu	45	14
F. Right to information in environmental matters	46 - 48	14
IV. CONCLUSIONS AND RECOMMENDATIONS	49 - 55	15

Introduction

1. The Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights conducted a country mission to Ukraine from 22 to 30 January 2007. He would like to thank the Ukrainian Government for allowing him to undertake a very informative and productive visit. The Special Rapporteur wishes to express his gratitude to the United Nations office in Ukraine for facilitating his visit and for having prepared an intense and comprehensive agenda.
2. The mission visited the capital city Kyiv and the Lviv and Zakarpatska regions. The Special Rapporteur had over 20 meetings and directly interacted with over 100 persons. He met with several representatives of the Government and other authorities, in particular the Deputy Minister of the Environment, the Deputy Prosecutor General, the Governor of Lviv Oblast, and the Deputy Head of the Regional Administration of Zakarpatska. The Special Rapporteur also met representatives of the Ministry of Justice and of the Ombudsman's office. He also met representatives of the Committee on Environmental Policy, Use of Natural Resources and Elimination of the Chernobyl Disaster Aftermath of the Verkhovna Rada (Parliament). The Special Rapporteur met representatives of regional departments concerned with environmental preservation, district and municipal officials and members of regional parliaments.
3. The Special Rapporteur would like to express his sincere appreciation to the non-governmental organizations (NGOs), academics and researchers he was able to meet. He would like to thank them for their interest in this visit and their very useful suggestions for his agenda.
4. In addition, the Special Rapporteur was able to visit a number of sites where toxic and dangerous products are stored, including functioning and abandoned industrial sites, as well as some villages. During the course of the on-site visits the Special Rapporteur was able to meet local residents.

I. LEGAL FRAMEWORK

5. International agreements become part of domestic legislation when the Ukrainian Parliament passes a law of ratification. Ukraine is a party to the core international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its first Optional Protocol.
6. Ukraine has ratified 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 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Ukraine is also a party to the Convention on Environmental Impact Assessment in a Transboundary Context and the Protocol on Strategic Environmental Assessment. Ukraine has signed, but not ratified, the Stockholm Convention on Persistent Organic Pollutants.

7. The right to a safe environment is enshrined in the Constitution of 1996. Pursuant to article 50 of the Constitution everyone has the right to an environment that is safe for life and health and the right to seek compensation for damages resulting from a violation of this right. This article also guarantees the right to free access and the right to disseminate information concerning the environment and the quality of food. Article 66 provides for the protection of the natural environment and the obligation to compensate for any damage caused to it.

8. Ukrainian legislation provides an important legislative framework that deals with environmental issues in general and also with the particular issues of movement and dumping of toxic and dangerous wastes and products. The Law on Environmental Protection of 1995 defines the legal, economical and social basis for the organization of environmental protection. It sets out inter alia the ecological rights and duties of citizens and defines the responsibility for violations of legislation on environmental protection. The Law on Waste of 1998 defines legal, organizational and economic principles for activities related to the prevention of waste or to reducing the amount of waste produced, its collection, transportation, storage, recycling and disposal either through neutralization or in landfills. The general goal of the Law on Waste is the prevention of the negative effects of waste on the environment and the health of the population. It is categorized as a fundamental law which defines the issues and what needs to be regulated, and sets out the general principles related to waste management and the liability framework. The Law on Pesticides and Agrochemicals regulates their manufacture, purchasing, transportation, storage, sale and use, and establishes the rights and obligations of the different actors in this sector. The Law on the Transport of Dangerous Freights, in addition to the regulation of transport and of the rights and obligation of senders and recipients, also addresses the transboundary transport of such freight. Finally the Law on the National Programme for the Treatment of Toxic Waste of 14 September 2000 provides for the realization of the programme which aims to prevent the accumulation of toxic wastes and limit their harmful effect on the environment and on human health. It also sets out the costs and financing sources of the programme.

9. The Ukrainian criminal code contains a chapter on crimes against the environment which defines which acts are criminal and establishes penalties. This section criminalizes, inter alia, the contamination of land by hazardous substances and wastes; the violation of rules related to water protection which result in water contamination; the failure to eliminate the consequences of environmental pollution; and the concealment or misrepresentation of information on environmental status or incidence of disease among the population.

10. The above-mentioned laws are complemented by numerous decrees adopted by the Cabinet of Ministers of Ukraine which seek to implement the principles enshrined in legislative acts and treaties to which Ukraine is a party. A number of the decrees most pertinent to the issue of illicit movement and dumping of toxic wastes and dangerous products were brought to the attention of the Special Rapporteur, including, for example, the Decree on Approval of the Regulation on the Transboundary Movements of Hazardous Wastes of 13 July 2000 and the Decree on the National Toxic Waste Management Programme of 14 September 2000.

11. Import of all types of waste for disposal is banned by the aforementioned legislation, in accordance with the Basel Convention. Indeed, Ukrainian legislation classifies hazardous wastes in four categories which are very close to those of the Basel Convention. According to the legislation the importer of raw materials must address a request to the Ministry of Environmental Protection which indicates the content, composition and final destination of the shipment. On this basis the Ministry will issue an import certificate. However, allegations were made by non-governmental interlocutors that border controls of these shipments were not sufficiently efficient or detailed and that the content and composition of the cargo are not adequately verified.

12. Possible future legislative developments were also brought to the attention of the Special Rapporteur. He was informed that new legislation on transboundary movements of toxic and dangerous products will provide for stricter controls, for example by being applicable also to goods shipped as humanitarian aid. Ministry of Justice officials also mentioned the development of legislation which will provide for more stringent management of toxic products and other chemicals. Finally the Special Rapporteur was also informed of the possible adoption in the near future of a plan of action on persistent organic pollutants in line with the Stockholm Convention. Some Members of Parliament mentioned that modifications to the law on waste might be required because of discrepancies between the list of products referred to in Ukrainian law and those in European Union legislation. These differences can, for example, lead to misunderstandings as to the qualification of a product as waste.

II. INSTITUTIONAL FRAMEWORK AND LAW ENFORCEMENT

13. The Ministry of Environmental Protection is the main government body which deals with issues directly related to toxic waste and dangerous products. The mandate of the Ministry is inter alia to implement State policies in the field of nature protection, use of water resources, waste management, ecological and, within its competence, radioactive safety. The Ministry of Health also has a mandate to address issues related to the potentially adverse effects of toxic and dangerous products and wastes, as it will be in charge of monitoring the health of populations of areas that have been affected by dumping or improper storage or disposal thereof. The Ministry of Health can also monitor the water and food produced in the affected areas. Finally, the Ministry for Emergencies and Affairs of Protection of the Population from the Consequences of the Chernobyl Catastrophe can also be called upon as it will coordinate the response of the authorities in case of an environmental disaster, as well as the State Nuclear Regulation Committee.

14. The system of administrative and territorial composition of the country consists of: the Autonomous Republic of Crimea, oblasts, regions, cities, districts in cities, villages and townships. In each oblast, there are departments of health protection, ecological inspection and of the State Department of Ecology and Natural Resources. In the territory of the Autonomous Republic of Crimea, there is the Republican Nature Committee of Crimea. These departments are responsible for responding to local environmental and health problems arising from toxic wastes and dangerous products. According to the Law of Ukraine on Local State Administrations, the local state administration is responsible in the field of environmental protection for taking measures concerning the indemnification of damages resulting from

violations of the law on environmental protection committed by enterprises, bodies, organizations and citizens; for informing the population of ecologically dangerous accidents and situations, the condition of the environment and measures taken; and for organizing the necessary work on the consequences of environmental accidents.¹

15. Whereas the Ministries of Environmental Protection, Health and Emergencies, have the mandate either to work towards the prevention of the adverse effects of toxic wastes and dangerous products or to respond to these adverse consequences, the Office of the Prosecutor General and the Office of the Ombudsman have the mandate to examine issues related to environmental damage after the fact.

16. The Office of the Prosecutor General has the mandate to initiate investigations when it receives complaints that allege a violation of the law. In the specific cases of a breach of the law on environmental protection or of a violation of the right to a safe environment, the case will be examined by a prosecutor from the environmental protection unit. This unit is composed of 33 prosecutors who have received specialized training and is responsible for conducting investigations on a wide range of issues including import of dangerous products, protection of the environment and issues related to water and the extraction of natural resources. In addition the unit will also investigate cases related to the Chernobyl disaster, namely misappropriation of funds and negligence of health and safety measures.

17. In the particular case of the importation of toxic and dangerous products the Special Rapporteur was informed that the actions of both individuals and corporations are examined. It was noted that in these types of cases prosecutors also have a mandate to investigate the actions of officials whose mandate includes control of the border and the nature of products being imported, including officials from the departments of health, customs and environmental protection. In these types of cases the prosecutor initiating an investigation will often order scientific tests to determine the exact composition of the imported product. Finally, although the prosecutor may not initiate proceedings he may make recommendations to the concerned authorities.

18. The Ombudsman's Office was created in 1995 and the right of appeal to the Ombudsman for the protection of rights is enshrined in the Constitution.² The Ombudsman submits an annual report to the Parliament of Ukraine on the observance and protection of human rights and freedoms.³ Although the Ombudsman has the mandate to protect the human rights of all citizens, the decisions of the Ombudsman are not binding. However, there exists an obligation to cooperate with and provide information to the Ombudsman, which extends to government organs as well as to the private sector.⁴

¹ Article 21, Law of Ukraine on Local State Administrations.

² Article 55 of the Constitution.

³ Article 18, Law on the Ukrainian Parliament Commissioner for Human Rights.

⁴ Ibid., article 22.

19. According to information communicated to the Special Rapporteur, the Ombudsman's Office receives each year approximately 350 complaints related to the right to an environment that is safe for life and health, which represents about 1.5 per cent of the total number of complaints addressed to the Office. Representatives of the Ombudsman's Office acknowledged that this low percentage indicated that more work needs to be done on human rights issues related to the environment. The work of the Ombudsman's Office may be linked to the judiciary as some cases can be forwarded to the Office of the Prosecutor General for investigation. Finally, the work on the Ombudsman's Office in this area is also reflected in a specific section of the annual report to the Parliament of Ukraine.

20. At the legislative level the Parliamentary Committee on Environmental Policy, Use of Natural Resources and Elimination of the Chernobyl Aftermath, holds hearings on both general topics concerning the environment and particular cases and discusses draft legislation. In addition, one of the functions of the Committee is to monitor the execution of the legislation.

III. ISSUES BROUGHT TO THE ATTENTION OF THE SPECIAL RAPPORTEUR

A. General challenges faced by Ukraine

21. During his visit the Special Rapporteur was informed of the overall environmental challenge faced by Ukraine as a result of the very significant quantities of toxic and dangerous products and wastes which have accumulated during the past decades and which are the consequence notably of the large industrial sector developed in a previous era. It is reported that, for example under the Soviet system the economy of Ukraine used between 1.3 and 1.5 billion tons of raw materials per annum, of which the major part was returned to the environment as waste, and that by 1990 25 billion tons of waste had accumulated in Ukraine.⁵ A number of facilities producing these wastes have become obsolete or were abandoned during the 1990s.

22. The problem posed by the accumulation of such quantities of waste is further worsened by several factors. First and foremost, the problem that was most brought to the attention of the Special Rapporteur is that of the unavailability of funding to clean up accumulated wastes, especially pesticides. In addition, in most cases Ukraine does not possess the necessary technologies to treat this waste. Some interlocutors also mentioned that the privatization process further compounds the problem. Indeed, new owners of plants and industrial sites often do not want to take responsibility for existing waste problems linked to the companies they have just acquired, and often want the State to take that responsibility. The low ecological awareness of some parts of the population was also raised as an issue. The Special Rapporteur notes however, that he found in Ukraine a very active civil society in the environmental sphere and a growing public awareness of these issues. Finally, the import of additional wastes adds to the existing problem with which Ukraine is already struggling to deal.

⁵ Andriy Demydenko, Ukraine country chapter for the Environment and Security Initiative (ENVSEC), 2006, available at <http://www.envsec.org/easteur/index.php>.

B. Ukraine as a target for illegal traffic in hazardous products and wastes from neighbouring countries

1. Specific cases

23. Following up on communications received, the Special Rapporteur examined in more detail the issue of the illicit import of toxic wastes into Ukraine, with a particular focus on two cases - acid tars in the Lviv region and “premix” in Zakarpatska.

24. The Special Rapporteur first examined the import of some 20,000 tons of acid tars (neutralized residual tars) from Hungary to the Lviv region between 2002 and 2004. In 2002, State enterprise Spetservice imported close to 17,000 tons of acid tars from Hungary, ostensibly to be used as alternative fuel. The companies involved labelled these acid tars as “modifiers” making their import easier than if they had been qualified as wastes. In 2003, another Ukrainian company Osma-Oil imported some 3,000 tons of acid tars to be used as alternative fuels at the Dobrotvir power station.

25. The Special Rapporteur was informed that when the acid tars arrived at the power station, it was unloaded manually by workers who had not been informed of the toxicity of the material. In addition, initial tests at the power station indicated that the acid tars could not be used as alternative fuels as promised, because they contained too much organic material to burn in a safe and proper manner. These tars are still lying in partially exposed conditions around the grounds of the Dobrotvir power station.

26. Regarding the first shipment, the 17,000 tons of acid tars were dumped in an abandoned quarry of State enterprise Sirka in Novy Rozdil. The acid tars lie by the edge of the quarry, unprotected from the elements, while some of the tar seeps into the earth and towards the bottom of the quarry. The Special Rapporteur was informed of plans to transform this quarry into a lake. The quarry has already been substantially filled and there are fears that when the water reaches the acid tars, a tar lake could be created. If the water levels continue to rise, as expected, water from the quarry could reach the Dniester River which would result in widespread pollution. Concerns were expressed that improper storage of these tars, both at the power station and in the quarry, could lead to the acidification of the environment and to the contamination of the water table.

27. The Prosecutor of the Lviv region instituted investigations in 2005 into these two cases, which are ongoing. The cases were later treated as one when the Prosecutor came to the conclusion that the two shipments of acid tars had originated in the same foreign company. Consequently, the Prosecutor ordered tests to be carried out on the tars. The initial results indicate that the composition of the tars does not match that which was indicated on the supporting documents submitted to customs and environment authorities to obtain authorization for the import of the product. The Special Rapporteur has been informed by the Government that the case has been investigated by the Department of Interior Affairs. The findings of the investigation show that the waste does not fall into the hazardous materials category. At present, experts are carrying out an investigation to see if there is any ecological damage to the environment as a result of the stockpiling of the acid tars. The Special Rapporteur welcomes the fact that the Prosecutor has also made recommendations concerning some 200,000 tons of domestically produced acid tars present in the Lviv region.

28. The Special Rapporteur also examined the case of “premix” in the Zakarpatska region. From 1999 to 2005 some 4,000 tons of premix were brought in from Hungary. The Special Rapporteur was informed that the importing company specified that the premix was raw material for the rubber industry, as well as insulating materials and as such did not require special import permission. As soon as the product was imported, it was dumped in several sites in the Zakarpatska region, namely in and around the town of Beregovo and the surrounding villages. They were stored for several years in bags completely exposed to the elements, in some cases in the centre of villages. The population of these villages began complaining of illnesses, namely frequent headaches and asthmatic coughs, and the authorities started to look into the issue.⁶ Local health authorities have informed the Special Rapporteur that they are monitoring the issue and that no significant increase in illness has been noted, although it has been reported that some officials have publicly acknowledged an increase in disease. Finally, even though some scientists and officials stated that they did not have sufficient evidence to establish a conclusive link between the premix and the reported rise in illnesses, they confirmed that concerns of a link are well founded.

29. The Special Rapporteur was informed that initial tests indicated that several types of premix were imported but that all contained organic substances and high levels of heavy metals (100 to 1,000 times that of the soil), which are highly toxic for human health. According to reports the Marzaev Institute of Health and Medical Ecology concluded that premix consists of volatile compounds containing heavy metal oxides harmful to human health. These include lead, copper, chrome and nickel, all of which require special disposal methods.⁷ The authorities have recently started to take action, including the containerization of the premix, which is the first step towards its removal from the area. However, at the time of the Special Rapporteur’s visit large quantities of the product (several hundred tons) remained stored in unsafe conditions, unprotected from the rain or wind, either in sacks or in the open, in seemingly abandoned freight cars, which in some cases are very close to populated areas. In addition, the premix which has been containerized remains in most cases stored either in populated areas or on open unguarded ground and in no case with signs or postings indicating the potentially dangerous nature of the product. The Special Rapporteur was informed of future plans and funding to containerize the remaining premix, however he remains concerned at the time taken to do so and the continuing storage in populated areas.

30. The results of initial tests were transmitted to the prosecutor and a moratorium on the use and transfer of the product was imposed. The Special Rapporteur was informed that, as in the proceedings related to the acid tars, proceedings initiated by the prosecutor in the case of premix mention officials from the health service, customs department and environmental inspection agencies, who should have been monitoring movement of the products across the borders of Ukraine, including conducting tests on the products. The officials who authorized the imports by the companies involved are also mentioned in the investigation.

⁶ Snizhana Rusin, article in the Kirovograd News, 18 January 2007: “Recent medical studies in the Beregovo region indicate that illness levels in Bolshaya Bathka have increased by 3-4 times, and by 21 per cent among children. At the regional level they have increased by 2.6 times.”

⁷ Ibid.

2. General trends

31. The Special Rapporteur notes some disturbing similarities between the cases of acid tars and premix: (a) the companies importing the products falsely declared their composition as well as their utility; (b) Ukraine did not possess the technologies that would have allowed it to use or dispose of these products in an adequate and safe manner; (c) Ukraine seemed unable to take recourse to the mechanisms of the Basel Convention; and (d) the products originated mainly from the European Union.

32. In both cases, it was brought to the attention of the Special Rapporteur that the companies involved in the import of these products were very small and no longer exist. Some interlocutors raised the possibility that these Ukrainian companies were in fact created by the foreign company exporting the product, with the complicity of a national of Ukraine, with the sole objective of importing these products. Since they are no longer in existence, the State cannot order the companies to clean up and respect their environmental obligations. Instead, the State ends up being the sole entity able to deal with the problem. In order to minimize the possibility of this occurring in future the Special Rapporteur notes that the relevant governmental agencies may wish to establish some form of vetting mechanism for companies wishing to import dangerous or toxic products. This would ensure that the importing companies can be made accountable if need be.

33. While the Special Rapporteur acknowledges that the ultimate responsibility lies with the companies involved, this should not prevent the State from taking measures to safeguard its population from the adverse effects of the dumping of these products. In addition, the complexity of investigations by the prosecutor and possible subsequent legal action against the corporations involved in both cases means that any legal process will be lengthy. Such a lengthy process could pose a great risk to the enjoyment of human rights of the affected communities. Prompt preventive action by the authorities is thus required. The Special Rapporteur takes note of the argument that slow action by the State is related both to the high costs of this type of clean-up and the issue of what to do with these products when technologies to process them safely are unavailable. It must however be noted that action by the authorities does not prevent them from seeking compensation from the responsible companies through legal action, either through the investigations launched by the prosecutor or through civil action.

34. The Special Rapporteur was also informed of the impossibility in both cases of resorting to the mechanisms of the Basel Convention to return the products to the originating country, as they were not initially declared as wastes. The Ukrainian authorities could resort to the Basel Convention if they can qualify the acid tars and the premix as wastes, however this would require further details on the nature of the product which implies costly and complicated tests.

35. In both cases the products originated in the same European Union State and were dumped in regions of Ukraine that shared a border with new European Union member States. Both government and civil society interlocutors raised the point that proximity to the European Union border further increased the occurrence of illicit transfers of toxic wastes or dangerous products. Several elements point to this conclusion because when countries accede to the European Union they must adopt stringent new environmental legislation. In such cases, companies in some countries may find it cheaper to export their wastes to neighbouring States and thus prefer to do so, rather than process them in accordance with the law. In addition, differences in legislation

between neighbouring EU and non-EU States might encourage exports of newly banned materials from the former to the latter in which the use of such materials may still be permitted. The Special Rapporteur was informed of one case concerning asbestos which is banned in the European Union. In this case it was reported that asbestos-laden construction material was donated by a new European Union member State to local authorities in Ukraine as a humanitarian gesture. Several interlocutors met by the Special Rapporteur, both in border regions and in Kyiv, expressed their concern that the import of wastes was an ongoing phenomenon, and was not limited to the two cases detailed above. The Special Rapporteur believes that discrepancies between European Union and Ukrainian legislation as well as Ukraine's huge stock of domestically produced toxic waste, which can make it easier to conceal imported toxic wastes and dangerous products, make Ukraine an attractive destination for the illicit movement of these products.

36. Finally the Special Rapporteur is also concerned by reports indicating that in addition to being a destination country for toxic wastes, Ukraine is increasingly being used as a transit country for toxic wastes originating in European Union countries and destined for other countries in Central Europe and Asia. One case which was communicated to the Special Rapporteur was that of a rail station in the Lviv region where lead is transferred from one freight car to another on its way to Central Asia.

37. The Special Rapporteur has been informed by the Government that since 2007, there has been no illegal importation of toxic and dangerous products and wastes, or asbestos.

C. Obsolete pesticides

38. The vast majority of interlocutors met by the Special Rapporteur, both from the authorities and civil society, mentioned obsolete pesticides as one of the major environmental challenges faced by Ukraine. Indeed, a government inventory from 2002-2003 estimated the total amount of obsolete pesticides at around 20,900 tons,⁸ this is comparable with the total quantities of obsolete pesticides present on the African continent, a problem which has already been examined by the Special Rapporteur. It is estimated that some 10 per cent of these are persistent organic pollutants (POPs), including some 1,769 tons of DDT.⁹

39. One of the main problems with regard to this stockpile of obsolete pesticides is their storage. In addition to the some 109 centralized special warehouses created at the end of the 1970s to store pesticides there are around 5,000 storage facilities owned by either private, public or mixed partnerships, mainly on farms.¹⁰ These small storage locations pose the most problems. Indeed, these small warehouses often violate prescribed storage regulations for chemicals. In a number of cases different types of pesticides are mixed, without any real concern for the potential consequences of the more dangerous pesticides that can be created by these mixtures.

⁸ See footnote 5 above.

⁹ Ibid.

¹⁰ MAMA-86, *Hazardous Waste Hot Spots: the Situation in Ukraine*, available at www.mama-86.org.ua (accessed 17 October 2007).

These warehouses are often close to human settlements; for example, according to government officials, in the Kyiv oblast there are over 100,000 tons of obsolete pesticides stored in private warehouses in violation of regulations. It has also been reported that in some cases containers thought to be safe for decades are becoming less and less airtight. Finally there is often insufficient information available about these warehouses; there is often little or no documentation about their contents¹¹ and no public information warnings about the hazardous nature of those contents.

40. This absence of warnings or additional information for the local population often leads to the misuse of obsolete pesticides. Indeed, obsolete pesticides stored in insecure and unguarded areas are sometimes stolen and used by the local population, who are unaware of the potential danger of the products they are using. In addition to being a threat to the health of those using obsolete pesticides, their improper use results in additional pollution of the soil and groundwater.¹²

41. The Special Rapporteur also notes that in some areas the stockpiles of obsolete pesticides and even more the large number of storage sites can prevent further clean development. This is the case in Zakarpatska oblast, where plans for development of ecotourism in the Carpathian Mountains, which is regarded as one of the best possibilities for the region, could be hampered by the presence of obsolete pesticides in otherwise pristine areas.

42. The Special Rapporteur was informed of a process to eliminate obsolete pesticides which has recently been established. The plan is to destroy some 500 tons of obsolete pesticides per year. This is still minimal bearing in mind the large stockpile of 20,000 tons. Some concerns have been expressed to the effect that the elimination process is likely to use incineration technologies, which is a method that has been criticized by international experts in the elimination of persistent organic pollutants, as it releases dioxins into the environment. While encouraging the elimination of the stockpile of obsolete pesticides, the Special Rapporteur encourages the authorities to exercise caution so that the technologies used will not cause further harm to the environment.

D. Spent nuclear fuel storage

43. The Special Rapporteur was informed of plans to build a nuclear storage facility. Three possible sites in or around Chernobyl have been mentioned in this connection and it has been reported that funding for this storage facility will come from foreign companies. Some interlocutors have expressed their concern that the planned size of the storage facility far exceeds the needs of Ukraine and that this could result in the facility being used to store imported spent nuclear fuel.

44. Both officials from the Ministry of Environmental Protection and members of the Committee on Environmental Protection expressed understanding for the concern of civil society on this issue, but assured the Special Rapporteur that this facility would not be used to allow

¹¹ See footnote 5 above.

¹² Ibid.

future imports of spent nuclear fuel. They also informed the Special Rapporteur of the fact that at present Ukrainian spent nuclear fuel is being sent to Russia as no adequate facility exists in Ukraine, which makes the construction of this facility quite pressing. The Ukrainian legislative framework related to nuclear energy provides that the public must agree on new developments and any decision in this field must be taken by Parliament. In addition, because of the unfortunate history, the population of Ukraine has a high level of awareness for issues related to nuclear energy. The plans for a new spent nuclear fuel storage facility are thus being closely monitored by the media and civil society. While remaining concerned about this issue, the Special Rapporteur believes that if the legislation is correctly implemented, and given the awareness shown by civil society, sufficient safeguards are in place.

E. Gold mine near Muziehovo

45. The Special Rapporteur also received information concerning a gold mine in the vicinity of Muziehovo in the region of Beregovo. Some of the interlocutors expressed their concern concerning the possible use of cyanide in the process of separating the gold from other minerals. When the Special Rapporteur raised the issue with the oblast administration, they informed him that the mine had been in operation since 1998 using a gravitational extraction method, and that they would not allow the mining company to pass to a chemical extracting process. These assurances were once again communicated to the Special Rapporteur by the Ministry of Environmental Protection.

F. Right to information in environmental matters

46. Article 9 of the Law of Ukraine on Environmental Protection provides for public participation in discussions concerning plans for installations that may have an adverse effect on the environment. In addition, article 21 of the same law provides that environmental NGOs may initiate national and local referenda on issues related to environmental protection. Despite the fact that Ukraine has ratified the Aarhus Convention, the Special Rapporteur notes with concern that in its report¹³ the Compliance Committee of the Convention finds that Ukraine still needs to bring its legislation and practice into conformity with the provisions of the Convention. The Special Rapporteur was informed that a law implementing the Convention mechanisms was being drafted. Finally the Special Rapporteur was informed of a number of laws and bills which protect the right to receive information concerning environmental matters, domestic chemicals and food safety.

47. While noting that the protection of the right to information and participation in environmental matters is fairly adequately protected in legislation, and will be further protected when the law implementing the Aarhus mechanisms is adopted, the specific cases examined by the Special Rapporteur show that in some instances progress needs to be made in the practice of providing information in environmental matters. Indeed, in the case of premix most of the population of the affected area did not receive any information from the authorities concerning this product, its composition and potential risk, before the media covered the story. In the case of obsolete pesticides, the absence, around warehouses containing these pesticides, of warning signs about the hazard posed by them and low public awareness has led to some misuse of these

¹³ ECE/MP.PP/2005/13/Add.3.

dangerous products. In these cases, the public may not have received sufficient information to allow the local population to take appropriate preventive measures.

48. Access to information regarding environmental issues and their potential consequences for human rights thus appears to require some improvement. Furthermore, the Special Rapporteur believes that providing full information on these issues will contribute to further improving the existing trust and understanding between the Government and civil society on environmental issues. For example in the case of the Muziehovo gold mine, while the local population fears the use of cyanide, the authorities have taken a clear position that this will not be permitted. If the public were better informed of the Government's position, their fears would long since have been laid to rest.

IV. CONCLUSIONS AND RECOMMENDATIONS

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

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

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

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

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

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

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

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

- In cases of alleged illicit dumping, the sanitary authorities should systematically monitor the health of the local population in order to provide early detection of any potential impact on human health.
- The precautionary principle should guide the action of all government departments dealing with cases of illicit dumping of toxic or dangerous products and wastes. In particular, because of the difficulty of scientifically proving links between a product and adverse health effects, the action of sanitary authorities must always be guided by this principle.

- **In the particular case of the quarry in Novy Rozdil, the authorities should remove the acid tars and dispose of them in an environmentally sound manner before the water which fills the quarry reaches them, in order to avoid the potential pollution of the waters of the Dniester.**
- **The Government should establish programmes that would lead to more centralized storage of obsolete pesticides, with the objective of eliminating small, unregulated and dangerous storage sites. In the implementation of these programmes the Government could envisage offering incentives to ensure their effectiveness.**
- **In order to deal with very important stockpiles of toxic wastes, such as obsolete pesticides and acid tars, Ukraine should seek and other States, in particular neighbouring States, should provide technical assistance so that appropriate and effective elimination technologies can be adopted.**
- **Countries of origin should accept the return of illegally or fraudulently exported toxic wastes and dangerous products and facilitate, when applicable, the implementation of the Basel Convention mechanisms.**

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