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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[07 September 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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AMNESTY INTERNATIONAL WRITTEN STATEMENT- GOVERNMENT OF THE UNITED KINGDOM AND NORTHERN IRELAND MUST ADDRESS SPECIAL RAPPORTEUR'S CONCERNS ON CRIMINAL ACCOUNTABILITY AND REMEDY FOR BUSINESS- RELATED HUMAN RIGHTS ABUSE

Amnesty International welcomes the report¹ of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his visit to the United Kingdom.

The Trafigura case and its UK links

On 19 August 2006, over 520m³ of toxic waste were dumped around Abidjan, Côte d'Ivoire. The dumping had a devastating impact on the enjoyment of the right to health by local communities and their environment. Over 100,000 people sought medical assistance. The dumpsites required extensive clean-up and decontamination.

The operations that led to the dumping were coordinated from the UK by a UK-registered company called Trafigura Limited, part of the Trafigura group.

Trafigura, a multinational commodities trader, made the waste by using caustic soda to "wash" several cargoes of a high-sulphur petroleum product on a ship at sea. This industrial process, which had never been undertaken at sea before, produces a hazardous and very odorous waste product called "spent caustic". The waste on board the ship included spent caustic and the remains of the petroleum product.

Trafigura made the toxic waste knowing it was hazardous if not disposed of safely, but not knowing how to dispose of it. During one attempt at disposal, Trafigura created an environmental incident at Amsterdam Port after people in the area complained of the smell and experienced nausea, dizziness and headaches. Tests revealed that the waste was highly contaminated and needed specialist treatment.

Despite this, Trafigura rejected an offer to dispose of the waste safely in The Netherlands for €544,000 (then about US\$695,000) and Dutch authorities allowed it to reload the waste onto the ship. The waste was finally dumped illegally in Côte d'Ivoire by a local company Trafigura hired to dispose of it for just under US\$17,000.

While there have been some related civil and criminal proceedings and some compensation paid to victims, the States involved have not held Trafigura properly to account for its role in the dumping of the waste, and many of those affected are still waiting for an effective remedy and justice.

Although Amnesty International called on UK law enforcement agencies to undertake a criminal investigation into Trafigura Limited's role in the dumping, they declined to do so. Amnesty International's work on that case revealed significant gaps in UK law and the UK's ability to ensure effective remedy for serious human rights-related crimes abroad.

The Special Rapporteur's report references the Trafigura case to highlight the difficulties that victims of toxic pollution face in seeking remedy in the UK and expresses concern as to its over-reliance on providing voluntary guidance on the reputational risks to companies rather than legal accountability.

¹ A/HRC/36/41/Add.1.

The State Duty to Protect

States have an obligation under international law to protect people from business-related human rights abuses. This requires States to adopt effective measures to prevent human rights abuses by companies and ensure effective remedy for victims of such abuse – including in respect of the operations abroad of corporations domiciled in their territory and/or jurisdiction.²

Appropriate criminal laws and sanctions are a key element of the duty to protect. The Committee on Economic, Social and Cultural Rights has stated that the most serious violations of the International Covenant on Economic, Social and Cultural Rights “should give rise to criminal liability of corporations and/or of the individuals responsible”.³ The Human Rights Committee has emphasized that, where investigations reveal violations of certain rights recognized by the International Covenant on Civil and Political Rights, States parties must ensure that those responsible are brought to justice “notably in respect of those violations recognised as criminal under either domestic or international law”.⁴ The Office of the High Commissioner for Human Rights has called on States to make appropriate provisions for corporate criminal liability for severe business-related human rights impacts.⁵ The Guiding Principles on Business and Human Rights specifically recognize States’ “own obligations to investigate individual and business involvement in human rights-related crimes”.⁶

Yet Amnesty International’s research has revealed that States rarely investigate companies implicated in human rights-related crime.⁷ The problem is particularly acute in cross-border cases, when a company based in one State (the home State) causes or contributes to harm in another State (the host State). Law enforcement agencies in the host State may be unable or unwilling to pursue the case, for example because of the political and economic power and influence of the company. Home State laws may not provide jurisdiction over criminal offences committed abroad. Even where jurisdiction exists, law enforcement agencies may not know they can assert jurisdiction, be reluctant to do so because the harm occurred in another State or lack the expertise to investigate cross-border corporate crime.

The Gaps in Corporate Criminal Accountability in the UK

In March 2014, Amnesty International submitted a legal brief and extensive evidence to the UK Crown Prosecution Service calling for a criminal investigation into Trafigura Limited, on the grounds that it conspired in the UK to dump the waste illegally abroad. Although the operations leading to the dumping were coordinated from the UK by a UK company, the substantive offence of dumping was not applicable because the UK’s waste disposal laws only apply if the waste was made or dumped in the UK. In fact, the UK takes the position that “there is no general requirement for States to regulate the extraterritorial activities of business enterprises domiciled in their jurisdiction” (although it recognizes that there are “limited exceptions” to this under some treaty regimes).⁸ Accordingly, in its National Action

² Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 24, E/C.12/GC/24 (10 August 2017), paras 14-22, 25-28 and 30-35; Committee on the Rights of the Child, General Comment No. 16, CRC/C/GC/16 (17 April 2013), paras 28, 30, 31 and 38-46; Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, CEDAW/C/2010/47/GC.2 (19 October 2010), para 36; General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (21 March 2006), para 15.

³ CESCR, General Comment No. 24 at 2, para 49.

⁴ Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add. 13 (26 May 2004), para 18.

⁵ United Nations High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse*, A/HRC/32/19 (10 May 2016), Annex, para 1.2.

⁶ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31 (21 March 2011), Principle 26.

⁷ The Corporate Crimes Principles: Advancing Investigations and Prosecutions in Human Rights Cases, www.commercecrimehumanrights.org/principles/introduction/.

⁸ *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, para 11, www.gov.uk/government/publications/bhr-action-plan.

Plan on Business and Human Rights, it sets out a general “expectation” that companies respect human rights in their operations, but has no plans to require them to do so legally.⁹

The Crown Prosecution Service passed the file to the Environment Agency, which declined to investigate the case without reviewing the evidence. Under threat of legal proceedings by Amnesty International, it subsequently agreed to review the evidence but, in March 2015, declined to investigate despite acknowledging that a serious offence had been committed in the UK if the allegations were true. It admitted to Amnesty International that it lacked the capacity and resources to undertake the investigation, especially against a powerful multinational company.¹⁰ As the Special Rapporteur stated in his report, this was despite “evidence of corporate conspiracy to dump waste abroad under section 1A of the United Kingdom Criminal Act 1977”.¹¹

Amnesty International considers that the factors resulting in inaction in this case, combined with a lack of support for and direction to UK law enforcement agencies to investigate this type of crime, result in UK law enforcement agencies being unable or unwilling to tackle corporate crime particularly occurring across borders.

Amnesty International is concerned that, unless the UK government takes action to improve its corporate criminal liability laws supported by adequate resources and strong policies to ensure their effective implementation, UK law enforcement agencies will continue to lack the legal framework and means needed to hold UK companies accountable for serious human rights-related crime abroad. This is likely to encourage a culture of corporate impunity.

The March 2017 report of the UK Parliament’s Joint Committee on Human Rights echoes these concerns, recommending that the UK introduce criminal sanctions for failing to prevent human rights abuses throughout corporate groups and supply chains, and that law enforcement agencies be “better trained and resourced” to investigate human rights-related crime including across borders.¹²

Recommendations to the 36th Human Rights Council

In addition to the recommendations of the Special Rapporteur, Amnesty International urges the Human Rights Council to call on the UK government to:

- Constructively engage with the Special Rapporteur and act on his recommendations without delay.
- Improve its corporate criminal liability laws and adequately train and resource law enforcement agencies, so as to ensure corporate accountability and effective remedy for victims when UK companies are implicated in serious human rights-related crime, whether in the UK or abroad.

⁹ UK National Action Plan on BHR at 8, page 14.

¹⁰ Environment Agency letter to Amnesty International, 17 March 2015.

¹¹ A/HRC/36/41/Add.1, page 16.

¹² Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*, publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf, paras 193 and 199.