

Distr.  
GENERAL

E/CN.4/2004/46/Add.2  
19 December 2003

ARABIC  
Original: ENGLISH

## المجلس الاقتصادي والاجتماعي



لجنة حقوق الإنسان

الدورة الستون

البند ١٠ من جدول الأعمال المؤقت

### الحقوق الاقتصادية والاجتماعية والثقافية

ما لنقل وإلقاء المنتجات والنفايات السمية والخطرة بصورة غير مشروعة

من آثار ضارة في التمتع بحقوق الإنسان

تقرير المقررة الخاصة، السيدة فاطمة زهرة أوهاشي - فيسلي،

المقدم عملاً بقرار اللجنة ٢٠/٢٠٠٣

إضافة

البعثة المضطلع بها إلى المملكة المتحدة

لبريطانيا العظمى وآيرلندا الشمالية\*

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\* يُعمم هذا الموجز بجميع اللغات الرسمية. ويعمّ التقرير نفسه، الوارد في مرفق هذا الموجز، باللغة التي قُدم بها فقط.

## موجز

تلبيةً لدعوة من حكومة المملكة المتحدة لبريطانيا العظمى وآيرلندا الشمالية، قامت المقررة الخاصة ببعثة إلى هذا البلد في أيار/مايو - حزيران/يونيه ٢٠٠٣. وكان الهدف الرئيسي من البعثة هو معرفة المزيد عن القوانين والسياسات والممارسات المعمول بها في المملكة المتحدة بشأن الاتجار غير المشروع في المنتجات والنفايات السمية والخطرة وأثر ذلك في التمتع بحقوق الإنسان. والتقت المقررة الخاصة في أثناء البعثة بعدد كبير من الجهات الفاعلة المعنية، من بينها وكالات حكومية، وإدارات مفوضة، ومنظمات غير حكومية، وممثلون عن القطاع الخاص.

وفي أثناء دراسة القوانين والأنظمة ذات الصلة بولاية المقررة الخاصة، بما في ذلك تشريعات الاتحاد الأوروبي ذات الصلة بالموضوع، أثير عدد من المسائل المعينة وهي الأنظمة المتعلقة بالمنتجات الكيميائية بما فيها المبيدات الحشرية، ومسؤولية الشركات، والوصول إلى المعلومات، والتعاون التقني، والعدالة البيئية.

وبينما ترحب المقررة الخاصة بكثير من السياسات الحكومية في المجالات ذات الصلة بولايتها، وخاصة فيما يتعلق بتنفيذ متطلبات اتفاقية بازل المتعلقة بمراقبة حركة النفايات الخطرة عبر الحدود وبالتخلص منها، فإنها قد لاحظت أن نطاق ومدى صحة النتائج والاستنتاجات التي خلصت إليها البعثة يحد منهما كون كثير من الأنظمة المركزية أو التشريعات هي الآن قيد إعادة النظر أو يجري إعادة صياغتها أو هي في طور التنفيذ. ونتيجة لذلك، فإن أجزاء هامة من الاستنتاجات والتوصيات تركز على مشاريع التشريعات/الأنظمة أو على ما سيكون منها مستقبلاً وليس على الممارسة العملية.

وتود المقررة الخاصة أن يجري إبلاغها بما يتعلق بالتطورات التالية:

- (أ) نتائج الاستعراض الوشيك "للأنظمة المتعلقة بالنفايات الخاصة"؛
- (ب) خطط الحكومة للتصدي لمشكلة القدرة على معالجة النفايات الخطرة، عقب التنفيذ الكامل "للتوجيه المتعلق بمدافن القمامة" وغيره من التوجيهات؛
- (ج) التعديلات المراد إدخالها على "أنظمة شحن النفايات"، المنظور فيها حالياً، والتدابير العملية المتخذة من أجل تنفيذ هذه الأنظمة.

وقد أبدت المقررة الخاصة الملاحظات التالية (غير مرتبة حسب الأولوية):

- (أ) أحاطت علماً بأوجه القلق المعرب عنها حول غياب الشفافية؛
- (ب) أحاطت علماً، مع الموافقة، بأن الوثائق الهامة المتعلقة بالسياسات في المجالات المشمولة بولايتها متاحة بشكل عام هي و المعلومات الشاملة المتعلقة بولايات وأنشطة الوكالات والجهات التنظيمية ذات الصلة؛

(ج) لاحظت أنه توجد عملية تشاور بشأن مشاريع التشريعات الجديدة والفرص المتاحة لإسهام أصحاب المصلحة في عمليات وضع السياسات. بيد أنها لاحظت أيضاً أوجه القلق التي أعربت عنها المنظمات غير الحكومية التي تدعي أنها واجهت قيوداً وصعوبات في جهودها الرامية إلى المشاركة على نحو كامل وفعال، وخاصة مشاكل تتعلق بالوصول إلى المعلومات وبالتكاليف؛

(د) لاحظت المقررة الخاصة مع القلق أنه، بصرف النظر عن الأنظمة والقيود الناشئة عن اتفاقية روتردام، لا يوجد في الوقت الحاضر حظر على تصدير المنتجات الكيميائية التي جرى تقييدها أو حظر استعمالها في المملكة المتحدة؛

(هـ) أحاطت المقررة الخاصة علماً مع الاهتمام بالقضايا التي بنت فيها محاكم المملكة المتحدة والتي يُسمح فيها بالوصول إلى العدالة أمام الضحايا الخارجيين للشركات المتعددة الجنسية وبإقرار مساءلة هذه الشركات. بيد أنها لاحظت الصعوبات التي تُواجه في الإتيان بالشركات إلى ساحة العدالة وأن القضايا العديدة المعنية قد سُويت خارج المحكمة، كما لاحظت انخفاض مستوى الجزاءات المفروضة، مما يشكل انتهاكاً لحقوق الضحايا ومصالحهم؛

(و) أحاطت علماً، مع الموافقة، بالإعفاءات المقررة فيما يتعلق الحق العام في الوصول إلى المعلومات بموجب "قانون حرية المعلومات لعام ٢٠٠٠" رهناً بالوفاء بمعيار المصلحة العامة. وهي تود أن يجري إبقاؤها على علم بأية حالات يُلغى فيها نقض وزاري قراراً بالكشف صادراً عن مفوض حرية المعلومات؛

(ز) أحاطت المقررة الخاصة علماً، مع القلق، بالروايات التي سردتها منظمات غير حكومية حول الأدلة المتنامية على وجود علاقة بين المشاكل البيئية والمظالم الاجتماعية فضلاً عن التكاليف المرتبطة باللجوء إلى العدالة في القضايا البيئية وهي تكاليف باهظة إلى أبعد حد بالنسبة إلى المجتمعات المتضررة. بيد أنها قد لاحظت أيضاً الجهود التي تبذلها الحكومة للعمل مع المنظمات غير الحكومية بغية تحقيق عدالة بيئية أفضل.

وقدمت المقررة الخاصة التوصيات التالية:

(أ) أن تفرض الحكومة حظراً على تصدير أي منتج كيميائي جرى تقييده أو حظر استعماله في المملكة المتحدة؛

(ب) أن يجري إيلاء مزيد من الاهتمام للصعوبات التي تواجهها البلدان النامية في يتعلق بالمبيدات الحشرية والمنتجات الكيميائية الأخرى وأن يتصدى التعاون التقني لهذه المشكلة على وجه التحديد؛

(ج) أن تنظر المحاكم في تعزيز إنفاذ التشريعات القائمة والمستقبلية في المجالات ذات الأهمية لولايتها بأن تأمر المحاكم بعقوبات مدنية وجنائية أكثر ردة في حق من يخرق القانون؛

(د) أن تكمل الحكومة تشجيعها للمبادرات الطوعية عن طريق تنفيذ معايير دنيا لسلوك الشركات وللشفافية تكون ملزمة قانوناً، بما في ذلك ما يتعلق بما تمارسه الشركات من أنشطة في الخارج.

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON THE ILLICIT MOVEMENT AND  
DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES ON THE  
ENJOYMENT OF HUMAN RIGHTS, MS. FATMA ZOHRA OUHACHI-VESELY,  
ON HER MISSION TO THE UNITED KINGDOM**

**(27 MAY TO 6 JUNE 2003)**

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## **Introduction**

1. In accordance with the mandate given to her by the Commission on Human Rights in resolution 1995/81 and subsequent resolutions, the Special Rapporteur undertook a mission to the United Kingdom of Great Britain and Northern Ireland from 27 May to 6 June 2003. The mission came about as a result of an invitation extended by the Government, and follows previous missions to several countries in Africa in 1997, in Central and South America in 1998, in Europe in 1999, the United States of America in 2001 and Canada in 2002.
2. The purpose of the mission was, *inter alia*, to study the laws and practice, and to learn about governmental policy and the impact of multilateral agreements on the transboundary movement of toxic waste and hazardous materials; to consider trends in such transboundary movements; to learn about technical cooperation undertaken by the United Kingdom; to study the impact and role of non-State actors in the phenomena covered by her mandate; and to sensitize the authorities to the importance of her mandate from a human rights perspective.
3. The Special Rapporteur is grateful to the United Kingdom Government and its agencies for their cooperation and for the assistance extended to her during her mission. She also thanks representatives of the Scottish Executive and the Scottish Environmental Protection Agency, as well as non-governmental organizations (NGOs) and private sector representatives who made themselves available for extensive consultations and who supplied her with large amounts of information.
4. The Special Rapporteur met with the then Minister of the Environment, Mr. Michael Meacher, representatives from the Human Rights Policy Department and the Environment Policy Department of the Foreign and Commonwealth Office, the Department for Environment, Food and Rural Affairs, the Department of Trade and Industry, the Department for International Development, the Environment Agency, the Pesticide Safety Directorate, the Scottish Executive, and the Scottish Environmental Protection Agency. She also met with representatives of the Joint Committee on Human Rights, representatives of the House of Commons Select Committee on Environment, Food and Rural Affairs, and the Royal Commission on Environmental Pollution. She furthermore met with NGOs, academics, industry associations and with representatives of the waste-disposal industry. A list of organizations consulted by the Special Rapporteur is enclosed in the appendix to the present report.
5. The Special Rapporteur held meetings in London, Edinburgh, York and Manchester. She also went on a site visit to the Cleanaway High Temperature Incinerator Plant in Ellesmere Port.

## **I. LEGAL AND CONSTITUTIONAL CONTEXT**

### **A. Constitutional framework**

6. The United Kingdom is a parliamentary democracy. It is a constitutional monarchy in which ministers of the Crown govern in the name of the Sovereign, who is both Head of State and Head of the Government. There is no written constitution; instead, the relationship between the State and the people relies on statute law, common law and conventions.
7. The United Kingdom Parliament makes primary legislation in all matters which have not been devolved to the Scottish Parliament and the Northern Ireland Assembly. The United Kingdom Government is responsible for negotiating and acceding to international agreements. The judiciary determines common law and interprets statutes.

8. Decentralization of power has taken place through the establishment of a Parliament and Executive in Scotland, a National Assembly in Wales and in Northern Ireland,<sup>1</sup> and a longer-term devolution of power to regional level in England. The Office of the Deputy Prime Minister is responsible for the overall management of relations between the United Kingdom Government and the devolved administrations in Scotland, Wales and Northern Ireland.

9. The Scottish Executive has responsibility for all public bodies whose functions and services have been devolved to it, and is accountable to the Scottish Parliament for them. The environment is one of the issues which in the new constitutional structure fall under the devolved administration. The Scottish Parliament is able to amend or repeal existing acts of the United Kingdom Parliament in this area and to pass new legislation of its own. The National Assembly for Wales has the power to develop and put into practice policies in the area of environment, but those powers only extend in relation to Wales insofar as those powers have been transferred to the Assembly.<sup>2</sup>

## **B. Multilateral, bilateral and regional commitments**

10. International agreements become part of national law once they are given effect by Parliament, usually through legislation. Following devolution, the power to ratify treaties remains with the United Kingdom Government, being a matter of foreign affairs. International agreements which have not been incorporated into national law cannot be used as the basis for an action by groups of individuals against the State or a public body (in the way that European Union (EU) directives may be), nor are they in themselves a source of rights and duties in legal actions between individuals.

11. The United Kingdom is a party to a number of major international human rights conventions. It is also a party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as well as the ban amendment to the Basel Convention. Ratification of the Stockholm Convention on Persistent Organic Pollutants awaits ratification by EU. The Special Rapporteur was informed after the completion of her mission to the United Kingdom that there is now a European Commission (EC) regulation in place that has the effect of ratifying the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and is directly applicable to EU member States (see paragraph 13 below). Work towards ratification of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters<sup>3</sup> is very advanced and ratification is expected in the near future.

12. EU is a major and increasing source of British environmental protection law, including the laws regulating the transboundary movements of toxic and dangerous products and wastes. According to a 1998 report from the Royal Commission on Environmental Pollution, four fifths of United Kingdom environmental legislation now has its origin in European institutions.<sup>4</sup> This means that policy on these issues is largely determined by the appropriate European Union bodies and institutions.

13. As a member of EU, the United Kingdom is obliged to follow and implement EU legislation as appropriate. There are two main ways in which EU plays a role in shaping British environmental law and policy:

(a) EU regulations which lay down rules and standards that are directly applicable in member States;

(b) EU directives which require transposition into the domestic legislation of member States as well as changes in British law or administrative practice.

In the latter case, British law is not the same as EU law until it has been implemented. Directives frequently consist of aims and goals and procedural frameworks rather than precise legal rules, and allow for some discretion in member States concerning ways of implementation. If a directive relates to a devolved matter, it is up to the devolved administration to implement it. This means that an EU directive may be implemented differently in different parts of the United Kingdom. If a directive is not implemented in domestic law by a designated date, EC or individual citizens may institute legal proceedings against the Government to claim any right ensured by the directive.

### **C. Main institutions and bodies**

14. Institutional responsibility at the national and international level for environmental issues rests mainly with the Department of Environment, Food and Rural Affairs (hereafter “Defra”). The Pesticides Safety Directorate (PSD), an executive agency of Defra, administers the regulation of agricultural pesticides and provides advice to the Government on pesticides policy. The Health and Safety Executive has jurisdiction over some issues relating to the testing and approval of chemicals and is responsible for the registration of non-agricultural pesticides. The Department for International Development is responsible for technical cooperation programmes in the fields relevant to the mandate of the Special Rapporteur.

15. The Environment Agency is a non-departmental public body of Defra<sup>5</sup> and an Assembly-sponsored public body of the National Assembly for Wales. The Environment Agency’s remit covers the whole of England and Wales. The Secretary of State for Environment, Food and Rural Affairs has the lead sponsorship responsibility for the Agency as a whole and it is accountable to it for its day-to-day operations in England. The Agency is accountable to the Welsh Assembly Government for its actions in Wales. The Agency is formally recognized as the competent authority (regulator) for England and Wales for transfrontier movements of waste.

16. In Scotland, environmental policies, excluding relevant parts of trade policies, is the responsibility of the Scottish Executive. The Scottish Environmental Protection Agency (SEPA) under the Scottish Executive is the environmental regulator which advises the Scottish Executive on technical and practical regulatory matters.

17. The House of Commons Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of Defra and its associated public bodies. The Committee has the power to undertake inquiries and issue reports on issues falling within its remit.

18. The Advisory Forum on Hazardous Waste, whose members include the Environment Agency, relevant industry associations and environmental NGOs, is meant to have the strategic role of considering the demands of existing and forthcoming legislation and the targets for hazardous waste reduction and recovery, and of providing a means for bringing all relevant sectors together to work towards the goals of hazardous waste reduction and managing it safely.

19. The Royal Commission on Environmental Pollution is an independent standing body, which provides advice on environmental issues to the Queen, Government, Parliament, the devolved administrations and the public. Within the limits of its terms of reference, the Commission has freedom to consider and to advise on any matter it chooses; the Government can also ask it for advice on specific topics.

## II. LAW, POLICY AND PRACTICE

### A. General

20. Part II of the Environmental Protection Act 1990 provides the overall legislative framework for waste management in the United Kingdom. Its main statutory provisions are fleshed out in numerous other documents, including the Special Waste Regulations 1996 (SI 1996/972), as amended, and technical guidance on the meaning of special waste.

21. EU directives provide the normative framework for much of the national regulation of wastes. The Framework Directive on Waste<sup>6</sup> is of fundamental importance within the domestic context. The Directive requires EU member States to establish or designate competent authorities to be responsible for its implementation. The competent authorities are required to draw up waste management plans, to issue permits for waste disposal and recovery operations and to inspect those operations.

22. The Hazardous Waste Directive<sup>7</sup> which requires storage, treatment and disposal facilities only to be operated under a permit scheme is put into force in the United Kingdom by the Special Waste Regulations 1996 (SI 1996/972), as amended. The Directive aims to control the movement and handling of hazardous waste. It requires the recording and tracking of waste moving from the producer to the final disposal site. The scope of the Directive is defined by the Hazardous Waste List, which has recently been amended to include televisions, computer monitors and fluorescent lighting.

23. The Council Regulation on the Supervision and Control of Shipments within, into and out of the European Community<sup>8</sup> gives effect to the Basel Convention throughout the EU countries. The United Kingdom implemented the requirements of the Basel Convention in the Transfrontier Shipment of Waste Regulations 1994 and the United Kingdom Management Plan for the Imports and Exports of Waste.

24. The Landfill Directive<sup>9</sup> aims to standardize the operation and regulation of landfill sites throughout Europe. It sets strict rules on what types of waste can go to landfills and how the sites must be managed. The aim of the Directive is twofold: to improve the sound management of landfills and to reduce the amount of landfill waste.<sup>10</sup> The Directive incorporates the “polluter pays principle” requiring member States to ensure that all of the set-up and operating costs of landfills are covered by the price charged by operators.<sup>11</sup>

25. The Landfill Directive was transposed into domestic legislation by the Landfill (England and Wales) Regulations 2002, which came into force on 15 June 2002. Since then, it is being introduced over time to give industry time to adapt, in accordance with the timescales set out in the Directive. The United Kingdom is to make use of a four-year derogation for the target years 2006 and 2009 offered in the Directive to member States that landfilled more than 80 per cent of their municipal waste in 1995. Following a ban on co-disposal in the Landfill Directive, the Environment Agency estimated in May 2003 that the number of hazardous waste landfills in the United Kingdom will plunge next year by 92 per cent.

26. Two other EU directives - the Waste Electrical and Electronic Equipment Directive and the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (ROHS) Directive - will need to be incorporated into national law by August 2004. The aims of these directives are to reduce the quantity of waste from electrical and electronic equipment and increase reuse, recovery (generating energy from waste) and recycling, and reduce the amount of hazardous material used in the manufacture of equipment. Member States will be required to set up systems for separate collection of waste electronic equipment. Distributors will be required to take back waste electrical and electronic equipment directly or indirectly when they sell a similar new item. Producers will need to meet targets



for the recovery and reuse of separately collected electronic waste, and facilities treating electrical and electronic waste will have to meet higher environmental standards.

27. Apart from the legislative framework largely determined by policies adopted by EU, *Waste Strategy 2000*<sup>12</sup> is the key domestic policy document for England which sets out the policy framework and goals for waste regulation. The strategy sets out targets for waste management, including reduction, recycling and recovery. *Wise about Waste - the National Waste Strategy for Wales*, published in June 2002, provides the strategic framework for the sustainable management of waste in Wales.

28. In Scotland, EU directives are given effect on a statutory basis either through regulations made under the European Communities Act, or under any other empowering primary legislation, such as the Environment Act 1995. A further option is for the Scottish Executive to issue an official direction to SEPA, or any other body, specifying action to be taken to meet the directive's terms.

29. *The National Waste Plan 2003* establishes the direction of the Scottish Executive's policies for sustainable waste management for 2020. The Plan was prepared by the Scottish Executive and SEPA, in consultation with key stakeholders. The plan aims to minimize the impact of waste on the environment, both locally and globally, and to improve resource use efficiency in Scotland. It also aims "to remedy the environmental injustices suffered by those who live with the consequences of a wasteful society".

## **B. Hazardous waste management**

30. The Special Rapporteur was informed that England and Wales alone produce around 5 million tonnes of hazardous waste per annum. In the United Kingdom, hazardous waste is currently referred to as special waste. Such waste is primarily controlled under the Special Waste Regulations 1996 (SI 1996/972).

31. Every year, the Environment Agency receives and processes approximately 750,000 consignment notes pertaining to 500,000 shipments of special waste. Data from each of these consignment notes is entered onto the Agency's Special Waste Tracking system (SWaT). The Agency uses the information on SWaT for statutory reporting requirements, planning, waste strategy and enforcement purposes.

32. In a review of the Special Waste Regulations from March 2001, the Department of Environment, Transport and the Regions found that the 1996 regulations define "special waste" in a way that is not wholly consistent with the definition of "hazardous waste" in the Hazardous Waste Directive, and that the inconsistencies between the two definitions are causing practical and legal difficulties. The 1996 Special Waste Regulations are currently under review.

33. According to the Scottish *National Waste Plan 2003*, the Scottish Executive intends to review the Special Waste Regulations 1996 and amend the list of wastes to be considered as hazardous in respect of EU legislation.<sup>13</sup>

34. Notwithstanding the overall policy towards waste minimization, as expressed in the *Waste Strategy 2000* report, the number of waste streams that are considered hazardous or special has increased as a result of the various European directives and regulations referred to above. Furthermore, the withdrawal of harmful chemicals, such as ozone-depleting substances, from use will lead to additional hazardous waste production.

35. Special waste disposal facilities are all owned and run by increasingly few, specialized companies. The treatment industry is presently reporting losses. The Special Rapporteur was given

anecdotal evidence that disposers fill up landfill sites at lowest price for short-term profit in anticipation of closure once the Landfill Directive enters into force. However, it was emphasized to the Special Rapporteur by the regulators that, by and large, companies are compliant with the conditions of their licences. Though the waste industry is still responsible for more pollution incidents than any other sector, progress was made in 2002 in halving the number of serious pollution incidents and improving site management compared to previous years.<sup>14</sup>

36. During an inquiry held by The Environment, Foods, and Rural Affairs Committee in 2002 on the issue of hazardous waste, the Environment Agency expressed its concerns about the restrictions on disposal outlets for hazardous waste caused by the ending of traditional landfill co-waste disposal, arising from implementation of the Landfill Directive. The Agency foresaw a need for additional treatment capacity and/or additional waste minimization. A report from the Hazardous Waste Forum indicates that there could be a shortfall in treatment capacity of 2 million tonnes per annum without action being taken.<sup>15</sup>

37. Additionally, information obtained from waste disposal operators suggests that the current number of sites taking hazardous waste would fall from about 218 now to 36 or so, of which only 12 would not be in-house (e.g. factory sites).<sup>16</sup> The operators foresee a real possibility that some waste might be improperly treated or at worst dumped illegally. Waste management industry representatives claim that the rules and future plans for how waste is going to be managed following the full implementation of the Landfill Directive are unclear, and have expressed a wish for clarity before investing further and thereby alleviate the capacity problem.

### **C. International movements of waste, including hazardous waste**

38. International movements of hazardous waste to and from the United Kingdom are regulated by the Council Regulation 259/93, which implements the provisions of the Basel Convention, and the Transfrontier Shipment of Waste Regulations 1994 (SI 1994/1137). The 1994 Regulations were amended in 1997 to incorporate the provisions of the Ban Amendment to the Basel Convention, prohibiting export of hazardous waste to non-OECD countries for disposal. The United Kingdom Management Plan for the Imports and Exports of Waste, a statutory policy document which entered into force in June 1996, sets out the policy on exports from and imports into the United Kingdom of waste for disposal or recovery. The Management Plan is currently under review and is expected in future to focus on minimization of waste, the proximity principle and the implications of implementing the Landfill Directive.

39. About 200,000 tonnes of hazardous waste per annum are exchanged as export/import, which is a very small portion of the overall waste generation. The Waste Shipment Regulation restricts the countries from which or to which waste can be transported. These countries must have suitable arrangements for the control of waste. The waste may only be moved when consent has been given by the competent authorities using a system of consignment notes, which are prescribed in detail.<sup>17</sup>

40. A system of notification is in place, which provides for different kinds of notification depending on the nature of the waste being shipped, whether the waste is destined for recovery or disposal and finally whether the waste is transferred between EU member States or out of EU. Regulation of waste which is being transported for disposal is relatively straightforward and must comply with the requirements of the Basel Convention.

41. The Management Plan bans all exports of waste for disposal and most imports for disposal other than in exceptional cases where wider environmental considerations apply. The Management Plan is

currently under review,<sup>18</sup> and the Special Rapporteur was informed that the exceptions to the ban on import of waste are likely to be removed.

42. According to the Environment Agency, it does not receive any requests for export of waste to non-OECD countries, which indicates an adequate level of knowledge about the legislation in the waste management industry.

43. In practice, the dividing line between movements for disposal and movements for recovery can be very fine indeed, if the amount destined for recovery is very small compared to the overall amount of hazardous waste. Waste transported for recovery is controlled under a more complicated system. The European Regulation adopts a classification for all wastes<sup>19</sup> which divides wastes into three lists: Green, Amber and Red. The categories are exclusive in the sense that any waste not on the list is treated as Red-list waste and there is no provision for mixtures of wastes even when they are on the same list.

44. Green-list waste needs to be accompanied by basic information such as a description of the waste, quantity shipped, the name and address of the person to whom the waste is consigned and a description of the recovery operation involved.

45. Amber-list waste must be subject to the pre-notification procedures established by the Basel Convention. The notification must contain details of the type, source and quantity of the waste. In addition, Amber-list wastes can be shipped under a general notification procedure whereby certain types of shipments going to a particular facility do not have to obtain approval on each occasion. Amber-list shipments may proceed in the absence of objections from the competent authorities within a statutory assessment period (tacit consent).

46. Red-list wastes (and any waste which has not been assigned to one of the lists) are subject to the greatest level of control. The regulatory authority in the exporting country must give notification to the importing regulatory authority prior to export and there is no provision for a general approval as with Amber wastes. Written consent must be given by the competent authorities within a statutory assessment period.

47. If there is any doubt by the exporting company about the exact nature of the waste, it may contact the Environment Agency and/or one of the 26 area offices of the Agency. The Special Rapporteur was informed that pending amendments to the Waste Shipment Regulation would help to provide clarification of the line between green- and amber-list waste, which is currently giving rise to some problems in practice of classifying different types of waste.

48. The Special Rapporteur heard concern expressed about the possibility of sham green-list waste exports. The Agency advised about a recent example where the Belgian authorities had stopped a shipment of car engines incorrectly classified as green-list waste. The Environment Agency does not have officers based at ports although it works in partnership with other authorities, e.g. Customs, Maritime and Coastguard Agency.

## **D. Enforcement**

49. The Environment Agency is responsible for enforcing the waste management regulations in England and Wales. The enforcement powers include enforcement notices and works notices, prohibition notices, suspension or revocation of environmental licences, variation of licence conditions, injunctions and the carrying out of remedial works. Where the Agency has carried out remedial works, it will seek to recover the full costs incurred from those responsible. Where the Agency has evidence that a criminal

offence has been committed, in addition to any other enforcement action, it will consider instituting a prosecution, administering a caution or issuing a warning.

50. The penalties for failure to comply with the special waste regulations are a fine of up to £5,000 on summary conviction (i.e. in a magistrate's court) or an unlimited fine and/or up to two years in prison on conviction on indictment (i.e. in the Crown Court). The courts have guidelines on appropriate fines, but the Special Rapporteur was told of widespread dissatisfaction with some allegedly very low level of penalties for breaches of the Regulations. According to some sources, the level of fines makes it much too expensive for companies to invest money in complying with the regulations, when compared to the cost of paying fines for non-compliance.

51. However, the Special Rapporteur was also told that the courts are increasingly viewing breaches of the Regulations as serious and are giving heavier sentences. While officials from the Environment Agency admitted that "there is still some way to go on this", as there are recent examples of very low fines, they expressed satisfaction that heavier fines are being imposed in certain cases and hope for an effect on future cases.

52. The Environment Agency works with customs and other law enforcement agencies on transboundary environmental issues, including illegal international trade in waste. Agency officials recognized that they may not be fully equipped to counter a possible future increase in illegal movements of toxic products and wastes as a result of traffickers and the additional costs engendered by new regulations, if no measures are taken to address such risks.

53. The Special Rapporteur was informed that organized crime is increasingly becoming involved in the waste management industry, which is a matter of great concern to the regulators. The Special Rapporteur heard that international sources estimate that the hazardous waste business is being run by organized crime in one European country at US\$ 400 million. This trend emphasizes the need for international cooperation with customs and other law enforcement agencies as well as the need to protect regulator staff working on these issues.

54. SEPA has a range of enforcement powers to ensure compliance with regulations, which include warning letters; formal enforcement or prohibition notices; granting, amendment, review, variation or revocation of environmental licences; and reporting a case to the Procurator Fiscal, who then decides whether criminal proceedings would be in the public interest. If the Procurator Fiscal decides that proceedings would not be in the public interest, no proceedings are taken. The Procurator Fiscal need give no reasons as to why proceedings are not initiated.

55. According to SEPA prosecution statistics for 2001/2002, prosecutions resolved resulted in admonition or imposition of fines ranging from £500 (keeping waste motor vehicles and parts on land without a waste management licence) to £5,000 (disposing of waste yeast cell debris, tannery effluent and food processing effluent in a manner likely to cause pollution of the environment).

### **III. ISSUES BROUGHT TO THE ATTENTION OF THE SPECIAL RAPPORTEUR**

#### **A. Regulation of chemical products, including pesticides**

56. The issue of chemicals and pesticides regulation, particularly as it relates to the export of such products, was discussed during meetings with regulators, NGOs and industry associations.

57. The Special Rapporteur was informed after her mission that the Health and Safety Executive will take the lead in drafting the new legislation necessary to facilitate enforcement of the new EC Regulation ratifying the Rotterdam Convention. The Executive plans to introduce the enforcing provisions by September 2003.

58. The United Kingdom has the fifth largest chemical industry in the European Union. The chemical industry is the country's largest manufacturing sector, accounting for 11 per cent of the value added by the whole of the United Kingdom manufacturing industry. It employs more than 400,000 people throughout the country and produces and sells products worth £42 billion annually, of which exports account for £23 billion. According to information received from the Chemicals Industry Association, the chemical industry is the United Kingdom's number one manufacturing exporter. Most chemicals (almost 70 per cent) are essential inputs for products and services provided by other industries.

59. Regulation of chemicals in the United Kingdom is largely determined by EU regulations, which are currently undergoing a major review. Of the chemical products that have been restricted or banned from use in the United Kingdom, restrictions on exports only apply to the products which are banned from export or subject to restrictions or to the system of prior informed consent under the Rotterdam Convention. The new EU chemicals proposal (see below) contains a ban on marketing and use of a banned substance within the United Kingdom and the European Union. However, according to the proposal, manufacturers could still make and export it providing they get export consent where necessary.

60. The Special Rapporteur was not able to ascertain whether the existing system of assessment on conditions of use takes into consideration the possible effects on end-users in other countries and climates, particularly in developing countries. According to one NGO consulted by the Special Rapporteur, there has not been sufficient attention given to the problems confronting developing countries. Exports of pesticides and other chemical products, albeit done in conformity with existing laws and regulations, may still lead to inappropriate usage, for example, when containers are not recuperated by the exporter and used by the local populations as water containers; when obsolete products are not destroyed and sometimes disappear after having been recorded; and when highly toxic products are used for other purposes and in different conditions from those prescribed by the producer of the products. According to the same NGO, farmers and consumers in developing countries are in many cases encouraged to intensify their use of chemical products and pesticides.

61. The Chemicals Stakeholder Forum was set up in September 2000. The principal function of the Forum is to advise the Government on how industry should reduce the risks from hazardous chemicals to the environment and to human health through the environment. The Forum has 19 members drawn from industry, environmental and animal protection and conservation organizations, trade unions, consumer groups and the scientific community.

62. In 2001, EC published a White Paper outlining ideas on the future chemicals strategy. The White Paper proposed a single system for gathering hazard information, assessing risks, and classifying, labelling and restricting the marketing and use of individual chemicals and mixtures. The policy aims to cover both new and existing substances.

63. In December 2002, the United Kingdom Government issued a Government Position Paper on the new EU Chemicals Strategy, in which it expressed support for the overall aim and approach set out in the EC White Paper. The Position Paper wants the principal responsibility for providing a risk assessment for categories or classes of use to be placed on the supplier of a substance. The risk assessment supplied at the registration stage should cover the whole life cycle. This will place an obligation on the downstream user to ensure that the risk assessment covers his category of use.

64. Customs controls over specific chemical products are governed by the relevant EC and United Kingdom legislation determining which chemicals require customs control. The Special Rapporteur was informed that, although customs regulations cover some chemicals, for example those concerned with ozone depletion, the main focus of customs activities is on controlling the movement of illegal cash.

65. According to the Environment Agency's annual report "Spotlight on Business Environmental Performance", progress towards improved environmental performance within the chemicals sector was largely sustained in 2002.

66. During a meeting with the Chemical Industries Association (representing around 180 chemical manufacturing companies, most of them headquartered outside the United Kingdom), the Special Rapporteur was briefed on the chemical industry's Responsible Care Programme. The Programme, which was first established 15 years ago, is an international voluntary programme which aims to improve safety, health and environmental performance of the product. The issue of end-user security is in the process of being developed, although the Product Stewardship Programme under Responsible Care seeks to identify the health, safety and environmental risks associated with the use of a product down the supply chain.

67. There are two authorities currently operating in the United Kingdom that control the approval and use of agricultural pesticides: PSD, an agency of Defra, and the Health and Safety Executive, an agency of the Department for Work and Pensions. According to a recent report by Defra, the regulation of pesticides is now more precautionary than in the past, owing to growing public pressure for more precautionary approaches to the management of environmental hazards, and it is likely that this trend will continue.<sup>20</sup>

68. The older approval system stems from the Food and Environment Protection Act 1985. This is a general measure that allows specific regulations to be made, principally the Control of Pesticides Regulations 1986 (COPR).

69. In parallel, the system outlined above is gradually being replaced by EC arrangements based on the harmonizing Directive 91/414/EEC which establishes rules for placing plant protection products (broadly agricultural pesticides) on the market. Under these regulations, the active ingredients of both new and existing pesticides are assessed by member States and, if found to be satisfactory, are listed on Annex I to the Directive. As the national system becomes absorbed into the European arrangement, the final decision on the Annex I listing of new active ingredients and existing compounds after review will be taken collectively by member States at EC meetings. Decisions on approval of products in individual member States will continue to be made by ministers. This legislation is implemented in the United Kingdom by the Plant Protection Products Regulations 1995, as amended.

70. Non-agricultural pesticides, which include those used in wood preservation and surface biocide treatment, are regulated by the biocide Directive 98/8/EEC, which has been implemented in the United Kingdom by the Biocidal Products Regulations 2001. The authorization scheme is similar to that introduced for plant protection products.

71. Enforcement of pesticide legislation is carried out by a number of bodies depending on the type of pesticide and the people involved. The Health and Safety Executive is the principal agent for the enforcement of the controls on use and storage of agricultural pesticides in the workplace, acting on behalf of other government departments.

72. The Pesticides Forum, established in 1996, aims to support government policy on responsible pesticide use. Membership of the Forum is drawn from 23 organizations covering the farming and pesticide industries, environmental and conservation groups, education and training, consumer interests, trade unions and organic farming. An annual report is published.

73. The Advisory Committee on Pesticides is a statutory body which advises ministers on all major pesticide issues. The Committee is in principle independent of the Government and of the agrochemical industry, but it does include members with declared interest in the agrochemical industry. Each year, members are required to declare any interests or potential conflicts of interest they may have, which are published in the annual report of the Committee.<sup>21</sup>

## **B. Corporate responsibility**

74. The Special Rapporteur has on many occasions explored the issue of corporate responsibility in matters relevant to her mandate and recommended that efforts be made to hold corporations accountable for any human rights violations committed either at home or abroad.

75. The Special Rapporteur was unable to consult in person with any official from the Department of Trade and Industry (DTI) on the issue of corporate social responsibility (CSR). Instead, she received information in writing about the Government's activities in this area.

76. From the information received, the Government seems to have an ambitious vision regarding CSR for British companies, and recognizes the vital importance of fostering good behaviour among organizations operating overseas.<sup>22</sup> The Government acknowledges that "responsible behaviour has a direct impact [...] on social inclusion, poverty reduction and the quality of life at home and in developing countries."<sup>23</sup> The growing public interest in the impact of business operations in developing countries has brought issues such as human rights and the environment into international trade, investment and supply chain relationships. By applying best practice in these areas, the Government believes that business can play an increased role in poverty reduction and promotion of human rights.

77. The Government has appointed a Minister with responsibility for CSR within DTI.

78. The Special Rapporteur was informed that, while initiating and supporting a wide range of voluntary initiatives at the domestic level, the Government is also a strong supporter of the United Nations Global Compact.

79. The Special Rapporteur was briefed by representatives from the Corporate Responsibility (CORE) Coalition, consisting of a number of NGOs, churches, unions and charities on efforts to promote the passing of a Corporate Responsibility Bill in Parliament (hereafter the "CORE Bill"). The Coalition was formed in response to the Government's alleged failure in the Modernising Company Law White Paper to specify rules requiring companies to be more transparent and accountable to their wider stakeholders. According to the Coalition, the Government's emphasis on voluntarism is not enough to ensure transparency and accountability. Information received by the Coalition indicates that by the end of 2001, 91 of the top 250 United Kingdom companies did not report substantially on social and environmental performance and only 36 produced reports that were independently verified. The Special

Rapporteur was informed that the CORE Bill is supported by over 280 cross-party members of Parliament.

80. The CORE Bill proposes measures which include mandatory public reporting on environmental, social, economic and financial consequences; payments made to and received from political parties and foreign Governments; and the way in which directors have discharged their duties.

81. In response to an enquiry by the Special Rapporteur on the Government's position on the CORE Bill, she received a copy of a letter from the Minister for Corporate Social Responsibility, Mr. Stephen Timms, which was drafted as a response to a postcard campaign lobbying for the Bill. According to the letter, the Government supports a framework which encourages companies voluntarily to raise their performance beyond minimum legal standards, and it "does not believe that a blanket regulatory approach such as that proposed by the Bill would be effective". The Government is, however, in favour of some "targeted interventions" when it comes to accountability of private companies.

82. The Government has not taken or expressed a position on the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, which were adopted by the Sub-Commission on the Promotion and Protection of Human Rights in August 2003.<sup>24</sup> The Government informed the Special Rapporteur that any position taken on the Norms would take into account the sort of concerns reflected in the response to the CORE Bill.

83. Pursuing her interest in the issue of corporate accountability and following up on individual cases involving companies based in the United Kingdom discussed in earlier reports to the Commission on Human Rights, the Special Rapporteur was briefed on recent legal developments with respect to access to justice for overseas victims of multinational corporations and multinational accountability.

84. A series of three cases litigated over the last seven years concerned compensation claims brought against the parent company of the multinational in its home courts in England. The three cases were heard by the Court of Appeal seven times and by the House of Lords twice, mainly on issues of jurisdiction.<sup>25</sup> The most recent and definitive judgement was given by the House of Lords in a case brought by more than 3,000 South African asbestos victims.<sup>26</sup> This was based on the principle laid down earlier by the House of Lords in the case of *Connelly v. Rio Tinto Plc*,<sup>27</sup> namely that, in a complex case, if a claimant could establish that there was no funding available to obtain legal and expert representation in his/her local courts, then the claim would be allowed to proceed in the English court. The decision overrides objections based on the principle of "*forum non conveniens*" which is meant to ensure that a case is tried in the jurisdiction with which it has the closest connection.

### **C. Access to information**

85. In 1998, the United Kingdom signed the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). The European Community also signed this Convention in its own right. In order to ensure wide compliance by EU with the Aarhus Convention before ratification, EC Directive 90/313/EEC was replaced in January 2003 by a new Directive,<sup>28</sup> which takes account of advances in technology, reflects international developments in access rights and also learns from the experience of the earlier regime.

86. The Freedom of Information Act 2000 (FOIA) gives a general right of access to all types of "recorded" information held by public authorities. The Act also sets out exemptions from that right and places a number of obligations on public authorities. Guidance notes on each of the exemptions are



currently being drafted. A public authority has to give reasons for denying a request for information. Significantly, many of the exemptions involve a public interest test, an important safeguard which may require disclosure even where an exemption has technically been triggered. The Act must be brought fully into force by 30 November 2005 at the latest.

87. The Act will be enforced by the Information Commissioner, a new post which combines freedom of information and data protection. At the moment, the Information Commissioner only deals with cases involving data protection and the enforcement of the publication scheme provision of part 1 of FOIA, but in 2005 he will deal with cases of freedom of information generally. While the Information Commissioner will have the authority to overrule decisions of non-disclosure of information, the Act nevertheless gives ministers a veto power, allowing them to overrule the Commissioner if he orders disclosure on grounds of public interest. In response to an observation by the Special Rapporteur that civil society does not appear to be well informed about the existence of the Information Commissioner, Defra indicated that it is planning to launch a public information campaign to improve the general public's knowledge of the mandate and function of the Information Commissioner.

88. In order to ensure full implementation of FOIA, and to ensure compliance with the Aarhus Convention and implementation of the new European Directive on Public Access to Environmental Information, Defra is in the process of drafting new environmental information regulations to replace the Environmental Information Regulations 1992. These regulations will cover England, Wales and Northern Ireland.

89. Scotland passed a Freedom of Information Act in 2002. The Scottish Act, which enters into force in 2005, will enable any person to obtain all types of "recorded" information of any date held by Scottish public authorities, subject to exemptions relating to national security and defence, police investigations, and the formulation or development of Government policy. If a public authority decides not to release information, as it considers it exempt, it must give reasons for its decision. For the majority of cases where an exemption applies, the public authority still has to consider whether it is in the public interest to release the information in question. The Act provides that information will only be withheld if the public interest in withholding it is greater than the public interest in releasing it.

90. The Scottish Information Commissioner will be responsible for enforcing the Act. Apart from dealing with specific applications for decisions by any person who feels information has been unjustifiably withheld, he is responsible more generally for encouraging a culture of openness by public authorities.

91. The Scottish officials consulted by the Special Rapporteur acknowledged that the existing regulations do not adhere to the Aarhus Convention. One particular concern is the reconciliation between access to information and the legitimate protection of confidential commercial information. Many companies regard the various types of waste information as commercial information which they believe should be kept confidential, but which the public authorities will probably be compelled to disclose following the implementation of the European Directive.

92. An illustrative example of the practical and definitional problems which may arise when information provided by a private company to a public authority is requested by a third party was presented to the Special Rapporteur by PSD. The case arose from a request by Friends of the Earth UK for data which was supporting a so-called experimental application from a private company. PSD decided to disclose the information as photocopies, but blanked out categories of information which it considered to be confidential commercial information, including information relating to the formulation of the product and the method of manufacture. The company obtained a court injunction against release of the documents based on its claim that another company could derive information about the chemicals used and the intended market from the information intended for release. The case ended with a settlement

between Friends of the Earth UK and the company, but the regulator would have liked to have obtained legal guidance on where to draw the line between information which can be released to the public and confidential commercial information which must not be released.

#### **D. Technical cooperation**

93. The Special Rapporteur met with officials from the Department for International Development (DFID) to discuss technical cooperation programmes in the areas of concern to her mandate. She was informed that, while DFID projects address environmental issues in the context of poverty reduction and the broader framework of sustainable development, there are no specific programmes aimed at addressing the consequences of transboundary movements of hazardous waste and dangerous products. Some technical assistance is being provided to promote integrated pest management programmes.

94. During her consultation with officials from other Government departments, the Special Rapporteur was informed about technical cooperation projects in the areas of concern to her mandate. One project concerned the issue of access to justice under the Aarhus Convention (Defra has provided funding for a handbook on access to justice to NGOs in Hungary to assemble case studies on access to justice in environmental cases throughout the countries which are members of the Economic Commission for Europe). Another project involves the secondment of project managers from the transfrontier shipment office of the Environment Agency to work for several weeks with the designated authorities in countries about to accede to EU on handling transfrontier waste shipments.

#### **E. Environmental justice**

95. The Special Rapporteur was briefed by representatives from NGOs and other civil society groups on the efforts to achieve what is termed environmental justice. According to these organizations, there is growing evidence in the United Kingdom of the links between environmental problems and social injustices. For example, 66 per cent of all carcinogenic chemicals emitted into the air come from factories in the most deprived 10 per cent of communities in England.<sup>29</sup> Early research indicates that race is a factor in the distribution of environmental pollution. Concern was also expressed that the costs of accessing justice in environmental cases are often prohibitive for disadvantaged communities, and furthermore that magistrates and judges are not always aware of environmental law or environmental issues and as such deal with cases inappropriately. Anecdotal evidence suggests that many cases do not reach the courts and are settled inadequately out of court.

96. The Special Rapporteur noted that, while the human rights problems relating to environmental justice were indeed serious, environmental justice issues are being recognized by the authorities. The Prime Minister, Tony Blair, the Scottish First Minister, Jack McConnell, and the former Minister for the Environment, Michael Meacher, have recognized the importance of seeking environmental equality as part of sustainable development and social inclusion. Scotland has begun to develop policies specifically on environmental justice issues. Defra has, among other activities on this issue, commissioned research projects from NGOs on access to justice in environmental cases. The Special Rapporteur was assured that the outcome of the research will be made publicly available. Defra has also collaborated with the Environmental Agency, an NGO, and local authorities on judicial training for magistrates on how to handle environmental cases.

### **IV. CONCLUSION AND RECOMMENDATIONS**

97. **The mission to the United Kingdom allowed the Special Rapporteur to learn more about the policy, legislation and practice of that country on the issues falling within the scope of her mandate. Importantly, the mission also provided her with a valuable opportunity to learn about present and**

upcoming EU regulations on those issues, which will apply in 25 countries once the enlargement of EU takes effect.

98. While appreciating the opportunity provided by the mission to learn about the laws and practices in the United Kingdom, the scope and validity of the findings and conclusions from the mission are limited by the fact that many of the central regulations or legislation in the areas of concern to the Special Rapporteur are currently under review, in the process of being drafted or in the process of implementation. As a result, important parts of the conclusions and recommendations are based on draft or future legislation/regulation rather than on practice.

99. Having said that, the Special Rapporteur notes with approval that the United Kingdom and its devolved structures appear to be attaching great importance to implementing the requirements of the Basel Convention. She would like to be kept informed about the outcome of the pending review of the 1996 Special Waste Regulations which aims to bring the definitions of hazardous waste in conformity with the Basel Convention.

100. The Special Rapporteur shares the concern expressed by the Environment Agency and the waste management industry about the expected shortfall in the capacity to treat hazardous waste, following the full implementation of the Landfill Directive and of directives such as Waste Electrical and Electronic Equipment and End of Life Vehicles. She would like to be kept informed about the Government's plans to address the capacity problem and to prevent illicit movement and dumping of dangerous products and wastes that may result from such a pressure. She also notes the concerns expressed about the absence of transparency, particularly in the domain of transport of toxic and nuclear wastes.

101. Following reports of difficulties in classifying different types of waste, and the possibility of sham green-list waste exports, the Special Rapporteur would also like to be kept informed about amendments to the Waste Shipment Regulations which are currently pending and about practical measures taken to implement the regulations.

102. The Special Rapporteur notes with approval that important policy documents in the areas of her mandate are publicly available, as is comprehensive information about the mandates and activities of the relevant agencies and regulators. She notes that there is a process of consultation on new draft legislation and opportunities for stakeholder contribution in policy processes. Meanwhile, she also notes the concerns expressed by NGOs that claim to have experienced limitations and difficulties in their efforts to have full and effective participation, notably problems with access to information and costs.

103. The Special Rapporteur notes with concern that, apart from the regulations and restrictions arising from the Rotterdam Convention, there is no ban at present on the export of chemical products that have been restricted or banned from use in the United Kingdom. She recommends that the Government introduce a ban on the export of any chemical product which has been restricted or banned for use in the United Kingdom. She also recommends that more attention be given to the difficulties encountered by the developing countries and that technical cooperation specifically address this problem.

104. While remaining partisan to more restrictive measures, and in particular to the idea of an international code of conduct for multinational corporations, the Special Rapporteur welcomes the Government's efforts to promote CSR. She recommends that the Government complement its promotion of voluntary initiatives by implementing legally binding minimum standards for corporate behaviour and transparency, including with respect to corporate activities abroad.

105. The Special Rapporteur notes with interest the cases decided by United Kingdom courts allowing access to justice for overseas victims of multinational corporations and establishing multinational accountability. She notes nevertheless the difficulties encountered in bringing the enterprises to justice and the fact that numerous cases are settled out of court and is concerned about the low level of penalties, which infringes the rights and interests of the victims. In addition, the process is slow, long, expensive and discouraging for the victims. The law is silent on the question of the responsibility of the parent company and the problem of enterprises that declare bankruptcy in order to avoid paying the fines levied.

106. She notes with approval that the exemptions to the general right of access to information under FOIA are subject to a public interest test. She would like to be kept informed about any instances in which a ministerial veto overrules a decision of disclosure made by the Freedom of Information Commissioner.

107. The Special Rapporteur believes that there is a need to strengthen the enforcement of existing and future legislation in the areas of concern to her mandate by the courts which should order more dissuasive civil and criminal sanctions against those who break the law.

108- The Special Rapporteur listened with concern to the accounts given by NGOs about the growing evidence of the link between environmental problems and social injustices as well as the costs of accessing justice in environmental cases which are prohibitive for disadvantaged communities. However, she also notes with approval the efforts by the Government to work with NGOs to achieve better environmental justice. She hopes that the studies that are currently under way will be made public and disseminated widely and that the problems discovered will be addressed by the competent authorities.

### Notes

(1) The Northern Ireland Assembly has a range of legislative and executive powers similar to those of the Scottish Parliament. However, the Secretary of State for Northern Ireland suspended the Northern Ireland Assembly on 14 October 2002 and Northern Ireland has been returned to direct rule.

(2) National Assembly for Wales (Transfer of Functions) Order 1999.

(3) The Aarhus Convention was developed under the auspices of the United Nations Economic Commission for Europe.

(4) "Setting Environmental Standards", Royal Commission on Environmental Pollution, Twenty-first Report, 1998, p. 7.

(5) A non-departmental body (NDPB) is a national or regional public body, working independently of ministers to whom they are accountable. The Environment Agency is a so-called executive NDPB with executive, administrative, commercial or regulatory functions. As such, it carries out set functions within a government framework but with a degree of operational independence.

(6) Council Directive 75/442/ECC on waste, as amended by Council Directive 91/156/ECC.

(7) Council Directive 91/689/ECC on hazardous waste, as amended by Council Directive 94/31/ECC.

(8) 259/93.

(9) 1999/31/EC.

(10) Ibid., art. 1.

(11) Ibid., art. 10.

(12) Presented to Parliament by the Secretary of State for the Environment, Transport and the Regions in May 2000.

(13) *The National Waste Plan 2003*, para. 5.4.5.

(14) *Spotlight on Business Environmental Performance 2002*, compiled and published by the Environmental Agency.

(15) “Hazardous waste market pressures and opportunities”, Hazardous Waste Forum, 2 April 2003.

(16) This number refers to landfills. There are a number of existing special waste treatment recycling and recovery sites across the country which will continue to accept hazardous waste.

(17) See “The transfrontier shipment of waste - A guide to the international shipment of waste”, posted on the Environment Agency web site: [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk).

(18) The review is temporarily on hold, pending a review of the Waste Shipment Regulation by EC.

(19) Mainly based on the provisions of a 1992 OECD Council Decision which sets out the control system for international movements of waste for recovery between the most economically developed countries of the world.

(20) A Guide to Pesticide Regulation in the UK and the Role of the Advisory Committee on Pesticides, Department for Environment, Food and Rural Affairs and Health and Safety Executive, ACP 14 (299/2003), June 2003, p. 26.

(21) See latest report from the Advisory Committee on Pesticides, Annual Report 2002. Appendix III lists the independent members’ annual declaration of interests in the pesticides industry 2001.

(22) “Business and Society: Corporate social responsibility report 2002”, Department of Trade and Industry, p. 39.

(23) Ibid.

(24) The text of the Norms is contained in document E/CN.4/Sub.2/2003/12/Rev.2.

(25) *Connelly v. RTZ Corporation Plc* [1996] 2 WRL 251; *Ngcobo and Other v. Thor Chemicals Holdings Ltd. and Others* (TLR 10/11/95); *Connelly v. RTZ Corporation Plc and Another* (TLR 12/7/96)/*Connelly v. RTZ Corporation Plc and Another* [1997] 3 WLR 376; *Lubbe v. Cape Plc* (1998 CLC 1559); *Sithole and Others v. Thor Chemicals Holdings Ltd. and Another* (TLR 15/2/99); *Lubbe and others v. Cape Plc* (2000) 2 Lloyd’s rep 383; [2000] 1 WLR 1545; *Sithole and Others v. Thor Chemicals and Others* (LTL 3/2/99).

(26) *Lubbe and Others v. Cape Plc* [2000] 1 WRL.

(27) [1997] 3 WRL 376.

(28) EC Directive 2003/4/EC on public access to environmental information.

(29) Friends of the Earth, 2001.

## **Appendix**

### **AGENCIES AND ORGANIZATIONS WITH WHOSE REPRESENTATIVES THE SPECIAL RAPPORTEUR MET DURING HER MISSION**

#### **Government agencies**

- Department of Environment, Food and Rural Affairs
- Health and Safety Executive
- Department of Trade and Industry
- Department for International Development
- Environment Agency
- Pesticides Safety Directorate
- Transfrontier National Service

#### **Scotland**

- Scottish Executive
- Scottish Environment Protection Agency

#### **Other Government institutions**

- Members of the Joint Parliamentary Committee on Human Rights
- Members of the House of Commons Select Committee on Environment, Food and Rural Affairs
- The Royal Commission on Environmental Pollution

#### **Courtesy visits with senior Government officials**

- The Right Honourable Mr. Michael Meacher, Minister of State (Environment)
- Nick Oatley, Deputy Head, Environment Policy Department, Foreign and Commonwealth Office
- Jon Benjamin, Head of Human Rights Policy Department, Foreign and Commonwealth Office

**Private sector**

- Visit to Cleanaway, High Temperature Incineration plant, Ellesmere Port
- Chemical Industries Association

**Civil society**

- Capacity Global
- Black Environment Network
- London School of Hygiene and Tropical Medicines
- Environmental Law Foundation
- Centre for Sustainable Development, University of Westminster
- Women's Environmental Network
- FIELD
- Communities Against Toxics
- Pesticide Action Network
- Amnesty International Business Group
- United Kingdom Environmental Law Association
- Environmental Justice Foundation
- CORE Coalition (consisting of Amnesty International (UK), CAFOD, Christian Aid, Friends of the Earth, New Economics Foundation, UNIFI and UNISON)
- Scottish Human Rights Centre

**Others**

- Richard Meeran, Solicitor, Leigh, Day & Co. Solicitors
- Philippe Sands, Barrister

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