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**Report of the Special Rapporteur on the adverse effects of the illicit movement
and dumping of toxic and dangerous products and wastes on the enjoyment of
human rights, Okechukwu Ibeantu**

Addendum

Preliminary note on the mission to Ukraine

GE.07-12844

I. PURPOSE AND DESCRIPTION OF THE MISSION

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 visited Ukraine from 22 to 30 January 2007. This preliminary note provides initial information on the visit of the Special Rapporteur. A full report of the mission and formulated recommendations will be submitted subsequently to the Human Rights Council.

2. The Special Rapporteur wishes to thank the Government of Ukraine for its invitation, which can be seen as a promising sign of openness and commitment to human rights and environmental matters. The Special Rapporteur wishes in particular to thank the Ministry of Environmental Protection for having opened its doors and given him the possibility to meet all relevant public authorities. The objective of the visit was to examine the situation regarding illicit traffic in toxic and dangerous products and wastes and the enjoyment of human rights, namely Ukraine's regulations and policies dealing with this matter as well as following up on relevant communications sent to the Special Rapporteur in accordance with his mandate.

3. During his visit, the Special Rapporteur had the honour to meet several senior government officials, including the Deputy Minister of Environment and the Deputy General Prosecutor. He also met with representatives from the Ministry of Justice, of the Ombudsman's Office and members of the Committee on Ecological Policy of the Verkhovna Rada (Parliament). At the regional level the Special Rapporteur met the Governor of Lviv Oblast and the Deputy Head of the Regional Administration of Zakarpattya. In these regions he also met representatives from regional departments of environmental protection, district and municipal officials and local parliamentarians. The Special Rapporteur also held meetings with civil society, non-governmental organizations, academics and researchers. The Special Rapporteur visited a number of sites where toxic and dangerous products are stored, including functioning and abandoned industrial sites, as well as some villages.

II. OBSERVATIONS AND PRELIMINARY CONCLUSIONS

4. The Special Rapporteur noted that there exists in Ukraine at all levels of Government and civil society a recognition of the urgent problem posed by the accumulation of toxic and dangerous products and wastes. Many of the interlocutors he met seemed motivated and willing to try to find solutions to some of the problems. There is agreement amongst the interlocutors with whom the Special Rapporteur met that some of the main environmental challenges faced by Ukraine result from the presence of significant quantities of toxic and dangerous products and wastes, which are the consequence notably of the large industrial sector developed in a previous era. A large number of these facilities have become obsolete or were abandoned during the 1990s. Another important environmental problem is that of obsolete pesticides. Ukraine having an important agricultural activity, huge quantities (close to 20,000 tons) of obsolete

pesticides are present all over the territory. Although some of these pesticides are stored in some 110 centralized storage warehouses, the main problem lies with the several thousand privately owed storage sites, of which a large number do not offer adequate storage facilities which could pose significant health risks. The Special Rapporteur was made aware that funding and availability of adequate technologies were the main challenges in solving the overall problem of accumulation of toxic and dangerous products and wastes.

5. Following up on communications received the Special Rapporteur examined in more details the issue of illicit import of toxic wastes into Ukraine, with a particular focus on the case of two products, "premix" in Zakarpattya and acid tars in the Lviv region. These two cases underline the importance of adequate border controls of shipments of raw materials and the requirement for importers to declare the exact composition of raw materials being imported. The Special Rapporteur believes that existing regulations on this matter might need to be reinforced and strictly implemented. Despite legislation banning the import of toxic waste, the Special Rapporteur believes that these two cases are not the only cases of illicit transfer of toxic wastes and that this remains an ongoing problem. It is important that Ukraine implement all necessary measures in order to put an end to further imports, which would only worsen the existing problem.

6. Although the Special Rapporteur recognizes that in many cases of illicit transfer of toxic wastes the ultimate responsibility lies with the corporations involved, in urgent cases, action by the authorities might be required. This does not exclude that the authorities seek compensation from these corporations through legal action. This is the case namely of the acid tars which were dumped in an abandoned quarry of the State enterprise "Sirka" in the Lviv region. The Special Rapporteur recommends, in order to avoid the potential pollution of the waters of the Dniester, that the authorities take action to remove the acid tars and dispose of them in an environmentally sound manner before the water that fills the quarry reaches the acid tars.

7. In the course of his visit the Special Rapporteur specifically tried to look into the adverse consequences of the illicit movement and dumping of these products on the human rights of the local population. In the two cases, he examined in more details the Special Rapporteur was informed by health officials that no adverse effects on the health of the local population had been observed. However, he was not able to obtain more detailed information concerning the monitoring of the health impact on the local population. The Special Rapporteur believes that, in cases of alleged illicit dumping of toxic or dangerous products and wastes, the sanitary authorities should monitor the health of the local population in a stringent manner. The Special Rapporteur realizes that it is difficult to establish scientifically conclusive links between the toxic wastes and health problems of the affected population. However, past experiences have shown that products with identical levels of toxicity can be presumed to have adverse health effects. For this reason, the Special Rapporteur believes that the precautionary principle should guide the response of the authorities, even if the complete scientific results are not yet conclusive.

8. The Special Rapporteur was informed of legislation protecting the right to information concerning the environment. In the case of nuclear waste the law provides

for public participation in decision-making through a referendum. He also noted the high level of public awareness on this matter. In contrast, in the particular cases of premix, acid tars and obsolete pesticides, the public may not have received sufficient information that would have allowed the local population to take appropriate preventive measures. 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.

9. The Special Rapporteur notes that there exists an adequate legal framework to deal with the particular issue of the import of toxic and dangerous products and wastes. The Special Rapporteur was informed of discrepancies between Ukrainian and European legislation in the areas of waste management, namely differences in the lists of products qualified as wastes. There are indications that the proximity of the European Union and the existence of these discrepancies may lead to some exports of dangerous products and wastes towards Ukraine. The Special Rapporteur was informed that legislative developments are planned to make this framework regulating waste management and environmental protection even more stringent, to improve access to information in these matters and to implement environmental awareness programmes. The Special Rapporteur welcomes the work of both the Government and Parliament in this area.

10. 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. During his visit the Special Rapporteur has had an excellent impression of the work of the Prosecutor's Office 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 Special Rapporteur notes, however, that investigations, at least in the cases he examined, were very long, which could be detrimental to the affected populations, as often little or no remedial action is taken whilst investigations are ongoing. Although he realizes that the complexity of such cases requires time, the Special Rapporteur believes that, if provided with more funding and improved training, the Office could deal with these in a more timely fashion. This would lead to a better protection of the human rights of the affected populations as well as a greater accountability of corporations and individuals involved in the illicit movement and dumping.

11. The Special Rapporteur will elaborate a full report of his mission for subsequent presentation to the Human Rights Council. This report will also include his final recommendations.
