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Is Post-Chornobyl Ukraine
Ready for Access to
Environmental Information?



January 2008



This project is funded by the
European Union

ACKNOWLEDGEMENTS

This report was researched and written by the Europe Programme of ARTICLE 19, with contributions from EcoPravo-Kyiv and ARTICLE 19's Law Programme. The report was edited by Clare Fermont and Lina Nicolli.

Chapter 6 (Interviews and Case Studies) is based on research carried out by local researchers, Oleg Listopad, Alexander Stegnyy, Sergey Varlamov and Dmytro Skrylnikov.

ARTICLE 19 would like to thank for the comments and information they provided: the Ukrainian environmental NGOs Environment-People-Law, Rosa Vetrov, Ecological League; the Ministry of Environmental Protection, Kyiv City Administration on Environmental Protection, the State Departments of the Environment in Lviv and Donetsk *oblasts*; the companies Stirol and Lakma; journalists Hanna Hopko (independent), Aleksandr Ilinaih (Information Agency of the Programme *Facta* for ICTV channel), Oksana Huditzkaya (*24 Hours*), Vera Karpinskaya (*Lvovskaya Gazeta*), Elena Dub (*Komsomolskaya Pravda v Ukraine*) and others.

Special thanks also to Ukrainian lawyers Taras Shevchenko and Dmytro Kotliar.

This report has been produced in the framework of the project 'Building Local Capacity to Promote Freedom of Information on Environmental Matters in Ukraine' and funded by the European Union under the Tacis Institution Building Partnership Programme (IBPP). The contents of this document are the sole responsibility of ARTICLE 19 and EcoPravo-Kyiv and can under no circumstances be regarded as reflecting the position of European Union.



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GLOSSARY

Aarhus Convention	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998)
BYT	Bloc of Yulia Tymoshenko
Civil Defence Institute	All-Ukrainian Research Institute “Civil Defence of the Population and Territories from Technogenic and Natural Emergency” (part of the Ministry of Emergencies of Ukraine)
Chornobyl	Ukrainian transliteration for ‘Chernobyl’
CPJ	Committee to Protect Journalists
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
EIA Law	Law on Environmental Impact Assessment
EU	European Union
hryvnia	Ukrainian currency (1 Ukrainian hryvnia = approximately US\$0.2)
IAEA	International Atomic Energy Agency
ICCPR	International Covenant on Civil and Political Rights
KHPG	Kharkiv Group for Human Rights Protection
Kiev Protocol	Kiev Protocol on Pollutant Release and Transfer Registers
Kyiv	Ukrainian transliteration for ‘Kiev’
LAN	Local Area Networks
MEP	Ministry of Environmental Protection (of Ukraine)
NGO	Non-governmental Organisation
<i>oblast</i>	Province
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
Rio Declaration	Rio Declaration on Environment and Development (1992)
UN	United Nations
UNDP	UN Development Programme
USSR	Union of Soviet Socialist Republics (or Soviet Union)
<i>Verkhovna Rada</i>	Ukraine’s Parliament
WHO	World Health Organization

1 INTRODUCTION

Although more than 21 years have passed since the nuclear disaster at Chornobyl (Chernobyl), the 30 km zone around the reactor remains one of the most dangerously radioactive places in the world.¹ Beyond this zone, between five and eight million people continue to live in areas affected by radiation pollution,² giving rise to a wide range of health problems, including high levels of thyroid and other cancers.

Other accidents with devastating environmental consequences have taken place in Ukraine. As recently as July 2007 a train transporting phosphorus derailed in the Lviv *oblast*, exposing local residents to highly toxic substances. Within three days of the accident, 145 people had been hospitalised. Despite this, the public received conflicting information about the accident and in some cases the authorities downplayed its severity. No conclusive data has yet been released on the full consequences of the incident.

Since 2003 the Ukrainian authorities have allowed toxic waste to be imported from Hungary without complying with basic safety measures. In some cases, the waste has been dumped in the middle of towns in Western Ukraine. A local resident said: ‘It was the same information policy as during Chornobyl: actually, none’.³

Public access to reliable and accurate information is paramount for people’s health and environmental protection. It is particularly important in a country like Ukraine where, in addition to nuclear waste, heavy industry continues to pump out pollution. Of particular concern are the chemical and metallurgic industries in Donetsk and Lviv *oblasts*.

Yet, due to the limited information made available by the Ukrainian authorities, the population is largely unaware of the ongoing environmental hazards and the importance of adhering to environmental safety standards. This situation creates insecurity and seriously undermines people’s trust in the authorities and the information released by them. It also constitutes a violation of international standards on freedom of information, particularly the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), to which Ukraine is a Party.

This report:

¹ The accident at Chornobyl took place on 26 April 1986.

² Greenpeace, *The Chernobyl Catastrophe. Consequences on Human Health* (Amsterdam: April 2006) <http://www.greenpeace.org/raw/content/international/press/reports/Chernobylhealthreport.pdf>.

³ R Ahrens, ‘And the Headache Came Along’, *VDI News*, 17 February 2006.

- a) explores the negative effects that limited access to information on environmental hazards has on people's lives, and analyses Ukrainians' information needs;
- b) highlights the role of environmental information in the exercise of other rights, such as the right to health;
- c) shows the importance of information for public participation in decision-making processes; and
- d) assesses the level of awareness among public officials and the general public about the right to information.

Following an introduction on Ukraine's political situation and the media, the report analyses the most pressing environmental issues in Ukraine, in particular nuclear waste and the Chernobyl legacy (Chapter 2). Chapter 3 provides an overview of international standards on access to environmental information and Chapter 4 outlines and comments on the main freedom of information provisions in Ukrainian domestic law, including specific provisions on environmental information and public participation. Chapter 5 looks at the practice of accessing environmental information in Ukraine and assesses the effectiveness of existing mechanisms, particularly State ones, but also referring to civil society and corporate actors. Chapter 6 presents the results of an empirical study carried out through interviews in Kyiv, Donetsk and Lviv *oblasts*, as well as case studies. Chapter 7 highlights the serious consequences when the public is denied access to information about the environment. The report ends with conclusions and recommendations.

1.1 Recent Political Background

Ukraine is one of the 15 republics that gained independence in 1991 after the break-up of the Union of Soviet Socialist Republics (USSR). A system providing for strong presidential powers was established, although former President Leonid Kuchma's second term was marked by allegations of widespread official corruption and the abduction and murder of independent journalist Georgiy Gongadze.⁴

Orange Revolution

Ukraine's fourth presidential election saw a contest between Victor Yushchenko and (then) Prime Minister Viktor Yanukovich. The latter was largely supported by outgoing President Kuchma. The official results of the second round of the presidential elections of 31 October 2004 gave Victor

⁴ The death of Georgiy Gongadze was followed by allegations of the President's involvement in the case. This led to a political crisis in November 2000, when leader of the Socialist Party, Oleksandr Moroz, stated that he had recordings of President Kuchma and other high-ranking officials that showed their involvement in the journalist's abduction.

Yanukovych 49.4% compared to 46.7% for Victor Yushchenko.⁵ The following day the Organization for Security and Co-operation in Europe (OSCE) stated that the election ‘did not meet a considerable number of OSCE, Council of Europe and other European standards for democratic elections’.⁶ The European Union (EU) also condemned the ballot.

Following the elections, large-scale protests erupted throughout Ukraine, signalling the beginning of the ‘Orange Revolution’ and calling for Victor Yushchenko to be recognised as the true winner. Pro-Yanukovych demonstrators also took to the streets but were outnumbered by pro-Yushchenko protesters. Following a decision of the Supreme Court, the election results were declared invalid and a re-run was scheduled for 26 December 2004. On 23 January 2005 Victor Yushchenko was sworn in as President.

The Orange Revolution inspired many human rights and media freedom activists, who saw it as the first step towards the establishment of a truly democratic system in Ukraine. It did not, however, fundamentally alter the political system. Problems linked to regional divisions, the political interests of influential oligarchs and corruption continue. In addition, shortly after the Orange Revolution the country once again experienced a wave of political instability.

Yulia Tymoshenko and her bloc of parties, the Bloc of Yulia Tymoshenko (BYT), had supported Victor Yushchenko throughout the Orange Revolution and then formed a coalition with him. However, internal conflicts in the coalition quickly developed and, only half a year after her January 2005 appointment as Prime Minister, she was dismissed by President Yushchenko. The President subsequently criticised her work as head of the Cabinet, suggesting that it had led to economic problems and political conflicts in the coalition.

Current situation

A new political crisis emerged in Ukraine following the March 2006 parliamentary elections. The election results reflected popular disappointment with the lack of tangible progress in the aftermath of the Orange Revolution. Victor Yushchenko’s party, Our Ukraine, received less than 14% of the national vote, coming third after the Party of Regions (32.14%) and the BYT (22.29%). After long negotiations and several failed attempts by Our Ukraine and BYT to form a government, Victor Yushchenko finally announced a coalition government led by the Party of Regions, the strongest force in Parliament. The coalition also included the Communist Party and the Socialist Party. Victor Yanukovich, President Yushchenko’s old rival, became Prime Minister again.

⁵ Central Electoral Commission of Ukraine, http://www.cvk.gov.ua/postanovy/2004/p1265_2004_d.htm.

⁶ OSCE/ODHIR, ‘Statement of Preliminary Findings and Conclusions’, 31 October 2004, http://www.osce.org/documents/odhr/2004/11/3771_en.pdf.

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An eight-month power struggle between the President and the government followed, during which former Prime Minister Victor Yanukovich re-appointed a number of public officials from the Kuchma period. There were frequent allegations of corruption and nepotism against both sides, and popular dissatisfaction with the government grew. Once again, people took to the streets, calling on the President to act, and on 2 April 2007 he dissolved Parliament. The following months saw battles in Parliament, appeals to the Constitutional Court challenging the legitimacy of the President's decision to dissolve Parliament, and demonstrations by all political sides.

On 25 May the President issued a decree announcing that he would take control of 40,000 Interior Ministry troops. This was an attempt to restore his presidential power over Interior Minister Vasyl Tsushko, who was overtly supporting Victor Yanukovich. The same day, Vasyl Tsushko was charged with abuse of office. On 26 May, on the order of the President, thousands of Interior Ministry troops moved towards Kyiv to protect key State offices and secure public order. The next day, after long negotiations, Victor Yushchenko, Victor Yanukovich, and Oleksandr Moroz (leader of the Socialist Party) agreed to hold new parliamentary elections on 30 September 2007.⁷

The Central Election Commission announced that five parties and blocs met the 3% threshold required to enter the *Verkhovna Rada* (Ukraine's parliament). The Party of Regions led by Victor Yanukovich received 34.36% of votes, the BYT 30.72%, Our Ukraine-People's Self-Defence Bloc supported by President Yuschenko 14.16 %, the Communist Party 5.39% and the Lytvyn Bloc 3.96%.⁸

The results were challenged by President Yuschenko, who expressed concern about the delay in counting the votes in some of Ukraine's Eastern and Southern (traditionally pro-Russian) provinces. He ordered an immediate investigation. The results were also challenged in court by the Communist Party, which argued that the vote was invalid because of alleged violations in voting processes abroad. This further delayed the official publication of the election result. Meanwhile, on 17 November, Our Ukraine-People's Self-Defence Bloc and BYT announced that they had reached an agreement to form a parliamentary coalition, thus giving them a majority in parliament and the opportunity to form a government. On 28 December 2007 Yulia Tymoshenko was elected Prime Minister of Ukraine. However, the opposition led by the ex-Prime Minister Yanukovich was still strong in the *Verkhovna Rada*.

Overall, the Orange Revolution did not introduce the wide-ranging democratic reforms that demonstrators had hoped for. Nevertheless, there have been some improvements in the fields of

⁷ *Ibid.*

⁸ OSCE Election Observation Mission for Ukraine Pre-term Parliamentary Elections 2007, Post-Election Interim Report, 1-4 October 2007, Executive Summary, http://www.osce.org/documents/odihr/2007/10/27178_en.pdf.

freedom of expression and freedom of information, some of which had already started before the Orange Revolution.⁹

1.2 The Media

The Orange Revolution fostered free expression and put an end to direct censorship on television, which had previously been widely practised. It also increased awareness of the need for media freedom and opposition to media manipulation.

As a result of years of campaigning for media freedom and legal reform by civil society and media groups, some positive reforms had already been introduced before the Orange Revolution. Among these were new legal provisions that increased harmonisation of Ukraine's law with international standards on free expression. Amendments¹⁰ passed in 2003 include provisions which stipulate that: there is no liability for breach of confidentiality when the disclosure of information is in the public interest; public bodies cannot sue for defamation;¹¹ and plaintiffs must pay up-front a percentage of the amount claimed in damages when they file a lawsuit. Although there is still some abuse of defamation legislation and disproportionate awards continue to be handed down, the incidence of defamation cases against journalists and the sums awarded in damages have substantially decreased.

Some advances and debates in the area of freedom of expression have also been made possible by public consultation bodies and official committees working in this area, such as the Parliamentary Committee on Freedom of Speech.¹²

The print media are diverse and often criticise the authorities. At the end of 2005 there were 22,794 registered publications in Ukraine, of which 9,984 were nation-wide or regional and 12,864 local.¹³ Many newspapers have both Russian and Ukrainian versions, and there are several popular Russian-language tabloids. The main newspapers are: *Fakty i Kommentari* (daily, circulation 761,000), *Segodnya* (daily, 849,000), *Vechernye Vesti* (daily, 500,000), and *Silski Visti* (daily, 430,000) and *Ukrayina Moloda* (daily, 163,000)¹⁴ State newspapers include *Holos Ukrayiny* (parliamentary newspaper, 180,000) and *Uriadovyi Kurier* (124,441). The outspoken *Zerkalo Nedeli* (weekly, 57,000)

⁹ Positive developments regarding the media are outlined below (Section 1.2).

¹⁰ Law 'On the Insertion of Changes to Certain Laws of Ukraine to Support the Right to Freedom of Speech', 2003.

¹¹ The authorities can now only request the refutation of false information but have no right to claim damages.

¹² There are also a State Committee on TV and Radio, a National Commission under the Presidential Administration and a National Council on TV and Radio working on freedom of expression.

¹³ Data of the Ukrainian Press Academy, reported in US Department of State, Country Reports on Human Rights Practices: Ukraine, 2006, <http://www.state.gov/g/drl/rls/hrrpt/2006/78846.htm>. However, these figures indicate media outlets that are formally registered. In practice over 50% of them are not published.

¹⁴ BBC, 'The Press in Ukraine', <http://news.bbc.co.uk/1/hi/world/europe/4073375.stm>.

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as well as *Den'* (daily, 62,000) are independent and analytical newspapers. There are also *Kievskiyе Vedomosti* (local daily, 90,000) and *Kyiv Post* (English-language weekly, 22,000).

Most newspapers have political leanings, such as *Ukrayina Moloda* (pro-Yushchenko) and *Vechernie Vesti* (pro-Tymoshenko, critical of both Victor Yanukovich and Victor Yushchenko).¹⁵ In addition, oligarchs and politicians own or have links with several of the popular media. For instance, Victor Pinchuk¹⁶ owns *Fakty i Kommentari* and several television stations; the so-called 'Donetsk clan'¹⁷ has links with *Segodnya*, which has supported Victor Yanukovich; and Yuliya Tymoshenko controls *Vechernie Vesti*.¹⁸ Overall, the Donetsk-based media tend to support Yanukovich, while the Western Ukrainian media have supported Victor Yushchenko.¹⁹ In many cases, there is a lack of transparency over ownership.

Television is the country's most powerful and popular medium. In 2006 there were 647 broadcasters,²⁰ 13 of them nation-wide.²¹ The State broadcasting stations are the national television company UT (comprising channel UT-1 and covering 98% of Ukraine's territory), the National Radio Company (UR-1, Promin and UR-3), the State Television and Radio Company Krim (Crimea), and 25 *oblast* television and radio companies. The main non-State channels are 1+1, Inter, ICTV, STB, Noviy Kanal and 5 Kanal. Private television channels, particularly Inter and 1+1, attract the largest audiences.²² As is the case for the print media, oligarchs with political interests own or have major stakes in television. Foreign television and radio companies, especially Russian-language stations, also operate in Ukraine.

In 2006 there were 524 radio stations.²³ The National Radio Company of Ukraine, the only company to have complete national coverage, is State-owned and operates three networks.²⁴ There are several commercial stations, including Russkoye Radio, Europa Plus, Hit FM, Nashe FM and Radio Era. Ukrainian radio stations transmit foreign radio programmes from the BBC, Deutsche Welle,

¹⁵ *Ibid.*

¹⁶ Businessman and son-in-law of former president Leonid Kuchma.

¹⁷ A group of politicians and powerful individuals from Donetsk, of whom Victor Yanukovich is the leading figure.

¹⁸ Prime Minister from February to September 2005, and Victor Yushchenko's ally during the Orange Revolution. See Section 1.1.

¹⁹ BBC, 'The Press in Ukraine'. See note 14 above.

²⁰ Central Intelligence Agency, World Factbook, Ukraine, <https://www.cia.gov/library/publications/the-world-factbook/geos/up.html#Comm>.

²¹ US Department of State, see note 13.

²² *Ibid.*

²³ Central Intelligence Agency, see note 20.

²⁴ BBC News, Country Profiles, Ukraine. http://news.bbc.co.uk/2/hi/europe/country_profiles/1102303.stm#media. However, the National Radio Company of Ukraine operates no FM broadcasting.

Radio Free Europe, Radio Canada and The Voice of America. Many radio stations broadcast only music.

The number of Internet users in Ukraine was estimated in 2006 as slightly over 5 million out of a population of 46 million.²⁵ The number is rapidly rising, but Internet use is still largely confined to the wealthy. The government does not restrict access to the Internet and overall it has been an important channel for free expression. For example, *Ukrainska Pravda*, a publication critical of the government, operates through the Internet.

However, a number of problems persist. There have been cases of intimidation of journalists, including beatings, threats and arson, particularly following reports on corruption.²⁶ These increased in 2006 compared to 2005.²⁷ Some journalists have also been denied access to press conferences.²⁸ Both the private and State media tend to avoid sensitive subjects for fear of reprisals, such as lawsuits or withdrawal of financial support. Ukraine's distribution system remains problematic and dependent on the national postal service.²⁹ Although awards for damages in defamation cases have decreased, as noted above, some cases still end with disproportionate sentences or are used to silence the media.

Ukraine does not have a public service broadcaster.³⁰

2 THE ENVIRONMENT IN UKRAINE

According to surveys carried out by the Institute of Sociology of the National Academy of Sciences,³¹ Ukrainians tend to have a negative view of environmental conditions in the areas where they live.

²⁵ Central Intelligence Agency, see note 20.

²⁶ US Department of State, see note 13.

²⁷ According to figures of the Institute for Mass Information, reported in: Committee to Protect Journalists (CPJ), *Attacks on the Press in 2006, Europe and Central Asia*, <http://www.cpj.org/attacks06/europe06/ukr06.html>. However, overall there was a marked decrease of harassment cases compared to the situation in 2004, prior to the Orange Revolution.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ A law on public service broadcasting was passed in 1997, but additional provisions were needed for it to be implemented. This was never done. In 2005, a new law was compiled. The process is ongoing.

³¹ This survey was carried out within the framework of a study entitled *Ukrainian Society: Opinions, Assessments and Living Conditions of the Population*. This representative study is conducted annually since 1994 by the Institute of Sociology of the National Academy of Sciences. Primary data is collected by polling an average of 1,800 people in their areas of residence and has a margin of error of 2%. All figures in this section are drawn from this study.

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Between 2002 and 2006, nearly half of respondents judged environmental conditions to be unsatisfactory: ‘very unfavourable’ (on average 13%) or ‘unfavourable’ (35.4%).³²

People’s assessment of their environment shows marked regional variance. In early 2006, the state of the environment was assessed as ‘unfavourable’ by a quarter of people living in Western Ukraine, a third of the residents in Central Ukraine, nearly half (46%) of those living in the South, and a clear majority of people living in Eastern Ukraine (69%). The high percentage in Eastern Ukraine correlates with massive metallurgical and chemical production in the region, which unfortunately is in most cases not accompanied by measures to protect the environment, and contributes to its steady deterioration. Data for 2006 show that residents of the industrial East are most concerned about air pollution due to industrial chemicals, while residents of Central Ukraine tend to worry about radiation (38% in Kyiv). Yet, the most common concern recorded in all of Ukraine between 2002 and 2006 was over pollution due to waste and litter.³³ Although the percentage of those who think that Chernobyl is the principal factor impacting on their health decreased between 2001 (28%) and 2006 (17%), many still see it as a ‘substantial’ factor.³⁴ Only 16% thought that other environmental issues had a greater impact on their health.³⁵ Serious concerns about the consequences of Chernobyl are not confined to those living in the most contaminated areas of Kyiv, Zhytomyr and Chernihiv, but also include those living in the more remote Vinnytsya, Sumy and Cherkassy *oblasts*.³⁶ According to the polls, health hazards due to environmental conditions have been the second most frequently cited reason for migration over the past few years; only work prospects were a higher consideration.

The majority of Ukraine’s environmental problems relate to its industrial activities. The country inherited a vast industrial base from the USSR, when it produced more than a quarter of the USSR’s industrial output. As a consequence, the country faces a number of industry-related environmental problems, including a large amount of obsolete pesticides and industrial toxic waste that was created in the 1970s. Ukraine’s ‘energy intensity’ is approximately 15 times higher than that of the United States of America and is also higher than that of Russia.³⁷

³² Some 23% were undecided. The rest thought that they lived in a ‘relatively favourable’ or ‘favourable’ environment (the latter only in 2.4% of cases).

³³ According to the 2006 data, other concerns for Ukraine as a whole (in order of importance) are: exhaust gases, emission of chemical and industrial waste into the atmosphere, discharge of industrial chemical and industrial waste into water, increased content of hazardous substances in foodstuffs, radioactive contamination, and discharge of chemicals and industrial waste into the soil.

³⁴ On average 36.8% between 2001 and 2006.

³⁵ Approximately a quarter of respondents were undecided.

³⁶ Vinnytsya is on the border with Moldova, Cherkassy is in Central Ukraine and Soumy is on the border with Russia.

³⁷ *Environment and Security, the case of Eastern Europe: Belarus, Moldova, Ukraine*, by the UN Environment Programme, UN Development Programme, UN Economic Commission for Europe, the Organization for Security and Co-operation in Europe, the Regional Environmental Centre for Central and Eastern Europe, and

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Ukraine is one of the most energy intensive countries in the world because of the inefficiency of its industry and old machinery and methods.³⁸ It is ranked 108 out of 146 countries in the latest Environment Sustainability Index, a study conducted by the US Yale University and Columbia universities.³⁹

The impact of factories and other industrial activities on the quality of air and water has been particularly acute: about 39% of discharged water is polluted and a quarter of this polluted water is left untreated.⁴⁰ As Ukraine shares its river basins with other countries, including Moldova, Poland and Belarus, polluted water from these countries also ends up contributing to Ukraine's environmental problems. Since 2000, there have been several accidental discharges of cyanide and heavy metals in Romania which have reached Ukraine via the Tysa River.⁴¹

Air pollution has a significant impact on the health of the population due to a high concentration of dust, nitrogen oxides, sulphur dioxide and carbon dioxide. It accounts for an estimated 6% of total mortality,⁴² causing up to 27,000 deaths annually,⁴³ mainly from respiratory diseases. Twenty-nine of Ukraine's cities exceed the World Health Organization's (WHO's) recommended annual average of maximum allowable concentrations of pollutants.⁴⁴

There are almost 20,000 tonnes of obsolete pesticides in the country,⁴⁵ some of which are stored at private sites that are not monitored and could pose a significant environmental hazard. In addition, 2.5 million tonnes of ammunition and chemical substances on military sites from the Soviet period need decommissioning.⁴⁶ There are also over 16,000 tonnes of toxic waste from Soviet rocket fuel.⁴⁷

According to the non-governmental organisation (NGO) EcoPravo-Kyiv, Ukraine has no system of safe waste management or disposal. The country has stockpiled 25 billion tonnes of waste, or nearly 40 kg per sq metre of its total area. Dumps, landfills, storage sites, slurry ponds and pit

NATO, 2007, p.48, http://www.envsec.org/easteur/docs/envsec_eastern_europe.pdf.

³⁸ *Ibid.*

³⁹ *2005 Environmental Sustainability Index*, Yale Center for Environmental Law and Policy, Yale University, USA, and the Center for International Earth Science Information Network, Columbia University, USA, 26 January 2005, p.5. http://www.yale.edu/esi/ESI2005_Main_Report.pdf.

⁴⁰ *Environment and Security*, p.49, see note 37, http://www.envsec.org/easteur/docs/envsec_eastern_europe.pdf.

⁴¹ 'Lead concentration up in Ukrainian portion of Tisza River,' Deutsche Press-Agentur, 29 March 2000. <http://www.reliefweb.int/rw/rwb.nsf/db900SID/OCHA-64CFFR?OpenDocument> and J Kanthak, 'The Baia Mare Gold Mine Cyanide Spill: Causes, Impacts and Liability', 12 April 2000, <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/4e30736ba1fddbbdc12568e300630b90>.

⁴² Strukova & al, *Air Pollution Costs in Ukraine*, 2006, p.2. <http://www.feem.it/NR/rdonlyres/B16C9BB4-9CA8-4F18-9DB5-64CD9DF92292/2115/12006.pdf>.

⁴³ *Ibid.*, p.6.

⁴⁴ *Ibid.*, p.4. Also see: <http://www.who.int/ceh/publications/11airpollution.pdf>.

⁴⁵ *Ibid.* (Strukova), p.57.

⁴⁶ *Environment and Security*, p.61, see note 37.

⁴⁷ *Ibid.*, p.44.

refuse heaps occupy 164,000 hectares, nearly 4% of the territory. Non-industrial waste in urban areas lies in 700 disposal sites; at 80% of their locations no measures are taken to prevent pollution of underground waters or the air.⁴⁸

Stockpiles of obsolete pesticides do not meet safety standards and pollute soil and subsoil waters, as a result of which people have been poisoned. Such pesticides are frequently used in unauthorised ways, and many of them are mixtures of unidentified substances. In addition to officially acknowledged stockpiles, environmental experts believe that there are unaccounted stockpiles of pesticides throughout Ukraine which continue to deteriorate and for which no one is held responsible.

These substances are not kept in safe containers, but only in thick paper and plastic bags.⁴⁹ A few stakeholders know about it, but the general public tends to be unaware. Despite this, the stockpiling of dangerous substances continues, especially in rural areas, where there is inadequate oversight by the administrative district centres.⁵⁰

Another threat to the environment is posed by nuclear energy and radioactive waste storage sites.⁵¹ According to the Nuclear Threat Initiative, there are six spent nuclear fuel storage sites and many low-level radioactive waste storage sites in Ukraine.⁵² It has been reported that many of the military's storage sites are inadequately built and require urgent repair.⁵³

Information about nuclear issues is hard to come by. The desire to preserve nuclear energy as an energy source in Ukraine, accompanied by the importance given to atomic energy worldwide, effectively curtails open debate in this area. At the same time, the Ukrainian government has no detailed, accurate data about levels of nuclear pollution across the country. Since 1991 the infrastructure and means to measure radioactivity have continuously deteriorated, leaving doubts as to their accuracy. The lack of reliable government information on the hazards of radioactivity encourages rumours.⁵⁴

Ukraine still depends on nuclear energy: four nuclear power stations produce nearly half of the country's electricity. The government plans to double nuclear energy output by 2030. Among the

⁴⁸ Information from EcoPravo-Kyiv.

⁴⁹ Interview with Tetyana Tymochko – First Vice-Chairman of the All-Ukrainian Ecological League and Head of the Aarhus Information and Training Centre.

⁵⁰ *Ibid.*

⁵¹ See Section 2.1 below.

⁵² The Nuclear Threat Initiative, 'Ukraine: Spent Fuel and Radioactive Waste Developments', 28 October 2004. <http://www.nti.org/db/nisprofs/ukraine/reactors/power/wastedev.htm>.

⁵³ OSCE, *Our Polluted World and Cleaning it Up*, quoted in 'Ukraine, Belarus and Moldova Choking on Toxic Waste', *Terradaily*, 23 May 2007.

⁵⁴ Interview with Volodymyr Usachenko, Government Commission on Chernobyl and former 'liquidator', April 2007.

reasons given is the need to reduce the level of dependency on energy from Russia, which came to the fore in the winter of 2005-2006, when Russia cut off gas supplies to Ukraine.⁵⁵

The coal industry also contributes to air pollution and the pipelines that deliver gas from Russia to the West have leaked in the past.⁵⁶ The continuous exploitation of natural resources and the extinction of endangered wild species also cause great concern.

The clear link between the state of the environment and health, economic and social issues was pointed out in a 2007 study by the UN Environment Programme:

environmental degradation often goes hand-in-hand with the declining health of local people. This overlaps with more recent economic and social problems that have hit hardest the very same heavily industrialised areas that have the most serious environmental problems. In turn social and economic difficulties have shifted attention and resources away from the environment, further aggravating the situation and creating a vicious circle ...⁵⁷

2.1 The Chernobyl Legacy

The most internationally well-known and devastating environmental disaster in Ukraine was the accident at the Chernobyl nuclear power station on 26 April 1986. The radioactive contamination exceeded by one hundred times that of the bombs dropped on Hiroshima and Nagasaki.⁵⁸ According to data from the Chernobyl Union of Ukraine, over 600,000 people have died in the 20 years since the accident.⁵⁹ Some 2,293 villages with a population of approximately 2.6 million were contaminated⁶⁰ and, overall, more than 250,000 people were resettled.⁶¹ Radiation damaged the population's immune and endocrine systems, which, in turn, has led to 'accelerated ageing, cardiovascular and blood illnesses, psychological illnesses, chromosomal aberrations and an increase in foetal deformations'.⁶² According to the data of the Ministry of Statistics, between 1992 and 2002 the number of victims of

⁵⁵ *Environment and Security*, pp.44-47, see note 37.

⁵⁶ The Associated Press, 'Conflicting reports on Russia Oil Leak', 31 July 2006. <http://www.cbsnews.com/stories/2006/07/31/world/main1847760.shtml>.

⁵⁷ *Environment and Security*, p.31, see note 37.

⁵⁸ Greenpeace, *The Chernobyl Catastrophe*, see note 2.

⁵⁹ A Yaroshinskaia, 'Chernobyl: the Big Lie', *Index on Censorship*, Vol.35, February 2006.

⁶⁰ Civil Defence Institute, *20 Years after Chernobyl Catastrophe. Future Outlook. National Report of Ukraine*, Kyiv, 2006.

⁶¹ *Environment and Security*, p.26, see note 37.

⁶² Greenpeace, 'Chernobyl Toll Grossly Underestimated', 18 April 2006, <http://www.greenpeace.org/international/news/Chernobyl-deaths-180406>. Illnesses include: all cancers, particularly of the thyroid and leukaemia; illnesses to the respiratory, digestive, vascular and musculo-skeletal/cutaneous systems; hormone/endocrine illnesses, abnormalities of immune system; genetic abnormalities; premature ageing; and neurological/psychological disorders. Greenpeace, *The Chernobyl Catastrophe*. pp.11-17, see note 2.

the Chernobyl catastrophe grew by around 12,000 per year.⁶³ Greenpeace divided those most severely affected into four groups: a) the ‘liquidators’, tasked with the immediate response following the accident and the clean-up activities; b) evacuees from the areas immediately surrounding the reactor, known as the ‘30 km zone’; c) people residing in less contaminated areas, but still exposed to radiation; and d) children of families from b) and c).⁶⁴

Ukraine spends 5-7% of the State budget on minimising the Chernobyl disaster’s consequences.⁶⁵ According to a UN report, the accident, besides contributing to deaths and diseases, had a significant mental health impact often seen as ‘the largest public health problem’ resulting from the incident, and partially caused by the lack of accurate environmental information.⁶⁶

The effects of Chernobyl are still felt. In 2007, between five and eight million people are estimated to be residing in areas that will continue to be highly contaminated for centuries to come.⁶⁷

Mismanagement of the accident

A major problem in the handling of the accident was the information vacuum, resulting from the authorities’ attempts to hide the catastrophe.⁶⁸ Greenpeace refers to the ‘cowardice of the leaders’, explaining that they were ‘frightened to warn their citizens about the terrible outcomes and, by that, radically increased the number of innocent victims’.⁶⁹ The town of Prypiat, located 3 km from the nuclear plant, was evacuated on 27 April, but the town of Chernobyl, which is 14 km away, only on 6 May.⁷⁰ In addition, the Ministry of Health’s employees and the media were prohibited from informing people of details of the accident until mid-May, while data on radiation (including radiation contamination maps) were classified until 1989.⁷¹ Even now there is little information on nuclear stations and Chernobyl, although by law this information should be available to the public.

When the explosion became common knowledge, the population entered into a state of shock. In the chaos that ensued, ‘... people [were] forgotten here and there ... an insufficient number of people were evacuated from the danger area, and some others were evacuated from the wrong area’.⁷²

⁶³ Interview with Volodymyr Usachenko, see note 54. It is not clear whether this is due to new people discovering symptoms, imprecise calculations or other factors.

⁶⁴ Greenpeace, *The Chernobyl Catastrophe*, p.11, see note 2.

⁶⁵ *Environment and Security*, p.26, see note 37.

⁶⁶ ‘Chernobyl’s Legacy: Health, Environmental and Socio-Economic Impacts’ and ‘Recommendations to the Government of Belarus, the Russian Federation and Ukraine’ (2nd revised version), *The Chernobyl Forum: 2003-2005*, <http://www.iaea.org/Publications/Booklets/Chernobyl/Chernobyl.pdf>.

⁶⁷ Greenpeace, *The Chernobyl Catastrophe*, see note 2.

⁶⁸ See Section 2.1 above.

⁶⁹ Greenpeace, *The Chernobyl Catastrophe*, see note 2.

⁷⁰ Civil Defence Institute publication, p. 6, see note 60.

⁷¹ *Ibid.*, p.8.

⁷² I Samiakina, a Byelorussian writer and a deputy to the Supreme Soviet of the USSR. ‘Chernobyl – Byelorussian Tragedy’ by Art Turevich in *Byelorussian Review*, No. 3, 1989.

The All-Ukrainian Research Institute for Civil Defence of the Population and Territories from Technogenic and Natural Emergency (Civil Defence Institute), a research body for the Ministry of Emergencies of Ukraine, admits that ‘mistakes and poor decisions’ were made in 1986. These were not simply the result of recklessness, but due to the need to make decisions very swiftly without yet having the full data to assess the scale of the problem and its implications.⁷³

Disinformation about the effects

The effects of Chernobyl soon became evident, with 1.6 million children highly contaminated immediately after the accident. By 4 May, more than 1,882 people had been hospitalised, some 38,000 had been examined and 204 (including 64 children) had been diagnosed with radiation syndrome. Eighteen people were found to be in a critical state.⁷⁴ As the figures continued to rise, the government reportedly tampered with the data. In a protocol from 1986, the Ministry of Health provided for ‘new norms of acceptable radiation levels for members of the public as ten times the previous norms.’⁷⁵ Immediately, more than 10,000 people hospitalised for radiation-induced illnesses were declared ‘healthy’ and discharged. As a result, the official number of people suffering from radiation syndrome fell dramatically. Ultimately, only 31 victims were officially recognised by the Kremlin.⁷⁶

Information on the accident remained vague. The main source of information for those who worked to contain the effects of the disaster, including engineers, was the Western press. More detailed publications on Chernobyl only began to appear approximately three years after the incident. Yet they were mostly superficial: the population received no detailed information but only the general message that everything was ‘under control’.⁷⁷

Current situation

Over \$US1 billion was received from the international community and spent on the sarcophagus that was created in 1986 to cover and seal the damaged reactor.⁷⁸ The sarcophagus developed cracks in the mid-1990s, which resulted in the leaking of radiation. In 2007 a fund managed by the European Bank

⁷³ Civil Defence Institute publication, p. 8. see note 60.

⁷⁴ A Yaroshinskaia, ‘Chernobyl: the Big Lie’, see note 59.

⁷⁵ ‘Increase of these norms to 50 times higher than previously is permitted in specific cases ... By these means the health safety of the public of all ages is guaranteed, even should the current radiation situation last for 25 years’. Government Protocol, 8 May 1986, quoted in A Yaroshinskaia, ‘Chernobyl: the Big Lie’, p.24, see note 59.

⁷⁶ A Gregorovich, ‘Chernobyl Nuclear Catastrophe: Ten Years after April 26, 1986’, <http://www.infoukes.com/historyChernobyl/gregorovich>.

⁷⁷ Interview with Volodymyr Usachenko, see note 54.

⁷⁸ *Ibid.*

of Reconstruction and Development enabled the start of a project to build a shelter around the sarcophagus. The building is due to be completed in 2012.⁷⁹

On the government side, information on Chernobyl is mainly gathered by the Ministry of Environmental Protection (MEP) and the Ministry of Emergencies, particularly its Civil Defence Institute. During an interview, Institute representatives stated that all information is open and available online, with updates appearing on the website at 9am every day.⁸⁰ At the same time, the representatives said that they do not receive many information requests, and could only remember two or three requests from journalists.

A (State) Programme for the Reduction of the Chernobyl Effects has been in place since 1986, but there has been little information on its activities or effectiveness. The Programme has a section on the provision of information to the population, but limited finances are earmarked for this, so it can hardly be implemented effectively.⁸¹

Even though there is now increased awareness, both in Ukraine and internationally, of the overall significance of Chernobyl, there is still no reliable, comprehensive inventory of the impact of the accident on the population.⁸² One reason is that the population was relocated within the USSR after the disaster without proper records. Another is that there is still no conclusive knowledge of the overall cumulative impact on the ecosystems and human health.⁸³ This is partly because the accident was unique, so that normally applied standards could not effectively measure its impact. The accident was also extremely complex, with a multitude of consequences and ramifications. A number of cancers, for example, develop over the course of more than 40 years, so that the effect of the disaster is delayed and not immediately quantifiable.

The report *Health Effects of the Chernobyl Accident and Special Health Care Programs* was published by the Chernobyl Forum in 2005 and compiled by specialists from the International Atomic Energy Agency (IAEA), the UN, WHO, the World Bank and scientists from Belarus, Ukraine and Russia. The publication reports 4,000 to 9,000 deaths due to cancer from radiation, but notes that the impact on people's lives was less significant than it was originally thought to be. However, the

⁷⁹ M Danilova, 'Chernobyl to get New, Steel Sarcophagus', Associated Press, 17 September 2007.

⁸⁰ Interview with the Civil Defence Institute, May 2007. The Civil Defence Institute works on protecting the population in every aspect of emergency situations generally, although the bulk of their work relates to the aftermath of Chernobyl.

⁸¹ *Ibid.*

⁸² Interview with Volodymyr Usachenko, see note 54, and interview with Oleg Listopad, July 2007.

⁸³ Greenpeace, *The Chernobyl Catastrophe*, p.10, see note 2.

IAEA's figures were judged by Greenpeace to be a 'gross underestimation', as well as an oversimplification of the current situation.⁸⁴

The importance of information was also recognised by the Parliamentary Assembly of the Council of Europe (PACE). In its Resolution 1127, 'On the Health Effects of the Chernobyl Nuclear Accident', it calls on Council of Europe member States and international institutions to, among other things, inform people 'of the health effects of accidental and natural radiation' and 'of the health and environmental problems of the various systems of energy production'.⁸⁵

In a national report 10 years after the catastrophe, the Ukrainian government said the greatest damage of Chernobyl was the moratorium on nuclear power plants that was imposed after the accident.⁸⁶

2.2 Kyiv

The Kyiv *oblast* lies at the margins of the zone affected by the radioactive pollution from the Chernobyl reactor. There is still some radioactive material present in the environment, principally caesium-137 – the main radioactive element released – and strontium-90. Some wild foods such as berries and mushrooms continue to show elevated caesium-137 levels and may still be contaminated. Kyiv is also affected by waste pollution, gas emissions (due to heavy traffic), ineffective sewage systems and poor quality drinking water.

Plans to develop the green areas of Kyiv caused tension between the city authorities and environmentalists. Even though the environmental authorities have been told to develop a programme to preserve these areas, environmentalists believe that these measures relate only to 3% of the land along the Dnipro riverbank and will not prevent building elsewhere on the riverside.⁸⁷

More than 400 hectares of green space were lost in Kyiv between 2000 and 2007, and trees continue to be cut down.⁸⁸ Even the head of Kyiv City Council's Ecological Commission, Anatolii Kovalenko, has not been told why this has happened, although the Commission reportedly 'assumes' that the reason is lack of funding to plant new trees and poor watering techniques.⁸⁹ Mayor Leonid Chernovetsky has blamed his predecessors, and says he has reversed a number of decisions relating to

⁸⁴ Greenpeace, 'Chernobyl Toll Grossly Underestimated', see note 62.

⁸⁵ Resolution 1127, June 1997,

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta97/ERES1127.htm>

⁸⁶ Interview with Volodymyr Usachenko, see note 54.

⁸⁷ 'Mayor ruins Kyiv parks', *Obzor*, 16 March 2007.

⁸⁸ L Bakka, 'Green Catastrophe: Kyiv Losing 400 Hectares of Green Spaces because of Imperfect Legislation', *Den*, 24 July 2007, p.5

⁸⁹ *Ibid.*

new construction works. Despite this, green areas continue to decrease. According to Anatolii Kovalenko, 350 hectares of parks and squares were acquired by businesses in the first half of 2007 without prior agreement with the Ecological Commission. Construction issues are normally resolved in a non-transparent manner by Mayor Chernovetsky and his entourage.

Land in Kyiv is expensive and a lucrative business. Ukraine does not have active legislation to protect green spaces, and permission to cut trees down is easily obtained by paying a small sum or by declaring the trees rotten.⁹⁰ Trees in the city are also withering because of the harmful emissions from cars and the salt with which roads are abundantly sprinkled in winter.

2.3 Donetsk

The Donetsk *oblast*, where 20% of Ukraine's industrial capacity is concentrated, is one of the most polluted regions in the country. This stems from its geographic location, production volumes and history.

The *oblast*'s subsoil is rich in natural resources and previously supplied raw materials across the USSR. Rapid industrial growth during the Soviet period triggered the swift expansion of towns, resulting in a high population density in the *oblast*. Donetsk constitutes 4.4% of Ukraine's territory but is home to 4,747 million people or 10% of Ukraine's population.⁹¹ The *oblast* is divided into 18 districts and 49 cities, with over 2,000 major industrial enterprises, or 3.8 per 100 sq km. The *oblast* has 800 large facilities in the fuel and energy sector, coal-mining, metallurgy, chemicals, production of construction materials, heavy machine-building for mining and transportation, as well as smaller industrial sites. This has led the Academy of Science in Kyiv to describe the *oblast* as 'over-industrialised'. The area is criss-crossed with pipelines pumping oil, gas, liquid ammonia and other products under high pressure. This concentration of production and urban populations, coupled with highly intensive agriculture, has placed an enormous burden on the biosphere. Additional problems are the old machinery and lack of management capacity. Much of the local economy consists of energy-consuming industries that are technologically inefficient and greatly damaging to the environment.

The Donetsk *oblast* generates 37% of Ukraine's industrial waste.⁹² Much of the waste is released into the atmosphere. Of the liquid waste, at least half is disposed of untreated or under-treated into surface waters. Local industries damage natural resources six times faster than elsewhere in Ukraine, annually discharging nearly 1.7 million tonnes of pollutants. The volume of waste (including

⁹⁰ *Ibid.*

⁹¹ All-Ukrainian Project, 'The Environment and Natural Wealth of Ukraine', Issue 2, Novy Svit Publishers, Kyiv, 2005, p.33 (in Ukrainian).

⁹² 'President Provel Soveshchanie s aktivnom Donetskoj oblasti', 17 January 2007, website of the Ukrainian President (in Russian), http://www.president.gov.ua/ru/news/data/1_13129.html.

toxic substances) is now stockpiled on as much as 1% of the total area of the *oblast* and nears 4 billion tonnes.⁹³

The main polluters in the *oblast* are coal mines, metallurgy facilities and thermal power plants. They make up only 10% of the polluters' total but account for over 80% of overall air pollution. Air is most polluted in the Donetsk, Mariupol, Debaltsevo, Makiyivka, Khartsyzsk, Zhdanovka, Kirovsk, YenaKyivo, Ugledar, Avdiyivka, Maryinsky and Starobeshevsky districts, which are exposed to over 75% of all emissions.⁹⁴

Water in all the *oblast's* rivers has a high concentration of salts because of the inflow of highly mineralised mine waters carrying more than 1 million tonne of salt compounds.⁹⁵ In addition, 67% of land in the *oblast* is ploughed.⁹⁶ Forests occupy a mere 7.6% of territory in the *oblast* – much less than in other *oblasts*.

Another problem is the storage of radioactive waste. For instance, the storage area of the State-owned Donetsk Chemical Plant contains 400 cubic metres of radioactive waste. The waste has been in the region for several decades and it is not known for how long it will remain. It needs to be removed from its current (potentially dangerous) receptacles and safely decommissioned.

These unsafe environmental conditions have had a negative impact on people's health, with a rise in mortality because of blood diseases and poisoning, as well as accidents due to unfavourable labour conditions in the heavy industry and mining sectors.

2.4 Lviv

The environmental situation in the Lviv *oblast* has both positive and negative features – considerable pollution and risks of environmental disasters on the one hand, and areas with a clean environment and untouched natural reserves on the other.⁹⁷ However, the situation has been progressively deteriorating because of the presence of chemical industries, mines, oil and gas deposits and pipelines. Chemical factories operate in areas adjacent to inhabited areas, for example around the Sokal (Lviv *oblast*), where there are millions of tonnes of waste from industry, the coal mines and the local coal enrichment facility. In Boryslav (Lviv *oblast*), drilled pits are now the source of uncontrolled gas

⁹³ Website of Rosa Vetrov (in Russian), <http://www.ecology.donbass.com/index.htm>, p.34. Special depositories and other facilities in the Donetsk *oblast* in 2005 stored 7,270,100 tonnes of very hazardous waste. Ukrainian Statistic Annual (Kyiv, Consultant Publishers, 2006, p.54).

⁹⁴ All-Ukrainian Project 'The Environment and Natural Wealth of Ukraine', Issue 2, Novy Svit Publishers, Kyiv, 2005, p.33 (in Ukrainian).

⁹⁵ *Ibid.*

⁹⁶ R Poberezhniuk, 'Radioaktivnye Otkhody Donbassa', Ura Inform (in Russian), <http://ura.dn.ua/19.01.2007/23618.html>.

⁹⁷ The information in this section, unless otherwise indicated, is from the *Lviv Regional Annual Environmental Report of 2005*.

emissions and oil-field discharges. Mismanagement of the treatment facilities has led to a lack of safe drinking water. These and other environmental hazards have caused health problems such as iodine deficiency in children, gastrointestinal disturbances, allergies and cancers, as well as respiratory, infectious and endocrine diseases.

Among the main problems are: the pollution created by factories; exhaust fumes from cars; pollution of the hydrosphere by industrial and household waste waters; waste treatment in the mining, metallurgical, power generation and other industries; lack of a sulphur disposal system at the Dobrotvorsky power plant and all petrochemical facilities; inadequate management of water protection zones; the unbalanced hydrological and hydro-technical regimes of small rivers; accumulation of pit waters due to mining activities; and pollution of sub-surface aquifers.

There are also serious issues relating to the need to dispose of stored radioactive waste. Well-designed landfills and treatment works at old dumps, which are currently operated with blatant disregard for environmental safety standards, are required.

Some of the problems in the Lviv *oblast* emerged a few decades ago, while others came to light recently as a result of the proximity of new EU members. Distinctive differences between Ukrainian and EU legislation often led to the movement of hazardous products, obsolete technologies and unwanted waste from neighbouring countries into Ukraine, particularly from Hungary.

Waste from Hungary

Western Ukraine started receiving waste from Hungary in 2000 and this increased significantly in 2003, when Hungary had to dispose of waste as a result of EU regulations for accession.

In Zakarpattia, a highly toxic, heat-resistant substance labelled Premix was deposited in bags.⁹⁸ It contains non-organic compounds and a large amount of poisonous heavy metals, such as lead, chromium, copper and nickel.⁹⁹ The substance was brought from Hungary between 2001 and 2004, when the Hungarian company Eltex sold 1,500 tonnes of Premix to the Ukrainian company Ozone. Some of the waste was dumped in the open air in the village of Bakta (Zakarpattia region) and some is stored in the Berehovo railway station.

⁹⁸ R Ahrens, see note 3.

⁹⁹ *Ibid.* For the consequences of this, see Section 7.1.2 below.



Bags containing Premix in Bakta

Reportedly, 15,000 euro per tonne was paid in bribes to dispose of the waste in Ukraine.¹⁰⁰ The local authorities apparently allocated 400,000 euro to place Premix in containers and move it, but the authorities then could not decide where to relocate it.¹⁰¹ A criminal case was initiated in October 2006 against customs officers for negligence for their failure to intervene to prevent the smuggling of Premix.¹⁰²

Amazingly, people did not know any of this until 2005. The truth was uncovered by a scientist from the Institute of Agriculture based in Bakta who analysed the substance. When the word spread, the local population panicked. The Prosecutor General ordered an official analysis of the substance, which confirmed the results of the local scientist.

An environmentalist stated that the 1,500 tonnes of Premix were only the ‘tip of the iceberg’. He referred to 25,000 tonnes of oil production waste, also imported from Hungary, and several tonnes of other harmful substances.¹⁰³ A local public official revealed to an environmental journalist in 2006 that ‘the firm Ozone is fictitious. It was established under a false name’.¹⁰⁴

In 2003, inhabitants of the town of Dobrotvir protested against the burning in the local thermoelectric power station of acidic tars, also brought from Hungary.¹⁰⁵ Although burning was forbidden, 1,100 tonnes of acidic tars remain in the plant. Others are located in plants in Stebnyk, Dashava and Stryj. In Noviy Rozdil, 18,000 tonnes of acidic tars lay in the open air. An environmental journalist stated that ‘persons in charge of acidic tar ... are inclined to downplay the danger ... [but] if [they] were not really dangerous, and even valuable as some claim, why did the Hungarians try so

¹⁰⁰ H Hopko, ‘Case of Collusion in Contamination’, *Kyiv Weekly*, 1 November 2006.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ Dmytro Skrylnikov, Bureau of Environmental Investigation, quoted in R Ahrens, see note 3.

¹⁰⁴ H Hopko, see note 100.

¹⁰⁵ O Forotsyna, ‘Weak Laws Make Ukraine Europe’s Dumping Ground’, *The Ukrainian Observer*, Issue 233.

hard to get rid of them?’¹⁰⁶ Ukrainian companies that imported acidic tars claimed that they would treat them and neutralise the acid, or re-use them as alternative fuel in a modified version. Environmentalists say that the former did not work and are doubtful that the latter can be safely and successfully carried out. An analysis of the cargo of acidic tars transported by train in April 2003 showed that the amount of arsenic was 300-500 times over the limit.¹⁰⁷

Nine tonnes of pesticides were also stored in the village of Syanky in Zakarpattya in 2001. When it rained, a stream of water carrying toxic material reached the Syan River, and then travelled to Poland and the Baltic Sea. Mayor Stepan Vasylechko asked the central authorities for assistance, to no avail. Mayor Vasylechko then wrote to the Environmental Minister of Poland, which resulted in an inspection by international experts and international media attention. This finally led to action, and the pesticide was placed in 20 concrete containers. However, six of them cracked shortly after, and four others in 2006. With support from international donors, the local NGO WETI organised an information campaign, leading to Polish and Ukrainian journalists visiting the affected area. The campaign was joined by several stakeholders, including civil society, the media and scientists. Following this, approximately a third of the pesticide was removed and funds were allocated to remove the rest in 2007.¹⁰⁸

These cases may fall under the 1992 Basel Convention on the Control of Trans-boundary Movements of Hazardous Waste and their Disposal (ratified by Ukraine in 1999). This would oblige Hungary to take back the waste.

Phosphorus spill

On 16 July 2007 a train derailed in the Lviv *oblast* and 15 of its 58 carriages were overturned. Six carriages caught fire and there was a spillage of phosphorus, a highly toxic chemical.¹⁰⁹ A toxic cloud spread across approximately 90 sq km, reaching 14 villages with 11,000 residents.¹¹⁰ By 19 July, 145 people had needed hospital treatment for exposure to toxic fumes.¹¹¹ There is still no official assessment of the potential long-term implications of the accident.

The media coverage of the incident lasted a week. Conflicting statements were released by the authorities, creating confusion as to the real significance of the accident on people’s lives and the environment. Deputy Prime Minister Oleksandr Kuzmuk compared the accident to Chernobyl on the

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ ‘Environmental Pollutants Finally Marked for Removal’, 2006, http://www.usaid.gov/locations/europe_eurasia/press/success/2007-03-28.html.

¹⁰⁹ BBC, ‘Dozens Sick after Ukraine Spill’, 18 July 2007, <http://news.bbc.co.uk/1/hi/world/europe/6904924.stm>.

¹¹⁰ As reported by the Ministry of Health, *Fakti Lviv*, 18 July 2007.

¹¹¹ ‘145 Hospitalized in Ukraine’, *The Associated Press*, 20 July 2007.

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day of the crash, which led to its mass coverage. When it emerged that the human and environmental costs were less severe than at Chernobyl, the coverage sharply declined.

A couple from Busk complained that they had found out about the train crash by chance rather than from the authorities.¹¹² An army officer friend told them to leave the area as the army had received a chemical contamination alert. On their way to the station they realised that other people had also heard rumours, which led to widespread chaos and confusion. There had been no official media statement by then.¹¹³ The head of the village council complained that ‘they tell us not to worry but we do not believe them. We see how poisonous smoke continues to ruin the entire neighbourhood’.¹¹⁴

In the days after the accident, the MEP revealed that concentrations of phosphorus over the villages of Anhelivka and Lisove were 23 times higher than normal.¹¹⁵ Later the same day, however, the MEP claimed that concentrations had decreased rapidly and were within the safety range.¹¹⁶ The authorities also declared that people in 14 affected villages near the city of Lviv were safe.¹¹⁷ Deputy Prime Minister Kuzmuk added that eating vegetables and drinking water from the region was safe. However, a chemistry and toxicology specialist at Lviv Medical University argued that the lack of wind and rain made the drastic decrease of phosphorus concentration referred to by the MEP impossible. She revealed that cases of discomfort in the throat and mouth had been recorded, which are typical symptoms of phosphorus poisoning.¹¹⁸

In an article in the newspaper *Den* of 24 July, a Lviv *oblast* resident complained of the:

diversity of controversial information sources. We hear first that there were three tank cars derailed, then six, and still later twelve! ... If only an official ... told us what was happening. Instead, all we get is hearsay, with every functionary pretending to have firsthand information, claiming there was no threat and fleetingly mentioning some phosphoric acid... [they] seem concerned primarily with keeping the population calm, saying everything was under control.¹¹⁹

He then stated that, luckily, Lviv residents received information from Lublin’s local station in Poland, which broadcast information supplied by Polish officials and independent experts.

Although (then) Prime Minister Victor Yanukovich pledged to bring to justice those responsible for the accident, the causes have yet to be established.¹²⁰ The different actors accused each other of responsibility for the accident, and there was no independent investigation.

¹¹² *Fakti Lviv*, see note 110.

¹¹³ *Ibid.*

¹¹⁴ ‘Government Hiding the Truth about Lviv Accident’, *Ukrayinska Pravda*, 19 July 2007.

¹¹⁵ N Lisova, ‘69 Suffer Toxic Poisoning after Ukraine Train Wreck’, *The Associated Press*, 19 July 2007.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Y Huben, ‘C-minus Graduates’ Hostages’, *The Day*, 24 July 2007, p.1.

¹²⁰ N Lisova, see note 115.

The representatives of bodies operating on the scene of the accident forbade people from wearing respiratory masks. A journalist from *Ukrayinska Pravda* witnessed an officer scolding one of the women working in the rescue team for wearing a mask. She revealed later that the management ‘forbids people from walking about in masks so as not to spread panic among the public. They say it’s because TV journalists are working here and broadcasting everything ...’.¹²¹ The police were also reportedly removing their masks as soon as a government car approached them. According to the woman, the administration had to ‘literally fight for’ the evacuation of the population; officials had reportedly received mandatory orders ‘from above not to spread panic’.¹²²

3 INTERNATIONAL STANDARDS

3.1 Right to Access to Environmental Information

The right to access environmental information is clearly spelled out in international law. ‘Traditional’ human rights treaties such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) guarantee access to environmental information as part of the right to private and family life, as well as part of the ‘overall’ right to freedom of expression and information. Additional declarations and treaties, such as the Aarhus Convention, have been agreed in the past decade specifically to guarantee the right to access environmental information.

3.1.1 Rio Declaration and Aarhus Convention

The international community has recognised access to environmental information as key to environmental governance, to the involvement of civil society in protecting the environment and to the protection of individuals against environmental hazards. Principle 10 of the 1992 Rio Declaration on Environment and Development (Rio Declaration) states unambiguously:¹²³

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely

¹²¹ *Ukrayinska Pravda*, see note 114.

¹²² *Ibid.*

¹²³ Available at:

<http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=78&ArticleID=1163>.

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available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

The Rio Declaration was the result of the 1992 UN Conference on Environment and Development and was signed by 172 States, including Ukraine. It was taken as the starting point for a legally binding international treaty on access to environmental information, to be negotiated within the framework of the UN Economic Commission for Europe but open to worldwide ratification.¹²⁴ The result was the 1998 Aarhus Convention, named after the city where it was signed.¹²⁵ This treaty has now been ratified by 40 States, including Ukraine.¹²⁶

Articles 4 and 5 of the Aarhus Convention place States Parties under a series of important obligations. First, they must make sure that they have up-to-date environmental information. The Aarhus Convention recognises that much information is held by private entities, such as heavy industry, and Article 5 of the Convention requires States to set up mechanisms to collect this information. Article 5(1) requires States to ensure that public authorities have up-to-date environmental information that is relevant to their functions. This means, for example, that a ministry in charge of exploitation of natural resources must collect environmental data relevant to activities such as oil drilling, and that a government department dealing with heavy industry must collect information about pollution from these industries. Article 5(1) places an additional requirement on States to collect information from private entities, such as businesses, regarding any activities undertaken by them that might affect the environment.

The Convention obliges States to make the most important categories of environmental information directly available to the public. Article 5(3) requires that States proactively publish the following information:

- (a) reports on the state of the environment;
- (b) texts of legislation on or relating to the environment;
- (c) policies, plans and programmes on or relating to the environment, and environmental agreements.

As far as possible, this information should be made available online. In addition, Article 5(1)(c) stipulates that, in the event of an imminent threat to human health or the environment, States should provide any information they have which might help the public to take measures to prevent or mitigate the harm arising from that threat.

¹²⁴ Although negotiated under the auspices of the UN Economic Commission for Europe, the Convention is open to ratification by all UN Member States, as well as by regional economic integration organisations.

¹²⁵ UN Doc. ECE/CEP/43, adopted at the Fourth Ministerial Conference in the 'Environment for Europe' process, 25 June 1998, entry into force 30 October 2001.

¹²⁶ Signed 25 June 1998, ratified 18 November 1999.

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Article 5(4) requires States to publish national environmental reports at least every four years. Article 5(7) adds that States must also publish the facts (and analysis of the facts) which it considers relevant and important in framing major environmental policy proposals. Article 5(8) requires States to take measures to ensure that product information is available so that consumers can make informed choices. Finally, Article 5(9) requires States to establish pollution registers.

The Aarhus Convention also provides that everyone has the right to access environmental information on request, without having to give a reason for the request.¹²⁷ To this end, States must ensure that public authorities make clear the kind of information they hold, and the process by which it can be obtained, and public officials must support the public in seeking access to the information.¹²⁸ Requests are ordinarily to be responded to within a month.¹²⁹ Fees may be charged but must be ‘reasonable’.¹³⁰ Access may be refused only in limited circumstances.¹³¹

Article 9 of the Aarhus Convention states that any person who considers her/his request for information to have been ignored, wrongfully refused or inadequately answered, has the right to a review procedure before a court of law or another independent and impartial body established by law. Taken as a whole, the Aarhus Convention provides a strong guarantee of the right to access environmental information.

In 2003, a follow-up instrument to the Aarhus Convention was signed – the Kiev Protocol on Pollutant Release and Transfer Registers (the Kiev Protocol). The Protocol was adopted by the European Community and 36 States, including Ukraine, at a meeting of the parties to the Aarhus Convention on 21 May 2003 in Kyiv (Kiev). It aims to ‘enhance public access to information through the establishment of coherent, nation-wide pollutant release and transfer registers ...’. It requires States to establish a pollution release transfer register which:

- is publicly accessible through the Internet, free of charge;
- is searchable according to separate parameters (facility, pollutant, location, medium and so on);
- is user-friendly in its structure and provides links to other relevant registers;
- presents standardised, timely data on a structured, computerised database;
- covers releases and transfers of at least 86 pollutants covered by the Protocol, such as greenhouse gases, acid rain pollutants, ozone-depleting substances, heavy metals, and certain carcinogens, such as dioxins;

¹²⁷ Article 4.

¹²⁸ Article 5(2)(b).

¹²⁹ Article 4(2).

¹³⁰ Article 4(8).

¹³¹ Article 4(3)(7). For more on refusals, see below.

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- covers releases and transfers of major sources of pollution such as thermal power stations, mining and metallurgical industries, chemical plants, and waste and waste-water treatment plants;
- accommodates available data on releases from diffuse sources (for example, transport and agriculture);
- has limited confidentiality provisions; and
- allows for public participation in its development and modification.

The Protocol is open for signature to all States, including States that are not a party to the Aarhus Convention.

3.2 Access to Information as a Human Right

In addition to specific environmental information treaties such as the Aarhus Convention, international law guarantees a general right to access information as part of the ‘overall’ right to freedom of expression and information and as part of the right to respect for private and family life. Countries as diverse as Sweden and Colombia pioneered the right of access to information in their domestic legislation.¹³² In its first session, the UN General Assembly described freedom of information as ‘a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated’.¹³³

Subsequently, freedom of expression and information was guaranteed globally through Article 19 of the Universal Declaration of Human Rights and Article 19 of the ICCPR.¹³⁴ The latter, which is a legally binding treaty ratified by more than 150 States, including Ukraine, states:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice.

The right to access information held by public authorities, sometimes referred to as ‘freedom of information’, has been acknowledged as a crucial element of the right to freedom of expression. The UN Special Rapporteur on freedom of opinion and expression has stated that, ‘the right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval

¹³² The Swedish Freedom of the Press Act, 1766, which now forms part of the Swedish Constitution, decreed that ‘every Swedish citizen shall have free access to official documents’; and in Colombia the right to access information is covered in the 1888 Code of Political and Municipal Organization.

¹³³ UN General Assembly Resolution 59(1), 14 December 1946.

¹³⁴ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

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systems.¹³⁵ The Special Rapporteur developed his commentary on freedom of information in his 2000 annual report to the Commission on Human Rights, noting the fundamental importance of this right not only to democracy and freedom, but also to the right to public participation and the realisation of the right to development.¹³⁶ The UN Human Rights Committee, the body established to supervise implementation of the ICCPR, has also frequently urged States to enact freedom of information legislation.¹³⁷ The Inter-American Court of Human Rights recently stated unambiguously that freedom of expression, which includes the right to seek and receive information, ‘protects the right of every person to request access to the information under the control of the State’.¹³⁸

Under the ECHR,¹³⁹ the regional human rights treaty ratified by Ukraine, the right to access environmental information is enforced primarily through Article 8, which protects the right to private and family life and peaceful enjoyment of the home.¹⁴⁰ The European Court of Human Rights, which oversees compliance with the ECHR, has ruled that environmental pollution will generally affect people’s well-being and is therefore relevant to the protection of private and family life, under Article 8. For example, in *Guerra and Ors. v. Italy*,¹⁴¹ the Court ruled that the failure of the authorities to provide information concerning pollution caused by a factory near the applicants’ home violated their right to private and family life. Although there had been no active State interference with the applicants’ right to respect for private and family life, the Court ruled that Article 8 imposes a positive obligation on the State to ensure the enjoyment of that right, which includes the obligation to provide information. Two years later, in *McGinley and Egan v. The United Kingdom*,¹⁴² the Court followed its decision in *Guerra and Ors. v. Italy* and confirmed that the ECHR guaranteed a right of access to the relevant information.¹⁴³ In the *McGinley and Egan* case the applicants had been exposed to radiation

¹³⁵ Report of the Special Rapporteur, *Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 14.

¹³⁶ Report of the Special Rapporteur, *Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 42.

¹³⁷ See, for example, its Concluding Observations on Ireland (UN Doc. CCPR/C/79/Add.21, 28 July 1993); and on Azerbaijan (UN Doc. A/49/40, 27 July 1994).

¹³⁸ *Claude Reyes and Others v. Chile*, 19 September 2006, Series C No. 151, para. 77 (Inter-American Court of Human Rights). Unofficial translation from the Spanish judgement.

¹³⁹ Adopted 4 November 1950, in force 3 September 1953.

¹⁴⁰ Although early developments placed the right to access environmental information under Article 10, a freedom of expression provision similar to Article 19 of the ICCPR, jurisprudential quirks have resulted in it being placed under Article 8.

¹⁴¹ *Guerra and Ors. v. Italy*, 19 February 1998, Application No. 14967/89 (European Court of Human Rights).

¹⁴² *McGinley and Egan v. The United Kingdom*, 28 January 2000, Application Nos. 21825/93 and 23414/94 (European Court of Human Rights).

¹⁴³ The Court did not find a violation. However, the respondent government had complied with its obligations by providing a process by which access to the relevant information could be obtained, but which the applicants had not used.

during nuclear testing on the Christmas Islands and claimed a right of access to records regarding the potential health risks of this exposure.

Building on these developments, the Committee of Ministers of the Council of Europe, of which Ukraine is a member, in 2002 urged States to ‘guarantee the right of everyone to have access, on request, to official documents held by public authorities.’¹⁴⁴

3.3 Principles of Effective Access

Recognition of the right to access environmental information is reflected in the large number of specific national laws on freedom of information that have been adopted – more than 70 in 2007, and many others in the preceding two decades¹⁴⁵ – and in the access to information policies and guidelines of intergovernmental organisations.¹⁴⁶

A survey of international law and State practice highlights that good domestic law should be based on a number of general principles in order to implement the right of access to information effectively. ARTICLE 19, in its 1999 publication *The Public’s Right to Know*,¹⁴⁷ identified nine principles:

- **Freedom of information legislation should be guided by the principle of maximum disclosure.** The principle of maximum disclosure holds that all information held by public bodies should be presumed to be accessible, and that this presumption may only be overcome in very limited circumstances. The principle of maximum disclosure encapsulates the basic rationale of freedom of information legislation. An important aspect of this principle is that the scope of the law should be broad. Everyone, not just citizens, should benefit from the right, and the access regime should apply to all public bodies, whatever their nature, and all types of information, regardless of the form in which it is recorded.
- **Public bodies should be obliged to publish key information.** Freedom of information implies not only that public bodies should accede to requests for information, but also that they should publish and disseminate widely documents of significant public interest.

¹⁴⁴ Recommendation R(2002)2 of the Committee of Ministers to member states on access to official documents, Principle III.

¹⁴⁵ D Banisar, *Global Survey of FOI Laws*, <http://freedominfo.org>.

¹⁴⁶ Many international financial institutions and other intergovernmental organisations now have disclosure or freedom of information policies.

¹⁴⁷ *The Public’s Right To Know: Principles on Freedom of Information Legislation* (London: ARTICLE 19, June 1999).

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- **Public bodies must actively promote open government.** Informing the public of their rights and promoting a culture of openness within government are essential if the goals of freedom of information legislation are to be realised. The best approach will vary from country to country but, at a minimum, there will be a need to train public officials and conduct public education campaigns. Attention must also be given to promoting better record maintenance by public bodies. In many countries, one of the biggest obstacles to accessing information is the poor state of records.
- **Exceptions to the right to access information should be clearly and narrowly drawn and subject to strict ‘harm’ and ‘public interest’ tests.** The regime of exceptions is one of the most difficult issues facing those drafting a freedom of information law and one of the most problematic parts of many existing laws. In many cases, otherwise effective laws are undermined by an excessively broad or open regime of exceptions. However, it is obviously important that all legitimate secrecy interests are adequately addressed in the law. The presumption in favour of disclosure means that the onus should be on the public body seeking to deny access to certain information to show that it may be withheld legitimately. The ARTICLE 19 principles set out a three-part test for exceptions as follows:
 - the information must relate to a legitimate aim listed in the law;
 - disclosure must threaten to cause substantial harm to that aim; and
 - the harm to the aim must be greater than the public interest in having the information.The first part of this test means that a complete list of all aims that may justify withholding information should be set out in the law. It is not, however, legitimate to refuse to disclose information simply because it relates to one of these interests. According to the second part of the test, the disclosure must pose an actual risk of serious harm to that interest. The third part of the test states that even if disclosure of a piece of information would lead to harm, the information should still be disclosed if withholding it would lead to a greater harm.
- **Requests for information should be processed rapidly and fairly, and an independent review of any refusals should be available.** Effective access to information requires that the law stipulate clear processes for deciding on requests by public bodies as well as a system for independent review of their decisions. The law should set out clear timelines for responding to requests, which should be reasonably short. The response to a request should take the form of a written notice stating any fee and, where access to all or part of the information is denied, reasons

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for that denial along with information about any right of appeal. It is crucial that those requesting the information have the right to appeal to an independent body to review decisions made by public authorities, a right reflected in most international standards. Otherwise, individuals cannot really be said to have a right to access information held by public bodies, and much information, such as that revealing corruption or incompetence, will never be disclosed.

- **Excessive costs should not deter people from making requests for information.** Fees are a controversial issue in freedom of information laws. It is widely accepted that fees should not be so high as to deter requests, but practically every law does allow for some charges for access. Some laws limit charges to the cost of reproducing documents, perhaps along with a set application fee. Other laws group requests into different categories, charging less for public interest or personal requests. Regardless of the approach, it is desirable for fee structures and schedules to be set by some central authority, rather than by each public body separately.
- **Meetings of public bodies should be open to the public.** The underlying rationale for freedom of information applies not only to information in documentary form, but also to meetings of public bodies. In practice, most countries will regulate this question in a law separate from the main access to information law.
- **Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed.** Most countries have a range of secrecy laws, many of which include illegitimate provisions that are inconsistent with the access to information law. If the principle of maximum disclosure is to be respected, the access to information law must take precedence over these laws. This is not as controversial as it sounds, at least in practice. A good freedom of information law will include a comprehensive set of exceptions, reflecting the three-part test described above, which ensures that information will not be disclosed if doing so would cause unjustifiable harm. As a result, there should be no need for the freedom of information law to be extended by secrecy laws.
- **Individuals who release information on wrongdoing – whistleblowers – must be protected.** A freedom of information law should protect individuals against any legal, administrative or employment-related sanctions for releasing information on wrongdoing or on a threat to public health, safety or the environment. Protection of so-called whistleblowers provides an important information safety valve, ensuring that key information does indeed reach the public. Such

protection should apply even where disclosure would otherwise be in breach of a legal or employment requirement. Protection from liability should also be provided to individuals who, reasonably and in good faith, disclose information in the exercise of any power or duty under freedom of information legislation. This effectively protects civil servants who have mistakenly, but in good faith, released information.

4 UKRAINE'S LAWS

4.1 Constitutional Guarantees

The right to access environmental information is guaranteed by Ukraine's domestic legislation. Article 50(2) of Ukraine's Constitution states:

Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.¹⁴⁸

A similar provision is in the Civil Code of Ukraine (Article 293, Part 1).¹⁴⁹

When Ukraine ratified the Aarhus Convention in 1999, the treaty became binding on the country.¹⁵⁰ To ensure consistency with the Convention, a number of Ukrainian laws were amended.¹⁵¹ In addition, Article 71 of the Law on Environmental Protection explicitly reaffirms that treaties such as the Aarhus Convention are an integral part of domestic law, stating that:

If the international agreements entered into by Ukraine contain provisions that differ from those found in Ukrainian law on environmental protection, the provisions from international law are applied.

4.2 Right to Information

Although Ukraine does not have a specific freedom of information law, many relevant provisions are contained in the 1992 Law on Information.¹⁵² This Law guarantees a general right of access to information and sets forth the basic legal grounds for the exercise of the right. There are a number of

¹⁴⁸ Constitution of Ukraine, 28 June 1996, available at <http://www.rada.kiev.ua/const/conengl.htm>.

¹⁴⁹ Civil Code of Ukraine, No. 435-IV, 16 January 2003.

¹⁵⁰ In accordance with Article 19 of the Law of Ukraine On International Agreements of Ukraine, No. 1906-IV, 29 June 2004, treaties ratified by Ukraine are part of domestic law.

¹⁵¹ Law of Ukraine On Making Amendments to Some Laws of Ukraine, 28 November 2002, No. 254-IV, *Official Gazette of Ukraine*, 2002, No. 52, p.2,350.

¹⁵² Law of Ukraine On Information, 2 October 1992, No. 2657-XII. This and other laws are available in Ukrainian at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi>.

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positive features in the Law, including a guarantee of the right to obtain information (Articles 5 and 9);¹⁵³ an obligation on State institutions to provide information upon request (Articles 10 and 32); provisions for an appeals system (Articles 35 and 48); a right to request government-held information concerning oneself (Article 23); a duty for public bodies to proactively disseminate information (Article 29); and sanctions on those who violate the Law (Articles 35 and 47). Article 28 stipulates that the freedom of information regime should be supervised by the *Verkhovna Rada* and Cabinet of Ministers of Ukraine.

However, the Law has several serious shortcomings.¹⁵⁴ There have been calls for it to be amended for greater compliance with international standards on freedom of information, and for the inclusion of more detailed and clear freedom of information provisions that could more effectively regulate the flow of information. In co-operation with ARTICLE 19, in 2002 the Kharkiv Group for Human Rights Protection (KHPG) started developing proposed amendments to the Law on Information and then campaigned for their adoption. However, following the Orange Revolution and the change of government, this process had to be re-started. In mid-2007 the Ministry of Justice decided once again to produce an outline for a new freedom of information law. However, given that there was another change of government following the elections in September 2007, a final version is unlikely to appear before 2008.

4.3 Environmental Legislation

The main environmental law in Ukraine is the Law on Environmental Protection.¹⁵⁵ In relation to access to environmental information, it establishes that:

every citizen has the right to access, following an established procedure, full and truthful information on the state of the environment and its impact on the health of the population (Article 9(1)(f)).

Following ratification of the Aarhus Convention, the Law on Environmental Protection was amended¹⁵⁶ to include the notion of ‘environmental information’, defined at Article 25(1) as any information in written, audiovisual, electronic, or other form on:

- the state of the environment or its elements – land, water, subsoil, atmospheric air, flora and fauna and their pollution levels;

¹⁵³ For citizens of Ukraine, State bodies, organisations and associations of citizens (Article 32(4)). The State body must inform the applicant within 10 days as to whether it will satisfy the information request. The State body will then have a month to fulfil its task (Article 33).

¹⁵⁴ See Section 4.10 below.

¹⁵⁵ Law ‘On Environmental Protection’, 25 June 1991, No. 1264-XII (last amended in April 2007). All laws are available in Ukrainian at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi>.

¹⁵⁶ In November 2002.

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- biological diversity and its components, including genetically modified organisms and their interaction with the objects of the environment;
- sources, factors, materials, substances, products, energy, physical factors (noise, vibration, electromagnetic radiation, nuclear radiation) which influence or may influence the state of the environment or people's health;
- threats and causes of environmental emergencies, results of measures against these phenomena, recommendations on the measures aimed at reducing their negative impact on the environment and people's health;
- environmental forecasts, plans and programmes, measures, including administrative ones, State environmental policies, legislation on environment protection;
- costs of carrying out environmental protection measures funded from environment protection and other sources of financing, economic analysis conducted in the process of decision-making on environmental issues.

According to Article 20 of this Law, the MEP has special obligations to: exercise control over the use and management of natural resources (such as lands, subsoil, waters and forests); ensure the operating of national informational and analytical system network; guarantee access to environmental information; conduct State environmental analysis including environmental impact assessments (EIAs). The MEP is also responsible for: ensuring the country's compliance with its obligations under international treaties ratified by Ukraine in the area of the environment protection; and for setting up processes for the dissemination of environmental information and the holding of public hearings or open sessions on the environmental impact of planned activities.

Article 22 of this Law mandates the creation of a system for the State's monitoring of the environment, including for its effective administration. Supervision of the state of the environment and the level of its contamination is carried out by the MEP, other specially mandated bodies, as well as by companies, institutions and organisations whose activities harm or could harm the environment. These entities are obliged to provide the relevant State bodies with the analytical results of their self-monitoring free of charge.

The right to access specific categories of environmental information is also guaranteed by other environmental laws, such as the Law on Environmental Impact Assessment (EIA Law),¹⁵⁷ the Water Code of Ukraine,¹⁵⁸ the Forest Code of Ukraine,¹⁵⁹ and the Laws on: Drinking Water and Drinking Water Supply,¹⁶⁰ Environmental Network of Ukraine,¹⁶¹ Waste,¹⁶² High-Risk Enterprises,¹⁶³

¹⁵⁷ Articles 6(1)(3), 10, 35, 41 and 43. Law On Environmental Impact Assessment, 21 January 1994, No. 45/95-BP.

¹⁵⁸ Water Code, 5 June 1995, No. 213/95-BP.

¹⁵⁹ Land Code, 25 October 2001, No. 2768-III.

¹⁶⁰ Articles 6 and 9. Law On Drinking Water and Drinking Water Supply, 10 January 2002, No. 2918-III.

¹⁶¹ Article 6 and Article 7(2). Law On Environmental Network, 24 June 2004, No. 1864-IV, Official Gazette of Ukraine, 2004, No. 29, p.1,950.

¹⁶² Articles 14 and 16. Law On Waste of 5 March 1998, No. 187/98-BP.

¹⁶³ Article 15. Law On High-Risk Enterprises of 18 January 2001, No. 2245-III.

the Protection of Population and Territories from Emergency Situations of Technical and Natural Origin,¹⁶⁴ and the Use of Nuclear Energy and Radiation Safety.¹⁶⁵

The right to accurate and timely information on personal and public health issues, including on existing and potential risk factors and the degree of their severity, is enshrined in the Principles of Legislation on Health Protection in Ukraine¹⁶⁶ and in the Law on Ensuring the Sanitary and Epidemiological Well-Being of the Population.¹⁶⁷

However, there are also certain environmental laws in Ukraine that lack provisions on the right of access to environmental information. These include the Code of Ukraine on the Subsurface,¹⁶⁸ the Land Code of Ukraine,¹⁶⁹ and the Laws on: the Natural Resource Fund of Ukraine,¹⁷⁰ Resorts,¹⁷¹ Flora,¹⁷² Fauna,¹⁷³ and the Protection of the Atmosphere.¹⁷⁴

4.4 Obtaining Information on Request

The Law on Information provides for proactive and reactive dissemination of information by stating that people may receive information: a) in response to an information request; or b) as a result of information made public by State bodies, companies, organisations, institutions and individuals. Its Article 32 defines an ‘information request’ as a ‘statement requesting access to official documents’ that must be submitted in writing.¹⁷⁵

The law stipulates that the body processing the request must notify the requester within ten days as to whether her/his request can be satisfied (Article 33(1)). When the response is positive, the information has to be disseminated within one month, ‘unless otherwise provided by law’ (Article 33(2)). Applications that do not require an archive search have to be answered immediately where possible, and overall no later than 15 days from their submission. State bodies ‘determine the

¹⁶⁴ Article 4. Law On the Protection of Population and Territories from Emergency Situations of Technical and Natural Origin of 8 June 2000, No. 1809-III.

¹⁶⁵ Articles 5, 10 and 16(4). Law On the Use of Nuclear Energy and Radiation Safety, 8 February 1995, No. 39/35-BP. The law establishes that human and environmental safety are priorities in the use of nuclear energy.

¹⁶⁶ Article 6. Principles of Legislation on Health Protection in Ukraine, 19 November 1992, No. 2801-XII.

¹⁶⁷ Article 4. Law of Ukraine On Ensuring Sanitary and Epidemiological Well-Being of the Population, 24 February 1994, No. 4004-XII.

¹⁶⁸ Code on the Subsurface, 27 July 1994, No. 132/94-BP.

¹⁶⁹ See note 159.

¹⁷⁰ Law On the Natural Reserve Fund of Ukraine, 16 June 1992, No. 2456-XII.

¹⁷¹ Law On Resorts, 5 October 2000, No. 2026-III.

¹⁷² Law On Flora, 9 April 1999, No. 591-XIV, Official Gazette of Ukraine, 1999, No. 18, p.775.

¹⁷³ Law On Fauna, 13 December 2001, No. 2894-III, Official Gazette of Ukraine, 2002, No. 2, p.47.

¹⁷⁴ Law On the Protection of the Atmosphere, 16 October 1992, No. 2707-XII.

¹⁷⁵ The information can be provided orally or in written form, but the request must be written under the Law on Information. The Law on Information and the Law on Public Appeal have different procedures, but sometimes they overlap.

procedures for payment for copies of requested documents' (Article 36). A refusal to provide information must state the justification for the refusal (Article 34).

The Law on Citizens' Appeals¹⁷⁶ also provides for the possibility of obtaining information, including of an environmental nature, through the submission of an application (appeal) to a body (including a State body), citizens' association, enterprise, institution, organisation – irrespective of the type of ownership – and the media.¹⁷⁷

Specific provisions for requesting environmental information are included in the Law on Environmental Protection.¹⁷⁸

Companies are obliged to provide information under several laws, such as the Law on Citizens' Appeals and the Law on Information. The Law On the Use of Nuclear Energy and Radiation Safety states that people also have the right to request and receive information from relevant companies, institutions and organisations within the limits of their competencies – albeit with the exception of data comprising State secrets (Article 10(1)).¹⁷⁹

Open and classified Information

Article 28 of the Law on Information divides all information into 'open information' and information 'with limited access' (classified information). Article 29(3) stipulates that restrictions on the right to receive 'open' information are prohibited.

Under Article 30, classified information is divided into 'confidential' or 'secret' information. The former is defined as 'data owned or managed by a natural or legal person, to be disclosed at their discretion, subject to conditions established by these persons'. 'Secret' information is regulated by the Law on State Secrets and defined, also in Article 30, as 'data legally classified as State or other secret, the disclosure of which can damage the person, society and the State'.

Amendments passed in April 2003 incorporated into Article 30 of the Law on Information the provision that 'information with limited access can be disseminated without the agreement of its owner if this information is of public interest' and 'if the right of the public to know outweighs the right of the owner to protect it'.¹⁸⁰

¹⁷⁶ Law of Ukraine On Citizens' Appeals, 2 October 1996, No. 393/96-BP.

¹⁷⁷ An Order of the Ministry of Environmental Protection was adopted to provide further details on the Law on Citizens' Appeals and its application with regard to environmental information. Order 'On the Approval of the Guidelines for Examining Public Appeals, as well as Reception of Citizens at the Ministry of Environmental Protection of Ukraine', 6 July 2005, No. 244, *Official Gazette of Ukraine*, 2005, No. 29, p.1,750.

¹⁷⁸ See Section 4.3 above.

¹⁷⁹ With the exception of data comprising state secrets (Article 10(1)).

¹⁸⁰ Law 'On the Insertion of Changes to Certain Laws of Ukraine to Support the Right to Freedom of Speech', see note 10. According to Article 38(4) of the Law on Information a person 'owns' information through: the creation of information; an agreement on the creation of information; an agreement to transfer ownership rights

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Natural and legal persons (including State bodies, companies and other institutions) define the regime of access to the information ‘owned’ by them. The main exception is information that, if not released, can endanger human life and health (Article 30).

As noted, under Article 35 anyone can appeal against a refusal to provide information (or a delay). It is, however, difficult to appeal against a decision to classify information. Article 37 states that there is no obligation to release information that is ‘duly classified as a State secret’ or ‘confidential information’.

In compliance with Article 15 of the Law on State Secrets,¹⁸¹ a document in its entirety can be classified if it contains secret information. There are no provisions to ensure the release of partial information when a document contains both sensitive and non-sensitive information.

Information in the field of defence, economy, science and technology, foreign affairs, national security and law enforcement can be classified pursuant to Article 1 of the Law on State Secrets. This and other laws also establish a list of information categories that cannot be made secret or confidential, including information on:

- the state of the environment, quality of food and consumer goods;
- accidents, catastrophes, dangerous natural phenomena and other emergency situations that have happened or are likely to happen and endanger the safety of citizens;
- the state of health of the population, standards of living, including nutrition, clothing, housing, health and social services, as well as social-demographic data, the state of law and order, and the education and culture of the population.

Restrictions on access to the same categories of information are also prohibited under the Law on Information (Article 30(4)).

Paragraph 2 of Part 2 of the Decision of the Cabinet of Ministers ‘On Types of Information Not Comprising Commercial Secret’¹⁸² states that any information, irrespective of its ‘owner’, shall not be classified as a secret if it relates to ‘environmental pollution, non-observance of safety conditions in the workplace, consumption of products harmful for people’s health ...’.

to another person.

¹⁸¹ Law of Ukraine On State Secrets, 21 January 1994, No. 3855-XII, (available in Ukrainian at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi>). Information that is classified in the field of defence includes: ‘information on the content of strategic and operative projects and other documents on military management, training and the execution of military operations, the deployment of troops ... arming and technical and material provision to the Military Forces of Ukraine and other military formations’. Information in the field of economy, science and technology includes: ‘information on the use of transportation, communication, facilities of other industries and State infrastructure to guarantee State security ...’.

¹⁸² Decision of the Cabinet of Ministers of Ukraine ‘On Types of Information Not Comprising Commercial Secret’ of 9 August 1993, No. 611, Collected Decisions of the Government of Ukraine, 1993, No. 12, p.269.

4.5 Proactive Dissemination of Environmental Information

Ukrainian legislation obliges the State authorities, local government bodies, enterprises, organisations, institutions and individuals to disseminate environmental information in a number of situations.¹⁸³ Article 9(h) of the Law on Environmental Protection establishes a general right of every Ukrainian citizen to ‘receive environmental education’.

Under the EIA Law, when an EIA is conducted for a proposed project, information on it must be published in the media.¹⁸⁴ Article 25(1) of the Law on Environmental Protection states that the MEP must compile and submit to the *Verkhovna Rada* an annual national report on the state of the environment in Ukraine. The report is then published on the Internet. State environmental bodies are also responsible for the regular dissemination of information on the environment through the media (with immediate dissemination in case of emergencies). This includes information on sources of pollution, waste disposal and other hazards that impact on human health. There is, however, no specification of the timeframe, regularity or form in which dissemination should take place. Article 25 further states that the MEP and its local bodies, as well as companies and organisations, must ensure the population has access to environmental information in relation to activities that have (or may have) a negative impact on the environment.

Moreover, MEP Order ‘On the Order and Frequency of Publicising Registers on the Environment, Including Radiation, State and Condition of Health of the Population’¹⁸⁵ stipulates that the Ministry shall, every three months, inform the public through its own website and the media about companies that cause the highest levels of pollution and about the state of the environment in the affected areas.

In order to promote the right of access to environmental information, there are also a number of by-laws, including:

- The Decision of the *Verkhovna Rada* ‘On Informing the Public on Environmental Issues’;¹⁸⁶
- Orders of: a) the MEP ‘On the Approval of the Procedure of Providing Environmental Information’;¹⁸⁷ ‘On the Approval of the Provision on Informing the Public on a Quarterly Basis through Media about Enterprises Causing Highest Levels of Environmental Pollution’;¹⁸⁸ ‘On the Approval of the Guidelines for Examining Public Appeals, as well as

¹⁸³ Moreover, the Law on Information at Article 29 prescribes the proactive dissemination of information through the regular publication of information by public bodies, and through the media.

¹⁸⁴ See Section 4.7 below on EIAs.

¹⁸⁵ April 28, 1990 p. N 100.

¹⁸⁶ 4 November 2004, No. 2169-IV, Official Bulletin of the Verkhovna Rada of Ukraine, 2005, No. 2, p.72.

¹⁸⁷ December 18, 2003 N 169.

¹⁸⁸ 1 November 2005, No. 397, *Official Gazette of Ukraine*, 2005, No. 51, p.3,223.

Reception of Citizens at the Ministry of Environmental Protection of Ukraine’;¹⁸⁹ and b) the Ministry of Health ‘On Publicising Information on Significant Developments Concerning Public Health through the Internet’.¹⁹⁰

Article 7 of the Law on Environmental Protection also provides for the increase of knowledge on environmental matters for society and specialists, through education in schools and universities, as well as specialised training for professionals. Its second paragraph states that, ‘ecological knowledge is an obligatory requirement for all civil servants, whose activities are linked to the use of natural resources and that have an impact on the environment’.

4.6 Public Consultations

Ukrainian legislation provides for the public’s right to participate in decision-making on environmental matters. A general right to public participation is also enshrined in the Constitution.¹⁹¹

Article 9 of the Law on Environmental Protection states that every citizen has the right to:

- participate in the discussion on draft laws, and provide input to the authorities on construction work that can have a negative impact on the environment (para. b);
- participate in the development of measures for the preservation of the environment and the rational use of national resources (c and d);
- join public associations and institutions for environmental protection (e); and
- take part in public hearings and open sessions on discussions on the impact of planned activities on the environment, on the stages of planning and construction (g).

The right of citizens and NGOs to participate in environmental protection activities is reiterated in Article 10(c) of the Law on Environmental Protection. Article 21 also guarantees: civil society’s right to participate in decision-making and programmes on environmental protection; the right to fulfil, in conjunction with the MEP, supervisory functions on companies’ or organisations’ implementation of

¹⁸⁹ Order of the Ministry of Environmental Protection of Ukraine ‘On the Approval of the Guidelines for Examining Public Appeals, as well as Reception of Citizens at the Ministry of Environmental Protection of Ukraine’, 6 July 2005, No. 244, *Official Gazette of Ukraine*, 2005, No. 29, p.1,750.

¹⁹⁰ Order of the Ministry of Health of Ukraine ‘On Publicising Information on Significant Developments Concerning Public Health through the Internet’, 8 June 2005, No. 259, available in Ukrainian at http://www.nau.com.ua/cgi-bin/nauonlu.exe?moz+91335_t+guest.

¹⁹¹ Article 38(1) states that:

citizens shall have the right to participate in the management of public affairs through national and local referendums ...

Article 40 stipulates that:

everyone shall have the right to direct individual or collective written appeals to the State authorities, local self-government bodies, as well as to officials of the bodies responsible for examining appeals and providing comprehensive replies within the periods established by law.

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programmes for environmental protection; and the right to call for national or local referendums on issues related to the environment, the use of natural resources and environmental safety.

Resolution of the Cabinet of Ministers No. 1378 (Resolution 1378)¹⁹² details the principles for holding consultations with the public. Consultations are held by executive bodies responsible for drafting legislation and policy. In some cases they are compulsory, particularly for draft legislation related to citizens' rights, liberties and interests (paras. 3 and 4).¹⁹³ The bodies themselves devise the format of consultation.

Consultation plans are devised by the executive organs at the beginning of each year following suggestions by public councils (para. 10), and can be either direct (public hearings and other events) or indirect (for example, surveys). If at least three public associations request additional consultations, they must be scheduled (para. 14).

The need for transparency and proactive dissemination of information before and during public consultations is repeatedly emphasised in the document (paras. 16, 20 and 21). However, the Resolution does not set a minimum time limit for advance notification of the public.

Public consultations simply have an advisory function (para. 10). There is no direct obligation on the executive bodies to implement the recommendations resulting from them.¹⁹⁴

Public councils

Resolution 1378 requires the local and central executive authorities (including the Cabinet of Ministers) to set up public councils. Public councils are advisory bodies attached to executive bodies and their activities are based on the regulations established by these bodies. Their task is to coordinate consultations and assist citizens in their right to public participation (para. 5). Public councils consist of representatives of NGOs, professional unions, other associations of citizens and media representatives (para. 6). They hold sessions at least once every three months (para. 9).

The Public Council for the Cabinet of Ministers assists the public councils of central and local executive bodies in fulfilling their functions. Its members include one representative per ministry and other central executive bodies.

¹⁹² Resolution 'On Several Issues related to the Guarantee of Public Participation in the Development and Implementation of State Policy', 15 October 2004.

¹⁹³ Other cases in which they are compulsory are: projects of State and regional programmes of economic and cultural development; reports on State budget spending; and information on the activities of the Cabinet of Ministers and central and local executive bodies.

¹⁹⁴ Resolution 1378 states that the results of consultations 'are taken into account by the executive body while making the final decision or in its subsequent work' (para. 33).

There are no guidelines on the exact procedure of setting up public councils, such as rules of nomination and appointment, terms of office of its members, accountability, possible discharge from their duties and conflict of interest regulations.

4.7 Environmental Impact Assessments

EIAs are primarily regulated by the EIA Law¹⁹⁵ and partially by the Law on Environmental Protection. They are compulsory for activities that may lead to environmental hazards. The Cabinet of Ministers requests EIAs (Article 21 of the EIA Law)¹⁹⁶ and formulates the list of activities requiring mandatory EIAs (Articles 13 and 21(4)).

EIAs can be initiated by the State or by the public. Public EIAs can be initiated by individuals and members of civil society. They can be carried out simultaneously with (but independently of) State EIAs¹⁹⁷ and are conducted by independent groups of experts. EIAs conducted by interested individuals and organisations are initiated on the basis of an agreement approved by the MEP (Article 17).

However, only the results of the State EIAs are binding; public ones are simply regarded as recommendations. Therefore, the decision on whether or not to undertake a project that has an impact on the environment is in the hands of the authorities.¹⁹⁸ Public EIAs can be taken into account while conducting State EIAs, as well as when making a decision about the authorisation of a proposed activity (Article 12).

The results of EIAs can be declared invalid by a court order if they are in breach of the legislation (Article 45).

Publicity about EIAs is vital for public participation. ‘Promotion of awareness among the local population about the results of EIAs’ is listed among the obligations of local environmental administration bodies (Article 23(4)).

A declaration must be made in the media before conducting State EIAs for activities that pose high risks of environmental hazards – including information on the committee responsible for the EIA, the proposed activity, its aims and method of realisation (Articles 10 and 35). The conclusions reached following an EIA must be disseminated through the media (Article 10).

¹⁹⁵ See note 157.

¹⁹⁶ The same authority is given to the government of the Autonomous Republic of Crimea. Within their regions, local councils make decisions and organize EIAs (Article 23).

¹⁹⁷ Article 16 of the EIA Law and Article 30 of the Law on Environmental Protection.

¹⁹⁸ Positive conclusions of the state ecological examination, and its approval by the MEP, provide the basis for starting the activity in question (Articles 39 and 29 of the EIA Law).

The conclusions of public EIAs can (but do not have to) be publicised in the media and sent to the relevant local organs of the MEP, including bodies responsible for State EIAs. This data can be taken into account while carrying out the State EIA (Article 42).

According to Article 11 of the EIA Law, public hearings and open sessions should be conducted in order to take public opinion into consideration in EIA processes. Public participation in this area can also be facilitated through statements in the media, the submission of written recommendations and the participation of public representatives in EIA expert committees. Article 11 further states that the formulation of conclusions on EIAs and the subsequent decision-making on the realisation of projects has to take public opinion into consideration.

Legal entities can challenge the results of EIAs – either directly with the State bodies responsible for the decision or by lodging a legal appeal (Article 44).

4.8 Sanctions

Article 47 of the Law on Information states that ‘breaches of the law ... shall entail disciplinary, civil law and administrative liabilities, as well as criminal prosecution’. This provision can be applied in cases of illegitimate denial of information; untimely release of information; dissemination of misleading information; and obstruction of dissemination of information.

Article 238 of the Criminal Code provides for fines or imprisonment in case of:

Concealment or intentional tampering by an official with information concerning the environment, including radiation levels, in connection with pollution of land, water, air, food products and raw materials, and all that adversely affects the health of people, flora and fauna, and also the incidence of disease among the population in areas of heightened environmental threat.

The maximum penalty is three years’ imprisonment, or five if the information relates to an emergency area and its concealment leads to grave consequences. ARTICLE 19 is not aware of cases in which these provisions have been applied.

Amendments in 2003¹⁹⁹ added a provision to the Code of Administrative Offences, on the illegitimate refusal of information, its late or incomplete provision, or the provision of false information by public officials. These offences are punishable by a fine.

In practice, sanctions are not applied. If a court rules in favour of an information requester, the body holding the information is simply requested to release it, without the imposition of sanctions. The complexity of the legislation also deters many potential plaintiffs from taking cases against public

¹⁹⁹ Law ‘On the Insertion of Changes to Certain Laws of Ukraine to Support the Right to Freedom of Speech’, see note 10.

bodies. Finally, the compensation that one may obtain for illegitimate refusals of information is very low, and would hardly cover legal costs.

The Criminal Code establishes at Article 328 that the dissemination of State secrets is a criminal offence. This provision applies only to persons ‘to whom such information was entrusted or became known in connection with their official duties’ and is punished through imprisonment for up to eight years, and deprivation of the right to occupy official positions. Moreover, Article 231 criminalises the illegal gathering of commercial secrets and Article 232 the dissemination of commercial secrets without the consent of their owner (by a person entrusted with this information through her/his position or profession).

The same amendments in 2003 also added to the Law on Information Article 47(1) on ‘Exemption from liability’, stating at paragraph 3 that ‘A person is absolved from liability for disclosing information with limited access if a court established that this information is of public significance.’

4.9 Access to Justice

Ukrainian law provides for access to justice to safeguard people’s right to environmental information – as well as to environmental protection generally.

The general right of access to justice is guaranteed in the Constitution.²⁰⁰ Article 9(i) and (j) of the Law on Environmental Protection establishes every Ukrainian citizen’s right to file lawsuits against State organs, natural or legal persons for compensation for the harm caused to their health or property as a result of actions that have a negative impact on the environment; and for decisions and actions (or failure to act) by public bodies that violate their environmental rights. Article 21(h) gives civil environmental organisations the right to sue in case of harm (including to people’s health) caused by violation of environmental legislation.

4.10 Comments on the Legislation

Ukrainian legislation on freedom of information – including information of an environmental nature – has a number of positive features. Examples are the guarantees of freedom of information, the prohibition on classifying environmental information; obligations on companies to release information

²⁰⁰ Article 55(1) and (2) states that people’s rights and freedoms are protected by the court, and everyone has the right to submit cases to court against the action or lack of action by the authorities.

on activities harmful to human life and health; provisions for public participation in decision-making (including public councils and open hearings); and obligations on public bodies to proactively disseminate information. The implementation of these provisions is, however, sporadic, as this report demonstrates. There are also several shortcomings in the legislation which ought to be addressed to ensure its compliance with international standards, particularly the Aarhus Convention.

One major drawback of Ukrainian freedom of information legislation is the absence of a law exclusively regulating access to information (that is, a *lex specialis*). The provisions on access found in the Law on Information are insufficient for an effective and functioning freedom of information regime. Other problematic features are highlighted below.

Omissions

Principle of maximum disclosure

Ukrainian provisions on access to information do not respect the principle of maximum disclosure, according to which there should be a presumption that all information held by public bodies is subject to disclosure, a presumption which may not apply when a narrow three-part test is met.²⁰¹ This principle encapsulates the basic rationale underlying the very concept of freedom of information.

Priority for freedom of information legislation

Under Article 4 of the Law on Information, information legislation consists of the Constitution, the Law on Information itself, international treaties ratified by Ukraine and ‘legislative acts related to certain branches, types, forms and means of information’. This provision is vague and leaves open the possibility of secrecy laws being passed and undermining (or nullifying) the rights in the Law on Information. A freedom of information law should, instead, establish that it takes precedence over other laws on regulating freedom of information.

Overriding public interest

A clear requirement that, even if disclosure of information would lead to harm, it should still be disclosed if there is an overriding public interest to do so, is also missing. This was partially addressed through amendments passed in 2003,²⁰² adding to Article 30(11) of the Law of Information the proviso that information to which there is limited access can be disseminated ‘without the agreement of its owner if this information is of public interest’. Article 30(11) could theoretically be applied by a government agency to disclose information belonging to a private natural or legal person when the public interest overrides the interest in maintaining the information secret – or by a private person to

²⁰¹ For the three-part test, see Section 2.3 above. See also Aarhus Convention, Article 4(1) and Recommendation (2002)2 of the Committee of Ministers of the Council of Europe, Principles III.

²⁰² See note 10.

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release information owned by the State. However, it is in contrast with the Criminal Code, which provides, at Article 328, for the prosecution of those who disseminate State secrets.

Whistleblower protection

The Law on Information, through the 2003 amendments, provides (at Article 47(1)(3)) for exemption from liability for disseminating State secrets in case of information in the public interest. However, this is in contradiction with Article 328 of the Criminal Code mentioned above, which does not provide any exemptions when State secrets are divulged. The Criminal Code should therefore be amended to include exemptions to protect civil servants who, in good faith, disclose information which shows official wrongdoing or the existence of a serious threat to public health, safety or the environment. 'Whistleblowers' fulfil an important function in society, by making available information of crucial interest to the public, and such disclosures should be encouraged by law.

Restrictions to the right to information

With its rigid distinction between 'open' and 'classified' information, Ukrainian law negates the principle of maximum disclosure described above – that all information should be presumed to be public, subject only to narrowly defined exceptions applied on a case-by-case basis. Such case-by-case analysis is important, since the balance between the interests of secrecy and openness may change depending on the circumstances. Moreover, there is no appeal against decisions to mark information as 'classified', which means that the competing interests may not even be properly weighed up at the time the decision to classify is taken.

Classification of information, according to the Law on State Secrets, implies the classification of entire documents, with no right to partial information. However, Article 4(6) of the Aarhus Convention states that each Party must ensure that, if information which is exempted from disclosure can be separated out without prejudice to the confidentiality of the information exempted, the remainder should be made available.

Ukrainian law on information includes the concept of 'ownership of information'. It treats information as the 'property' of the (State or private) body that originally created it. The 'owner', at their discretion, can restrict information as 'confidential', with only a few exceptions listed at Article 30 – the main exception being information that can endanger human life and health. This position is legitimate for private institutions which fulfil no public role: they are not obliged to provide information. However, in the case of public bodies there should be a presumption of maximum disclosure, subject only to specific and narrowly defined exemptions.

Finally, in several provisions, Ukrainian laws guarantee rights to 'citizens of Ukraine'. This excludes people residing or present in Ukraine but who are not Ukrainian. This is also not in

compliance with the Aarhus Convention, which refers to the right to environmental information without distinctions of citizenship.

Vagueness

The Law on Environmental Protection places obligations on State bodies to proactively disseminate environmental information. However, there are no details on the frequency and exact format of the dissemination.

Although the EIA Law provides for public participation in conducting EIAs and in the resulting decision-making processes, the exact procedures for it are not clearly delineated in the legislation. In addition, the EIA Law refers to a requirement to publish in the media information on EIAs and their results, yet there are no details on timeframes and the types of media concerned.

Definitions

The definition of ‘environmental information’ in Ukrainian law is significantly narrower than the definition in the Aarhus Convention. The Ukrainian definition does not include information on environmental agreements or the state of human health and safety, conditions of human life, cultural sites and buildings, inasmuch as they are or may be affected by the environment.

Although the contradiction is resolved in Article 19 of the Law On International Agreements of Ukraine²⁰³ in favour of the Aarhus Convention,²⁰⁴ the restricted definition of ‘environmental information’ remains in domestic law.

Contradictions

A major contradiction lies in the provisions that state that environmental information cannot be classified, given that Article 25(1) of the Law on Environmental Protection states that people have unhindered access to environmental information which ‘does not represent a State secret.’ The latter implies that environmental information *can* be classified and can nullify other provisions prohibiting the restriction of access to environmental information.

The Law On Human Protection against Ionising Radiation²⁰⁴ contradicts the Law On the Use of Nuclear Energy and Radiation Safety. The former states that natural and legal persons have the right to receive information from the relevant State bodies on the levels of radiation and on measures taken to protect them from radiation exposure in their places of residence and employment. The latter states that citizens have the right to receive information from the same bodies on the levels of radiation

²⁰³ In accordance with Article 19 of the Law On International Agreements of Ukraine (No. 1906-IV, 29 June 2004), international agreements to which Ukraine is a party are part of domestic legislation.

²⁰⁴ Law of Ukraine On Human Protection Against Ionising Radiation of 14 January 1998, No. 15/98-BP.

on the territory of Ukraine generally. The Law On the Use of Nuclear Energy and Radiation Safety provides additional rights (not present in the second law), by stating that people have the right to request and receive information *also* from relevant companies, institutions and organisations within the limits of their competencies.²⁰⁵

Article 3(2) of the MEP's Order 'On the Approval of the Procedure of Providing Environmental Information'²⁰⁶ stipulates that a request to receive environmental information should include no more than three queries. This contradicts the Constitution and laws of Ukraine, since it sets an arbitrary limitation on access to environmental information.

Article 32 of the Law on Information provides that information can be obtained from the central authorities (legislative, executive or judicial bodies), but there is no mention of the local authorities or private bodies fulfilling public functions. Instead, the Law on Citizens' Appeal and the Law on Environmental Protection, as well as other laws,²⁰⁷ state that people may also address queries and information requests to local administration bodies and companies. This creates a contradiction, and those who are not familiar with the various legal documents might simply not be aware of the full extent of their rights.

5 ACCESS TO ENVIRONMENTAL INFORMATION

General awareness of environmental issues has slowly increased over the past decade. Ukrainians are more informed about pollutants and other issues that can negatively impact on their health.²⁰⁸ Despite this, civil society activists are convinced that insufficient in-depth environmental information is being made available.²⁰⁹ Overall, this information is still disseminated primarily when environmental emergencies occur,²¹⁰ and the authorities do not systematically distributing environmental information to the media.²¹¹

²⁰⁵ With the exception of data comprising State secrets (Article 10(1)).

²⁰⁶ 18 November 2003, No. 169, *Official Gazette of Ukraine*, 2004, No. 6, p.358.

²⁰⁷ For example, the Law On the Use of Nuclear Energy and Radiation Safety also places obligations on companies to release information.

²⁰⁸ Interview with EcoPravo-Kyiv, July 2007.

²⁰⁹ Interview with Serhiy Varlamov, Ukrainian environmentalist, July 2007.

²¹⁰ Interview with EcoPravo-Kyiv, see note 208.

²¹¹ Interview with Borys Vasylykivskyy, EcoPravo-Kyiv, July 2007.

5.1 Information from the Media

According to EcoPravo-Kyiv, since 2006 the media have, to some extent, increased their reporting of environmental issues, including health and environmental policy. The media have also reached out more to NGOs for comment on topics relating not only to pollution but also to public policy-making. This coincided with environmental concerns coming to the fore at the international level – with the Kyoto Protocol and global warming. Ukraine has been no exception to the general trend towards greater media coverage of global environmental issues. Overall, however, the information in the Ukrainian media is often superficial, and does not raise ‘inconvenient’ topics or provide in-depth analysis or critical commentary on current environmental issues faced by Ukraine.

Environmental issues have been discussed in some radio and television broadcasts, but there are no regular programmes on the issue. Such topics feature most often on national radio or television. The private media, which are more concerned with ratings and advertising, show less interest as ecological subjects rarely attract sponsors.²¹² In some cases, representatives of environmental organisations have been guests on talk shows. The Green Party financed a programme before the elections, and a weekly programme on State television UT-1 entitled *Vash Vykhod (Your Turn)* sometimes covers environmental issues. Although *Vash Vykhod* makes a significant contribution to public debate inasmuch as sensitive issues are discussed, it is also careful not to overstep the boundaries of what is ‘acceptable’. The main newspapers provide some coverage of environmental problems, such as waste and global warming. The newspapers *Seigodnya* and *Fakty* have a regular environment column. The independent newspaper *Zerkalo Nedeli* has a reputation for tackling sensitive political issues, which can include topics of an environmental nature.

The Donetsk *oblast* has a newspaper with an environmental focus, the bi-weekly *Nash Kray*. The paper was established in 1994 and is jointly funded by advertising revenue and state funds; the State Department of the Environment in the Donetsk *oblast* provides 30% of its budget.²¹³ Given its links with local authorities, and the fact that it is based in the State Department of the Environment itself, the newspaper tends to avoid contentious or problematic issues. In addition, its ability to truly inform the local population is undermined by its low circulation, amounting to only 3,000 copies among a population of 4.4 million. In addition, 80% of the readership resides in the *oblast*’s capital, while only 25 copies reach newsvendors in the cities of Konstantynivka and Artemivsk. In Artemivsk, hardly any copies were sold in 2006. As a result, the magazine is not commonly considered by environmentalists as an effective means of informing the population.

²¹² *Ibid.* There are some exceptions. For example, *Vash Vykhod* mentioned below is sponsored by a bank.

²¹³ Interview with the editor-in-chief of *Nash Kray*, January 2007.

Few media outlets and journalists actively investigate and report issues of environmental concern, especially when these are politically sensitive.²¹⁴ Although there a small number of committed and professional environmental journalists, the majority of journalists prefer not to expose sensitive topics or criticise the authorities, for fear of reprisals.²¹⁵

Another significant problem in this context is the difficulty journalists experience in obtaining information from public institutions. Often they are only provided with information when they have demonstrated their loyalty to the authorities. In addition, many journalists lack sufficient knowledge and skills and this undermines their capacity to insist on their right to information and to cover environmental issues professionally. Journalists often have some knowledge about the Law on the Media but are not familiar with their rights under the Law on Information, the Law on Environmental Protection, or international standards such as the Aarhus Convention.²¹⁶ There are limited training opportunities in investigative journalism and generally the level of professionalism is not high.

5.2 Information from the State

5.2.1 Policies and Procedures

A number of factors affect environmental transparency in Ukraine. These include: a lack of effective policies and clear guidelines for providing information; the absence of political will to enhance the transparency of institutions; and the lack of a tradition of dialogue between the authorities and the public.

A draft “Strategy of National Environmental Policy of Ukraine” until 2020 was being compiled by the MEP in November 2007, and due to be to be submitted to the Cabinet of Ministers in January 2008. The strategy’s Concept was adopted by the Cabinet of Ministers on 17 October 2007, following some input from civil society.²¹⁷ It defines principles of environmental policy, mechanisms for their realisation, their monitoring and for indicators of success.

Despite these efforts, overall Ukraine still does not have an effective State policy on environmental information, primarily because the protection of the environment is not seen as a priority. Former Prime Minister Victor Yanukovych’s government largely excluded nature conservation from its agenda. The governing coalition in power in 2007, like previous ones, seemed to view environmental concerns as a barrier to economic growth. This is reflected in the MEP’s poor performance, as well as its very limited authority. Under existing regulations, a number of ministries

²¹⁴ Interview with Oleg Listopad, see note 82.

²¹⁵ *Ibid*

²¹⁶ Interview with Serhiy Varlamov, see note 209.

²¹⁷ Tetyana Tymochko (see note 49) was part of the working group which developed the Concept.

are required to consult with the MEP when implementing projects, but in practice this does not always happen. This is the case, for example, with the Ministry of Transport when it comes to road construction.²¹⁸

Legislation neither sets out in detail how people can exercise their right to information nor places any legal responsibility on public bodies to provide technical assistance to citizens or undertake public education measures to promote access to information. This means there is limited pressure on the authorities to develop their capacity to respond to requests for information.

There are also several problematic provisions in the law that hinder its implementation. For example, the absence of clear regulations in the Law on Information about costs for the provision of information causes confusion. Article 36 specifies that State bodies determine the procedures of payment, without further detail. In some cases, public officials have refused to provide information because of the large amount of photocopying involved, even though people have a right to receive the documents if they are willing to bear the costs.

There are also no legal regulatory frameworks for the provision of information electronically.²¹⁹ According to the Law on Information, the authorities only have a duty to reply to information requests submitted in writing. In practice, they might reply to information requests over the telephone or by e-mail, but they are not formally obliged to do so.

Legal guarantees on access to justice are often undermined in practice because of the low level of public awareness or that the unfair denial of access to information can be challenged in court. Lack of clarity about court costs also deters people from filing court cases.

5.2.2 Institutional Capacity

Institutional capacity to disseminate environmental information, and thereby enhance good environmental governance, needs to be strengthened. This means increasing budgetary, technical or human resources.

Budgets

Insufficient financial resources have been set aside in institutional budgets for public information – and those resources that have been allocated are often not managed efficiently.²²⁰ A 2006 study by

²¹⁸ Interview with Borys Vasylykivskyy, EcoPravo-Kyiv, see note 211. Other bodies/ministries that have an impact on the environment and so should liaise effectively with the MEP include the State Committee of Forestry and Water Management, the Ministry of Architecture, the Committee on Metallurgy, the Ministry of the Coal Industry and the National Committee of Atomic Energy.

²¹⁹ Including provisions on the procedure for submitting electronic information requests or their status compared to that of written requests.

²²⁰ Interview with the Civil Defence Institute, see note 80.

EcoPravo-Kyiv on institutional transparency found that the national budget and the State Environmental Fund have no funds allocated for public participation initiatives.²²¹ Indeed, the costs for public hearings, round tables and seminars are frequently covered by international projects and grants. Although the Law on Environmental Protection requires that the professional qualifications of public officials with regard to granting public access be enhanced,²²² hardly any resources have been allocated for training officials. Severe lack of investment in the court system is also a major problem, affecting the capacity of the judiciary to protect citizens' rights, including the right to information.

Technical infrastructure

Systems to provide information are still in their infancy. Some ministries do respond to information requests, but there are few mechanisms (and little office culture) to proactively disseminate various categories of relevant information.

Although some information is accessible in electronic form through official websites, this is not sufficient in a country where most people have no access to the Internet. Moreover, websites are often incomplete and the potential of the Internet as an information dissemination and consultation tool are thoroughly under-utilised. In September 2007, many links on the homepage of the MEP were not functioning (for instance 'news', 'forum', and 'environmental passports of *oblasts*'). There were only two documents in the section 'legislative and regulatory acts'. Five recent decisions on EIAs were posted but no information on older or ongoing EIAs could be found. There was also no public information on how to provide input to EIAs.

Many systems that served for both information gathering and dissemination were lost following the collapse of the USSR and the abolition of many of its institutions (such as the collective farm system). These have yet to be replaced by other channels. Consequently, the authorities are now facing problems both in disseminating necessary information effectively, especially to rural populations in remote areas, and in gathering information to inform decision-making processes. For instance, there are guidelines for farmers on how to avoid the negative impact of radioactivity on their farm produce (such as guidance on what crops should be planted in certain areas and which ones avoided, and where they should or should not graze animals), but the authorities find it difficult to disseminate such information effectively and to monitor whether it is being observed.

The monitoring of radioactive contamination at the local level is carried out in all *oblasts* by local representatives of central government ministries (the Department for the Monitoring of Radioactive Contamination Levels of the Agrarian Ministry, the Ministry of Health and the MEP).

²²¹ EcoPravo-Kyiv, *Assessment of the Access to Information, Participation in Decision-Making, and Access to Justice in Ukraine*, 2006

²²² At Article 7. See Section 4.5.

However, the resources, including available staff and quality of equipment, have decreased following the demise of the USSR. As a result, capacity for monitoring radioactivity accurately and the quality of data available are now considerably lower than 20 years ago.²²³ For example, the Ministry of Health does not have adequate technology or sufficient skilled staff to measure the quality of the water. As a result, government bodies often do not have reliable and complete statistical information.²²⁴

The right to access information can only be exercised effectively where information management systems and registers are in place. The absence of detailed freedom of information legislation has meant that many institutions have yet to create such systems and those which do exist are still in their infancy.²²⁵

Human resources

There are far too few training events and insufficient funds for training State officials. When officials have received freedom of information training it has mostly been as part of NGO projects. Such training can complement but not substitute for systematic education of civil servants in this field by the State. The Aarhus Information and Training Centre (Aarhus Centre) noted that knowledge of the Aarhus Convention among public officials is still very limited, although the organisation believes that the awareness of freedom of information among public officials is growing.²²⁶

Training of judges is also of crucial importance. However, a study carried out by EcoPravo-Kyiv in 2006 showed that no training event on environmental law and public information rights in this context had been held for judges over a three-year period.²²⁷

In May 2006, the Donetsk-based NGO Rosa Vetrov (Wind Rose) polled local public officials at all levels about their knowledge of the Aarhus Convention. The results revealed that much work still needs to be done: 50% had no knowledge of the Convention's basic features and very few referred to participatory decision-making and access to justice.²²⁸ In addition, 80% thought that people had a right to access only information that affected their own life and health, family or the region where they live, but not information that affected them indirectly or was in the public interest. Only 20% were familiar with the definition of 'environmental information'. Others did not believe that information concerning

²²³ Interview with the Civil Defence Institute, see note 80.

²²⁴ Interview with Oleg Listopad, see note 82.

²²⁵ Interview with Tetyana Tymochko, see note 49.

²²⁶ Interview with Tetyana Tymochko, see note 49, July 2007. For information on the Aarhus Centre, see section 5.3.1 (particularly note 281).

²²⁷ EcoPravo-Kyiv, *Assessment of the Access to Information, Participation in Decision-Making, and Access to Justice in Ukraine*, 2006.

²²⁸ This was part of the project Developing the Management of Solid Household Waste in Donetsk Region, (2005 – 2006), funded under the European Commission's TACIS Programme. The information in this section is from Rosa Vetrov's report to TACIS in December 2006.

a person's health or safety could be categorised as 'environmental information'. Only 30% knew that the obligations of the local administration included not only gathering and holding information, but also disseminating it. Only 10% knew that the person requesting the information is not obliged to provide the reasons for the request. No respondent knew what information should be proactively disseminated by the authorities according to the Aarhus Convention.

When asked about public participation, nearly all officials saw the public as having a passive role. They mostly felt that the public should only be involved at the initial stage of decision-making, and only 20% thought that the public should receive information about final decisions. In addition, 30% stated that the public should not be involved in decision-making, as only specialists should participate in this process, and 10% saw public participation as dangerous, noting that the public can easily negatively affect the work of public officials and very rarely makes a positive contribution.

5.2.3 Proactive Publication

The current legislation does not require public bodies to produce and proactively publish many types of information. But even for those types of information where this is required, there are problems with the delivery of information. Decisions and orders – such as the *Verkhovna Rada's* decision 'On Informing the Public on Environmental Issues', and the MEP Order 'On the Approval of the Procedure for Providing Environmental Information' – are implemented only sporadically. Moreover, although the MEP is responsible for the publication of an annual *National State of the Environment Report*,²²⁹ the last such report was placed on the Internet in 2004; by January 2008 the 2005 report had still not appeared.²³⁰ The long delays in producing these reports mean that the information contained in them is usually outdated by the time it is published.²³¹ The State report draws on reports produced by the Regional State Departments of the Environment (regional branches of the MEP). These tend to be produced more regularly. For example, the *Lviv* regional report for 2006 was available electronically in mid-2007.²³² A special environmental report was published for the fifth Ministerial 'Environment for Europe' Conference, which was hosted by Ukraine in Kyiv in 2003. However, it presented an overly positive picture of the environmental situation and the authorities' actions.²³³

The Civil Defence Institute²³⁴ produces an annual report about pollution levels and other information, such as public awareness materials and leaflets. These cover issues such as information

²²⁹ Article 25 of the Law on Environmental Protection.

²³⁰ Interview with Serhiy Varlamov, see note 209

²³¹ Interview with Oleg Listopad, see note 82.

²³² Interview with Serhiy Varlamov, see note 209.

²³³ Interview with Oleg Listopad, see note 82.

²³⁴ See note 60.

for farmers about what crops to grow, how and where to graze livestock, and information for the general public on how to prepare vegetables and what vegetables to avoid.²³⁵ Some other State bodies also produce publications on environmental issues. For example, the Commission on Economic Policy and the Kyiv City Council helped launch the journal *Area of Sustainable Development*.²³⁶ However, even when publications or reports are produced, they are often not easily accessible. The number of copies produced is usually low and they are often not posted on websites. The Internet, as well as other information dissemination channels, such as public libraries, are important in facilitating the dissemination of information to the public; unfortunately, however, how widely or effectively key information gets disseminated is almost entirely left to the initiative of individual officials.

In some cases, State bodies use the media to disseminate certain types of information. The MEP has produced a few social information broadcasts. Some television programmes have covered the need to reduce gas consumption, but this was only in response to the energy crisis in 2005, when Russia raised the price of oil and gas delivered to Ukraine.²³⁷ Television programmes, however, tend to be costly, and the scant financial resources for public information do not allow the MEP to produce many of them.

Overall there is little initiative to enhance transparency. Many believe that positive changes in the aftermath of the Orange Revolution were subsequently reversed.²³⁸ The ongoing power struggle between political elites has also had a negative impact on the nation's environmental and information policies. Between 2003 and 2007, there were four Ministers of Environmental Protection, each of them taking a different approach. Each change of Minister also involved the replacement of the majority of staff. For those NGOs that invest efforts in developing a dialogue with the relevant public officials and in providing training for them, frequent changes of staff result in a need for staff to be re-trained and contacts to be re-established. This can disrupt progress in the implementation of the Aarhus Convention.²³⁹

5.2.4 Withholding Information

Provisions requiring all environmental information to be open to the public are often not implemented. Not only do public bodies largely fail to disseminate on their own initiative environmental information

²³⁵ Interview with the Civil Defence Institute, see note 80.

²³⁶ A journal with a small circulation, produced four times a year, but whose funding was falling in 2006; among its founders are the Commission on Economic Policy and the Kyiv City Council.

²³⁷ Interview with Borys Vasylykivskyy, EcoPravo-Kyiv, see note 211.

²³⁸ According to a monitoring study conducted by the Institute of Sociology in April 2006, immediately after the parliamentary election.

²³⁹ Interview with Tetyana Tymochko, see note 49, May and July 2007.

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of public interest, in many cases they fail to provide information that has been requested. In the case of environmental information, they cannot easily justify refusing access on the grounds that it is classified (as by law information on the state of the environment cannot be made secret or confidential); as a result they give no reason for the refusal, provide incomplete information, or fail to respond to the request. As people cannot check what is and is not available, they cannot challenge the authorities for not providing comprehensive information. Frequently, public bodies fail to provide the information according to the timeframe established by law. Often the information provided is not sufficiently detailed to allow proper public scrutiny. For example, the budget of the MEP is available but has only general headings; this is not sufficient for civil society to monitor and question public spending.

In some cases, legal documents have been adopted without consultation or even public scrutiny. In 2006 the Cabinet of Ministers issued Decree No. 145-p, approving the Energy Strategy of Ukraine for the period until 2030.²⁴⁰ Internet searches on the draft Strategy during the second half of 2005 on the websites of those institutes involved in the Strategy's development yielded only partial results: only the Draft 7th Section of the Strategy was posted on the website of the State Committee of Energy Supply. Repeated public requests to receive the draft were either rejected or subject to delays as requests were passed from one department to another. Even though the draft Strategy was discussed among State authorities and international donor organisations, it was made public only shortly before its adoption.

There is also no access to entire registries, such as the State Registry of Fauna. According to Ukrainian legislation,²⁴¹ the Registry should comprise information on the geographic distribution of species, their numbers and conditions, characteristics of their habitat and their use in modern farming, as well as other data necessary for the protection and rational use of fauna. The Registry should be published every five years and managed by the MEP. Yet MEP representatives have provided contradictory information as to the existence of such a Registry: some say the Registry does not exist, even though according to other sources it has existed since 1994. Others say that the Registry is in a database format that cannot be disseminated. If this is the case, it raises the question as to why it is not published or made public in another format so that it is accessible to all interested parties.²⁴²

²⁴⁰ Decree of the Cabinet of Ministers of Ukraine On the Approval of the Energy Strategy of Ukraine for the Period Until 2030, 15 March 2006, No.145-p. The main body involved in the development of the Strategy was the Institute of General Energy at the National Academy of Sciences of Ukraine, with the participation of an *ad hoc* commission with members from the Ministry of Fuel and Energy of Ukraine.

²⁴¹ Article 51 of the Law on Fauna and Decision of the Cabinet of Ministers of Ukraine On the Management of a Registry of Fauna, 15 November 1994, No.772, Collected Decisions of the Government of Ukraine, 1995, No.1, p.27.

²⁴² Information from EcoPravo-Kyiv.

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In some cases the authorities have referred those requesting information directly to the originators. For example, when, in May 2007, EcoPravo-Kyiv requested details of the layout of the city of Kyiv, the Kyiv city authorities stated that the request should be submitted to the private institution that had been commissioned to undertake the technical task of preparing the city plan.

The KHPG, which has tested the system by submitting several information requests, reported that, in the vast majority of cases, the requests were not acknowledged within 10 days.²⁴³ When the KHPG did receive an answer (either late or after repeated requests), the organisation was often denied the information on the basis that it was ‘government property’, ‘for official use’ or ‘confidential’, or they were referred to another government body.²⁴⁴ Although there are sanctions for illegitimate denial of information, these are normally not imposed.²⁴⁵

Finally, information on nuclear energy and waste is effectively restricted for various reasons. Firstly, the authorities may refrain from revealing details of potential health hazards in order to promote or protect nuclear energy as an energy sector.²⁴⁶ Secondly, the Ukrainian government is often reluctant to expose problems related to the legacy of Chernobyl because it could damage Ukraine’s image internationally as a favourable place for investment.²⁴⁷ Thirdly, the Chernobyl disaster and the international aid following it have given rise to corruption, such as misappropriation or diversion of aid money, which thrives in situations of secrecy and lack of accountability. Lastly, the population’s resignation to the legacy of Chernobyl and the unpleasant truths behind it does not contribute to a climate where the boundaries of transparency on this and other nuclear issues are pushed forward.

‘Secrecy’ stamps

Of particular concern has been the use by government officials of stamps saying ‘not for publication’, ‘not for printing’ and ‘for official use only’ – classifications which are not defined in law. They are in some cases also used on information that relates to the environment, regardless of the fact that the law prohibits the classification of environmental information. For example, access to the layout of Kyiv (including information on town planning until 2020)²⁴⁸ is restricted. The document contains environmental information (such as details of green zones, roads and the transport system) and

²⁴³ As instead the law provides. See Section 4.4. The information requests were on issues including the death rate, suicides, pensions, unemployment, education and prison conditions.

²⁴⁴ KHPG, “Secret Materials which the Regime Concealed under Stamps “Not to be Printed” and “Not to be Published”, *Prava Ludyny*, 22 April 2006, <http://khpg.org.ua/en/index.php?id=1145710178>.

²⁴⁵ A court might simply order a body to release information, with no sanctions. See Section 4.8.

²⁴⁶ Interview with Volodymyr Usachenko, see note 54.

²⁴⁷ Interview with the Civil Defence Institute, see note 80.

²⁴⁸ Approved by Decision of the City Council of Kyiv On the Approval of the General Layout of the City of Kyiv and the Planning of Its Suburban Zone for the Period Until 2020, No. 370/1804, 28 March 2002, *Kreschatik*, 2002, No. 110.

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constitutes an important element of the city's environmental policy. Despite this, it carries the 'for internal use only' stamp. Access to the layout has been denied despite repeated public appeals and individual requests. The restriction on access was not openly admitted by the authorities; an environmental NGO was told by internal sources that this was the case.

Some legal documents have also been designated 'for official use'. This is the case with the 2000 Decree of the President and the Order of the Cabinet of Ministers transferring the Azov-Sivashsky National Park and Crimean Nature Reserve to the management of the Department of State Affairs. These legal documents have not been published and their classification – which has no legal basis – means that they remain inaccessible to the public.²⁴⁹

According to a survey carried out in 2002 by the KHGP²⁵⁰ to assess the authorities' use of 'not for publication' stamps, 8,000 State documents were classified in this manner at the time. The KHGP reported that the number of documents classified through these extra-legal procedures was higher in 2002 than in previous years. Later KHGP research showed that, between January 2001 and August 2005, 295 documents issued by the Cabinet of Ministers were classified as 'not for printing'; some of them related to environmental information.²⁵¹ Only the titles of these documents are available. Some of them clearly contain information in the public interest;²⁵² others do not appear to relate to information which, if disclosed, would cause harm.²⁵³ Interestingly, the Resolution of the Cabinet of Ministers on giving the Yusupovsky Palace and Park Estate Complex the status of state residence (No. 1070, 25 September 2002) bears the stamp 'not for publication'.

Fortunately, these stamps have not been used since November 2005. There has been a significant decrease in the number of normative acts which are assigned illegal stamps restricting access. Former President Kuchma issued approximately 900 acts bearing such stamps; former Prime Minister Yanukovich issued approximately 100; and President Yushchenko issued 44 (none was issued after 1 November 2005). Yulia Tymoshenko, when Prime Minister (24 January – 8 September

²⁴⁹ Moreover, the transfer of management to the Department of State Affairs itself contravenes Ukrainian law.

²⁵⁰ See note 252 below.

²⁵¹ KHGP, see note 244.

²⁵² For example, Approving the Programme for defusing explosive objects remaining from the Second World War in the area of the cities of Sevastopol and Kerch for 2000-2005 (No.75, 31 January 2001); Carrying out urgent work to liquidate an emergency situation at the state enterprise – Horlivsky Chemicals Factory (No.1,312, 29 August 2002); and Approving the State Programme for fundamental and applied research on issues involving the use of nuclear materials, nuclear and radiation technologies in the development of areas of economics for 2004-2010, (No.1165, 8 September.2004).

²⁵³ For example, Approving the list of geographic coordination points which define the position of the outer lines for calculating the width of the territorial sea of Ukraine in the Azov Sea (No. 636, 16 May 2002); Allocating funds for carrying out urgent measures to ensure vital activities on the island Zmiyiny (No.1,118, 17 August 2002); Establishing the width of the territorial sea of Ukraine in the Azov Sea (No.1,755, 16 November 2002); and Allocating funds for carrying out urgent measures to resolve problems over the island Zmiyiny (No. 1401, 4 September 2003).

2005), issued 15 and two Instructions under the stamp ‘for official use only’, while Yury Yekhanurov, who succeeded her (8 September 2005 – 4 August 2006), published only one resolution bearing the stamp ‘For official use only’. However, the government refuses to make public documents that were classified prior to November 2005.

Significantly, the Ministry of Justice officially acknowledged in 2006 that the use of stamps restricting access not allowed for by legislation is illegal. Classifying normative legal acts with stamps restricting access, which is not envisaged by legislation, is a violation of the right of citizens to access legal information. In 2006, the Ministry of Justice approached the Cabinet of Ministers suggesting that they give instructions about the inadmissibility of the future use of the stamps limiting access, and requiring the publication of acts previously issued by the Cabinet of Ministers bearing these stamps.²⁵⁴ However, the government has so far refused to publish previously classified acts.

The practice of using secret stamps is not only contrary to Ukrainian legislation, but also to international standards on freedom of information. Exemptions to the general right to freedom of information are legitimate only when they meet the three-part test mentioned above.²⁵⁵ Furthermore, the public should be able to challenge the classification of documents in court. This right is simply denied in the case of secret stamps.

5.2.5 Public Participation

Although the Aarhus Convention creates an obligation to provide for public participation in decision-making on environmental issues, in practice citizens wanting to exercise their right encounter many obstacles, often due to the impossibility of obtaining relevant information at the right time. The MEP, each of its directorates and all regional departments have monthly ‘public involvement’ plans that are consolidated into one general programme and submitted to the Cabinet of Ministers. However, these programmes mainly consist of awareness raising activities on minor issues, such as ‘Say no to litter’, often aimed at school students, and do not constitute a real tool for public participation.

Environmental impact assessments

Formally, EIAs are carried out according to legal procedure, but they are frequently superficial and do not assess the true environmental impact with sufficient accuracy.²⁵⁶ Moreover, information on the carrying out of EIAs has to be published in the media, yet sometimes even specialised NGOs (let alone the general public) only hear about a project when a final decision has been reached. In other cases, a

²⁵⁴ Letter to Oleksandr Yevhenovych by Deputy Minister of Justice M. M. Shupenya No. C-32705-22, 21 January, 2006. <http://khpg.org.ua/en/index.php?id=1151734678> (see Appendix 1).

²⁵⁵ See Section 2.3.

²⁵⁶ For legal provisions on this, see Section 4.7.

very short time is set aside for the submission of comments on EIAs. This is often the case with major construction works.²⁵⁷

Local groups usually have scant resources, limiting their ability to comment adequately. Very few environmental NGOs are equipped to carry out or commission their own EIAs on projects planned by the State or private investors, since they require a great deal of time, expertise and/or resources.²⁵⁸ Another problem is lack of time: environmental NGOs are campaigning to ensure that sufficient time is allocated for the preparation of comments on EIAs. In some cases, even when NGOs have managed to prepare detailed recommendations, these were not taken into account.²⁵⁹ In Kharkiv in 2004, an EIA was conducted about the building of a canal to the Black Sea. An NGO requested that they be included in the assessment team, which is allowed by law, but they were told that their request was made too late.²⁶⁰

In some cases, EIAs are not carried out at all. For example, the Kyiv-Odessa motorway was built in the past decade without an EIA. Its environmental impact is significant, as it passes through wildlife migration routes. An accurate EIA would have assessed the negative consequences for the animals and developed solutions to mitigate them.²⁶¹

Public hearings

As noted above, legislation provides for public hearings to be held before activities begin that will have an impact on the environment.²⁶² The law states that recommendations from public hearings ought to be taken into account, although there is no obligation to do so. When the authorities act against recommendations originating from public hearings, a justification should be provided. Normally the public hearings' dissenting opinions are attached to the MEP's decisions, or references are made to them in the decisions themselves. A hearing can be held before an EIA or, in some cases, when a project has been completed, if there are pending issues requiring discussion.

However, there are several problems with public hearings. Firstly, information about them is not disseminated sufficiently widely, and often not even environmentalists or specialised NGOs know when they will take place. Secondly, not all communities likely to be affected by the activity are involved in the discussions. For example, if there is a decision to build a motorway from Kyiv to another city, a hearing will be held in Kyiv, but inhabitants of the many other towns and villages on

²⁵⁷ Interview with Tetyana Tymochko, see note 49, May 2007.

²⁵⁸ Interview with Oleg Listopad, see note 82 and interview with Tetyana Tymochko, see note 49.

²⁵⁹ Interview with Tetyana Tymochko, see note 49.

²⁶⁰ Interview with Serhiy Varlamov, see note 209.

²⁶¹ Interview with Borys Vasylkivskyy, EcoPravo-Kyiv, see note 212.

²⁶² For legal provisions on public hearings, see Section 4.6.

the motorway's route may not be consulted.²⁶³ Thirdly, some environmental activists have noticed that unknown individuals participate and vote; they believe that some of them might have been 'hired' for the vote.²⁶⁴ Fourthly, given the scarcity of information on the environmental impact of new activities and the limited awareness of environmental issues generally, many people do not participate in public hearings and do not exercise their right to have a say on issues that might adversely affect them.

In practice, there have been very few cases in which people have succeeded in stopping State projects through public hearings.

Public councils

The relatively new public councils – civil society/expert advisory panels to State institutions – are a positive initiative as they enable some degree of civic oversight over decision-making and policy development, including on environmental matters.²⁶⁵ They are gradually being set up, but do not yet exist across the country.²⁶⁶

Members of public councils should be independent, although in many cases they are from 'pocket NGOs' (NGOs effectively established by the State and serving its interests) or are public officials, in violation of the relevant regulations.

Public councils are not always efficient. However, the MEP's public council is generally considered one of the best as there are some capable and experienced NGO representatives among its members.²⁶⁷ It monitors the budget, discusses issues and complaints with the Minister, as well as the implementation of the Aarhus Convention. The MEP's public council has been developing recommendations for the development of environmental policies. Although in some cases its recommendations have been taken into account, in others they have not.

5.2.6 Impact of Corruption

Corruption and mismanagement are among the main factors that have an adverse impact on access to environmental information. One of the reasons why many Ukrainian politicians are perceived as being susceptible to corruption is their close links with businesses.

In a 2007 resolution, the PACE expressed serious concerns about shortcomings in the functioning of Ukraine's democratic institutions, including systematic misuse of the judicial system by 'other branches of power'. Among a series of recommendations on how to improve the democratic

²⁶³ Interview with Borys Vasylykivskyy, EcoPravo-Kyiv, see note 212.

²⁶⁴ Interview with Oleg Listopad, see note 82.

²⁶⁵ For legal provisions on public councils, see Section 4.6.

²⁶⁶ Interview with Tetyana Tymochko, see note 49.

²⁶⁷ Interview with EcoPravo-Kyiv, July 2007. The members of the MEP's public council include the Director of the Aarhus Centre and Ecological League.

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process, the PACE called on Ukraine ‘to launch the reform of the criminal justice system and law-enforcement agencies and to take legislative and practical measures to tackle all forms of corruption, including political corruption’.²⁶⁸

Allowing information related to mismanagement and corruption to reach the public domain could lead to the authorities being called to account on issues such as budget expenditure on environmental projects.²⁶⁹ For example, the MEP has stated that it has been able to raise its environmental fund (from the equivalent of approximately US\$800,000 in 2006 to US\$1 million in 2007). These funds are largely derived from the use of natural resources.²⁷⁰ The relationship between the size of the budget and the state of the environment is, therefore, inversely proportional; an increase in funds means increasing exploitation of natural resources.²⁷¹ However, reportedly some of the money raised for the fund (or that should have been included in the fund) has not been accounted for.²⁷²

In 2004 a high profile public official in the MEP was reportedly involved in a corruption scandal related to a tender for 400,000 Ukrainian hryvnia (approximately US\$80,000) for the reconstruction of Crimean parks. According to evidence presented to the prosecutor, there were three applicants for the tender, but all had the same address. An environmental journalist examined the parks that should have been ‘reconstructed’, but could find no evidence that this work had been carried out. When the journalist started reporting on the case, he received telephone calls from a public official threatening legal action. Although no lawsuit was filed, and the journalist felt confident that he could prove his statements in court, this put considerable pressure on him. Following the scandal there were demonstrations and civil society campaigns calling for the public official’s resignation; the official was eventually dismissed.²⁷³

In some cases, public officials have been silenced. In one case, nuclear waste from a military base in Chernihiv was transported to another site in absolute secrecy. An MP at the time had indirectly learned about this. When he started talking about the case publicly, a colonel from State Security Services visited him and warned him of the consequences of ‘disclosing official secrets’. The former parliamentarian maintained that, in his opinion, the reason for the secrecy was not military security but financial gain and possible corruption. Indeed, activities related to nuclear or toxic waste are often also officially declared to be ‘commercial secrets’.

²⁶⁸ PACE Resolution 1549 (2007) ‘Functioning of Democratic Institutions in Ukraine’, Point 15.6; adopted 19 April 2007, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1549.htm>

²⁶⁹ Interview with Ukrainian environmental organisations, July 2007.

²⁷⁰ There are also some charitable funds in addition.

²⁷¹ Furthermore, construction companies have to pay additional fees for each venture that has a negative impact on the environment – the bigger the fee the bigger the impact. Fees are also paid for hunting.

²⁷² Interview with Borys Vasylykivskyy, EcoPravo-Kyiv, see note 212.

²⁷³ Interview with Oleg Listopad, see note 82.

5.3 Information from Civil Society

5.3.1 Non-governmental Organisations

In mid-2007 there were 23 national and 450 local environmental organisations.²⁷⁴ They were engaged in public awareness initiatives and disseminating environmental information; training public officials and journalists; providing consultation, expertise (including alternative EIAs) and recommendations to the authorities; campaigning for environmental protection; and litigation on environmental issues.²⁷⁵

For example, the Aarhus Centre works to raise the awareness of public officials about environmental information and the Aarhus Convention. They organise training events for public officials and NGOs on environmental issues, including specifically on the Aarhus Convention. They also train officials on how to involve the population in the preparation of official reports; and train NGOs on how to get involved. Events organised by the Centre often bring together public officials and NGOs – thereby attempting to include the opinions and recommendations of NGOs in the State’s reports on the implementation of the Aarhus Convention.²⁷⁶

In some cases NGOs have achieved successes. For example, the NGO All-Ukrainian Ecological League campaigned to stop the placement of hazardous electrical cables in Rovno (Western Ukraine). A public hearing was held in the area where the line was to be built, but people’s concerns were effectively dismissed. The organisation wrote to the sponsor to expose the fact that the consulting firm refused to listen to people’s concerns. Subsequently, the sponsor decided to use another firm.²⁷⁷

In July 2007, the Ecological League was collecting signatures for a petition addressed to the President against a construction project that, if implemented, would affect a nature reserve in Crimea.²⁷⁸

There are some areas in which it is problematic for NGOs to be involved. For example, it can be problematic for civil society groups to broach questions relating to nuclear power, including radioactive waste. Information on these very sensitive issues is often concealed on the pretext that is a matter of national security, at times to protect what are in reality business interests.²⁷⁹

NGOs are an important source of environmental information. They provide specialised services, as in the case of EcoPravo-Kyiv’s hotline, offering advice on environmental issues to the general public. NGOs also gather relevant information from members of the public who contact them

²⁷⁴ Interview with Tetyana Tymochko, see note 49.

²⁷⁵ For NGOs as alternative sources of information, see Section 5.3.

²⁷⁶ Interview with Tetyana Tymochko, see note 49.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ Interview with Volodymyr Usachenko, see note 54.

for advice. Environmental organisations disseminate the information they compile through the media and their own publications.²⁸⁰ The Aarhus Centre, which has 20 centres across Ukraine, regularly holds press conferences to promote environmental awareness.²⁸¹ The Aarhus Centre and EcoPravo-Kyiv jointly published and disseminated a report in 2004 and one in 2006 on the implementation of the Aarhus Convention in Ukraine.²⁸²

The Ecological League has also carried out an information campaign on genetically modified (GM) foods. Through media monitoring, they have noticed an increase in media interest in GM foods, including on national television channels, coinciding with their campaign.²⁸³ They also disseminate various information materials in the form of postcards, leaflets, publications and a specialised quarterly magazine. They prepare materials that are accessible to the general public, including special materials for children. In addition, in the Autumn of 2007 they were writing an *Ecological Encyclopaedia*. They have also printed and disseminated the text of the Aarhus Convention – something that the MEP itself has never done.²⁸⁴

In Donetsk, the three main environmental NGOs that cover the whole *oblast* are K Chistim Istochnikam, Roza Vetrov and Mama 86. However, NGOs in the region still need strengthening and sometimes struggle due to a lack of co-operation by the authorities. In Lviv there are some strong and active environmental NGOs, primarily with a legal focus. Among the most active are Environment-People-Law (formerly EcoPravo-Lviv) and the Bureau of Environmental Investigations.

5.3.2 Schools and Universities

There are no courses on the environment in journalism faculties, with the notable exception of the lectures on environmental sciences at the Institute of Journalism of Taras Shevchenko University in Kyiv.²⁸⁵ Some training for journalists is also provided by NGOs.²⁸⁶

Information campaigns on environmental issues in schools and universities are generally poor because of a lack of specialist knowledge in this area.²⁸⁷ Environmental studies are available in

²⁸⁰ Interview with Borys Vasylykivsky, EcoPravo-Kyiv, see note 212.

²⁸¹ It started as a project with foreign funding, and then continued under the auspices of the MEP. The MEP provides the premises (in the Ministry building itself) and pays all the running costs. No salaries are received from the MEP, however. The staff are NGO representatives and their salaries are paid by their respective NGOs.

²⁸² Interview with Tetyana Tymochko, see note 49.

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ Interview with Ukrainian environmentalists, July 2007.

²⁸⁶ The Aarhus Centre director noted that some journalists currently wish to explore new, non-traditional topics, meaning that there is scope for the development of environmental journalism. Interview with Tetyana Tymochko, see note 49, July 2007.

²⁸⁷ Interview with Oleg Listopad, see note 82.

universities, but not in secondary schools. Some NGOs are involved in improving environmental education; for example, the Ecological League provides environmental training in schools.²⁸⁸

5.3.3 Public Activism

The Orange Revolution saw an outburst of activism. However, this has faded and most people are no longer involved in actively seeking greater transparency on the part of the authorities. The Orange Revolution was followed by three years of political infighting, lack of progress on pressing issues, and relentless corruption. As a result, many people feel deep distrust and resentment towards public officials and institutions, and do not believe that they can make a difference by participating in decision-making. In some cases, people might protest against the project, particularly when they are directly affected by government decisions (for example, when they learn that a factory will be built next to their homes). However, those finding themselves in this situation for the first time may lack the experience and know-how to effectively challenge the project.²⁸⁹ They also often lack the most basic information on the new project, such as the identity of the owner. Lastly, people have little awareness of their right to information and public participation.

Difficult economic conditions lead many people to endure environmental hazards at work or at home, as they cannot find alternative employment or afford to relocate to another area. Local NGOs, for instance, report that the management and employees in the sodium factory in Sloviansk²⁹⁰ know about the dangerous levels of pollution but fear losing their jobs and as a result remain silent.²⁹¹ Buildings in environmentally unsafe areas – for instance, in the vicinity of polluting factories or near nuclear plants – are, for obvious reasons, cheaper than elsewhere.

5.4 Information from the Private Sector

Standards of transparency and corporate social responsibility in the private sector are still in their infancy in Ukraine. Some laws oblige companies to provide information, particularly when this information affects people's health.²⁹² According to international standards, much environmental information held by or originating from companies should be made public because of the overriding public interest. However, in Ukraine the reality is that economic growth is still seen by many business people, politicians and citizens as the most important short-term objective, and often takes precedence over long-term concerns about businesses' impact on health or the environment.

²⁸⁸ Interview with Tetyana Tymochko, see note 49, July 2007.

²⁸⁹ Interview with Oleg Listopad, see note 82.

²⁹⁰ See Chapter 7.

²⁹¹ Interview with Victoria Grankina, Head of Rosa Vetrov, February 2007.

²⁹² For legal provisions, see Section 4.4.

Nevertheless, a few companies have concluded that doing business despite local residents' concerns or in a way that gives them a bad environmental record can, in the long term, put their business revenues at risk. The importance of a positive public image in maintaining stable profits is being recognised by a few pioneer companies. This dynamic has to some degree been triggered by the fact that these Ukrainian companies increasingly have to compete in a globalised market with Western companies, many of which have already adopted standards and policies on accountability and corporate social responsibility. On a few occasions Ukrainian businesses have been more open to discussing environmental concerns with activists than the authorities whose responsibility it is to consider the public interest. For example, in 2006 the Ecological League prepared 13 pages of comments on the building of a metal factory in Poltava, but these were ignored by the authorities. The League then continued discussions with the Director of the company directly, who then voluntarily agreed to implement a number of measures retrospectively to reduce the factory's environmental impact.²⁹³

Generally, there is still much confusion about what constitutes a commercial secret and what should be made available under the regulations on accessibility of environmental information, which adds to the problem of lack of business accountability.²⁹⁴

5.4.1 Examples of Good Practice

The paint factory Lakma in Kyiv and the chemical company Stirol in Donetsk provide some examples of good practice in information management as part of corporate social responsibility policies.

Lakma, a company with 260 employees and only one production site in Kyiv, has adopted a number of measures to reduce its negative impact on the environment, including by establishing a department for environmental protection.²⁹⁵ Since 2001, it has enhanced its capacity for environmental management, particularly thanks to the assistance of a German company, Unikum, which provided consultants and training to measure and control environmental impact. It has also participated, together with five other companies, in a programme on environmental management, funded by the European Commission.²⁹⁶

Lakma has a corporate policy on its website which includes a commitment to minimising environmental impact (point 9).²⁹⁷ The company follows a certification system, consistent with

²⁹³ Interview with Tetyana Tymochko, see note 49.

²⁹⁴ Interview with Victoria Grankina, see note 291.

²⁹⁵ Interview with Elena Giorgjevna Paraskevas, Head of Lakma, April 2007.

²⁹⁶ *Ibid.*

²⁹⁷ See Lakma's website (in Russian), <http://www.lakma.ua/policy.php>.

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international guidelines, to measure the environmental impact of its activities, such as emissions and pollution, and to identify causes. The latter might include mismanagement of resources or shortcomings in the production process. The data is used to compile an environmental management matrix, in which points are allocated for each production step, representing the estimated damage to the environment. If a production step has a number of points that exceeds the guidelines, an internal impact assessment is carried out for this aspect of production. The matrix is reviewed annually, and is used to formulate solutions to reduce the company's environmental impact. Some of the measures Lakma undertakes are very easy to implement, and may simply involve giving precise instructions to the employees to keep containers with paint and other chemicals closed to stop the fumes escaping.

Lakma's system is not yet perfect. For instance, although management is aware that the company consumes a great deal of water, it does not know the precise amount. In order to substantially decrease the company's environmental impact, it would need to install new equipment, which is only possible with serious investment.

While it generates impressive amounts of information that enables it to monitor and manage the company's environmental impact, Lakma could improve its practice of sharing this information with the public. The company has some procedures for external exchange of information; it has drawn up a list of external stakeholders whom it tries to keep informed. In order to provide information on its activities, it uses reports, publications and presentations; press releases and press conferences; and its website. It makes public information on the company's audits, and publishes contact details for members of the public and the media who wish to request information. Lakma produces an annual public report on governance of the company. However, this report does not include a section on the environment, and an annual report on environmental aspects, which is also produced, is internal to the company, as are the monitoring procedures and the information generated by them. The website does not contain any information on environmental impact, other than the policy commitment to minimising it.

Another positive example is Ukraine's biggest chemical company and an important exporter of pharmaceuticals and fertilisers, Stirol. It was built in 1933 and is located in the Donets Basin. With over 5,000 staff, it is one of the biggest employers in the Donetsk *oblast*.

The company has a vice-president on the environment who is also a member of the managing board. Stirol is unique in that it employs methods to recover waste and recycle the gases produced,²⁹⁸ thereby breaking the conventional link between greater economic development and increased emissions. Previously the company used 36 million cubic metres of water. It now recycles sewage

²⁹⁸ Interview with Volodimir Andreyevich Karpiy, Media Director of Stirol, April 2007.

water and waste water from the mining industry,²⁹⁹ which is filtered and then re-used.³⁰⁰ Stirol is the only major chemical company in the world that re-uses water rather than extracting it from local rivers. The water is used and re-used in a closed circuit system and no waste water is produced.³⁰¹ This technology was introduced in 2002 with the support of the multinational General Electrics. The level of Stirol's emissions used to be 12,000 tonnes a year. This has been reduced, and in 2007 it was three times less than the acceptable standard. This is despite the fact that production has increased. Emissions are monitored through an automated system that is connected to a central computer.

Stirol has some mechanisms for proactive dissemination of environmental information. Monitoring data, for instance, is sent by the central computer directly to the factory's website. The website has an entire section entitled 'ecology', containing relevant policies, documents and some data. However, the website is not fully up to date. In 2007, the company's 'annual environmental targets' as indicated on the website were for 2005. Environmental information relating to the company is also available in the factory's newsletter. The company maintains contact with and provides information to the media.

Since the State does not create strong incentives or requirements for private businesses to generate and make publicly available comprehensive information on their environmental impact, the commitment of individual companies is a decisive factor. Both Lakma and Stirol confirmed that their advanced environmental impact monitoring systems would never have been set up had there not been a strong personal commitment by senior management to strengthening environmental sustainability.

For both companies external expert advice and assistance has been key to improving their systems. One is a small company that was able to set up relatively simple systems. The other is powerful and influential company (wanting to expand in external markets) and therefore with the resources to deal with environmental issues. Many companies fall between these two extremes and so may face particular challenges in following their example.

6 INTERVIEWS AND CASE STUDIES

To capture stakeholders' own assessment of the situation regarding access to environmental information in Ukraine, local researchers conducted a total of 31 interviews in three *oblasts*. The three focus *oblasts* were Kyiv *oblast* in Central Ukraine, Donetsk *oblast* in Eastern Ukraine, and Lviv *oblast*

²⁹⁹ From Horlivka, a town next to the factory.

³⁰⁰ Interview with Volodimir Andreyevich Karpiy, Media Director of Stirol, April 2007.

³⁰¹ D Watts, 'Aiming to be Europe's Breadbasket Again', *The Times*, Focus Report, 21 May 2007.

in Western Ukraine. Interviews were carried out in the second half of 2006 and in early 2007. Some additional interviews were conducted by ARTICLE 19 in early 2007. One researcher in each *oblast* carried out face-to-face interviews with public officials, members of civil society and journalists living in the three *oblasts*. For the interviews with members of civil society, a sample of people was chosen, including NGO representatives, ordinary women and men, and people who had been adversely affected by environmental hazards. The meetings identified the obstacles – both legal and practical – that these groups currently face in giving or obtaining information relevant to their lives and to the realisation of their rights. The public officials interviewed included representatives of the Department for Public Relations, Liaison with *Verkhovna Rada* and Media Relations of the MEP; the Environmental Commission of Lviv City Council; the State Department of the Environment for Lviv *oblast*; and the State Administration for Environmental Security of Donetsk City Council. The journalists were from: newspapers *Nash Kray* and *Gromand'ska Pravda* (Donetsk); newspapers *GAL-INFO*, *24 Hours* and *Komsomolskaya Pravda in Ukraine* (Lviv); ICTV television channel (Kyiv); and independent journalists writing on environmental issues (Kyiv). Representatives of NGOs working on environmental issues were also interviewed.³⁰²

The interviews also provided case studies to illustrate how denial of access to official information has had a direct, adverse impact upon individuals' health or well-being, and some examples of good practice.

6.1 Views of Public Officials

Public officials' opinions on access to environmental information varied. Some did not acknowledge that there were any obstacles to the free flow of environmental information, while others were critical of State bodies and admitted there were some deficiencies.

Most public officials in the city of Donetsk saw no problem with access to environmental information. They stressed that they receive requests for information and that they routinely respond, using different means, including by telephone or in writing, although the pre-established procedures have to be strictly observed (for example, a request cannot be anonymous).

Where officials admitted weaknesses and deficiencies in relation to access to information, they identified a variety of reasons for these.

302 They include: the Kyiv Environmental-Cultural Centre, the National Environmental Centre of Ukraine, the Unit for Conservation of the Environment of the Kyiv National University and the Aarhus Centre in Kyiv Oblast; representatives of *Ecologiya-Pravo-Lyudina* (Environment-People-Law), the Western Ukrainian Fund for Environmental and Tourist Information, the Bureau of Environmental Investigations and others.

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In Sloviansk, in the Donetsk *oblast*, public officials blamed the public for not being informed. They said people in their constituencies were not sufficiently politically active and did not request information about developments unless they were directly affected. Public officials also blamed people for their lack of engagement in current issues. The Donetsk regional environmental authorities noted that, despite the publication of between 100 and 150 EIAs, the public failed to comment. However, a representative of the Sloviansk city authorities stressed their failure to involve effectively the public in decision-making regarding the implementation of environmental policies.

Public officials in Donetsk reported instances where people were consulted on the construction of new residential buildings and on the reconstruction of a square near the railroad terminal. A large-scale Ukrainian-British project called 'Rosa Vetrov', engaging the public in environmental decision-making, terminated in 2003, although the project implementers established an NGO (also called Rosa Vetrov) at the end of it. At the time of the project, a number of public consultations were organised on several initiatives, especially on new construction projects. However, according to the officials, public interest in environmental matters and NGO activism in this field decreased after the project ended. The head of Rosa Vetrov saw as the main reason for people's passivity their frustration at the very minimal impact resulting from their efforts, primarily due to public officials' failure to respond to request for public participation.

Public officials in Donetsk also complained of the media's shortcomings, stating that in practice media outlets agree to collaborate with environmental authorities (and cover environmental issues) only if paid.

Public officials in Kyiv admitted that corruption is a key obstacle for Kyiv residents trying to access environmental information. They pointed out that the head of the State Department of the Environment of the Kyiv Administration had apparently staffed his department with well-known figures linked to corporate interests. The situation is further aggravated by the extremely high demand for land for new buildings and escalating land prices.

Lack of resources and materials were also identified by officials as a significant problem. The head of the State Department of the Environment for the Donetsk *oblast* stressed that they had limited human and financial resources, which restricted their activities.³⁰³ He noted that their annual budget was insufficient to implement many of the much-needed environmental measures in the *oblast*.

Another factor quoted by officials was the difficulty experienced by public bodies in gathering or accessing the information themselves. For instance, in Donetsk, the public officials interviewed stated that no city or regional authority had a single copy of the national report that the MEP is

³⁰³ Meeting with Serhiy Vladimirovich Tretyakov, Head of the Department of the Environment in the Donetsk Oblast. This was an additional interview by ARTICLE 19, conducted in January 2007.

required to produce each year under the terms of the Law on Environmental Protection. The situation is slightly better with regional reports. For example, 1,000 copies of the *Report on the Environmental Status of the Donetsk Oblast, Land of Our Discontent*, were distributed throughout the *oblast* via official channels. Instead, the head of the State Department of the Environment in Donetsk generally saw no specific difficulties in accessing and collecting information.³⁰⁴ He was also confident that government bodies had full access to information on the environmental effects of private businesses, and that businesses did not attempt to hide information. However, he did admit that, in some cases, there could be inaccuracies because of a lack of experts or adequate equipment.

Another problem mentioned was the existence of an institutional culture which is not favourable to freedom of information. A former public official, for example, suggested that some bodies simply used avoidance tactics when asked for ‘inconvenient’ information. For instance, when a citizen lodged requests for information on sensitive environmental issues – such as the interests of the tendering committee³⁰⁵ or the city’s senior officials – with the State Department of the Environment of the Kyiv City Administration, the Department would draft a formal reply devoid of real content, referring the request to another body, the State Department of the Environment for the Kyiv *oblast*,³⁰⁶ where the outcome was likely to be the same.

6.2 Views of those Requesting Information

Many NGO and media representatives identified a widespread reluctance in public institutions to help those requesting information, be they ordinary citizens, civil society activists or journalists. Lviv-based NGO and media representatives felt that the momentum gained during the Orange Revolution

³⁰⁴ *Ibid*

³⁰⁵ The tendering committee is part of the Kyiv City Administration. They decide on tenders for the use of the local budget for environmental activities.

³⁰⁶ Kyiv enjoys a special status regarding environmental protection thanks to the Law On the Capital City, which grants Kyiv such privileges as can normally be found in *oblasts* but not in cities. The Law established the city’s own Department of the Environment, which is an executive body that reports to the Kyiv City Administration, which, in turn, is subordinate to both Kyiv City Council and to the national executive authorities. The Department of the Environment manages the funds allocated by Kyiv City Council and Administration for environmental programmes, and the Extra-Budgetary Environmental Protection Fund. Kyiv also hosts the State Department of the Environment, a territorial agency of the MEP present in all regions. This body has no direct influence on the city’s budget spending but is entitled to carry out an EIA on any project that can cause potential hazards to the environment. Oversight and control rest with the Kyiv subdivision of the State Environmental Inspectorate. An inspectorate is a body of the MEP and is present in each branch of the Ministry. It fulfils supervisory functions, including ensuring that the law is correctly implemented and monitoring the activities of factories and, for example, forest guards. All these agencies keep large amounts of environmental information.

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had been lost, with the government re-embracing secrecy and undemocratic ways following a short period of increased openness.³⁰⁷

Journalists interviewed in Kyiv stated that they received only limited information from State bodies. One remarked: ‘We get from the authorities only the data they want to give us and nothing more.’

An NGO respondent from Kyiv listed the existing problems as the ‘red-tape of being repeatedly referred [to other bodies] and overformal replies, public officials’ disinclination to take any action, fears of losing one’s position, corruption and the total absence of oversight and enforcement mechanism in the judicial bodies.’

An environmental NGO from Lviv echoed this statement, saying that although public officials usually do reply to inquiries, frequently their overly formal answers lack the specific information that had been detailed in the request. Interviewees from Kyiv-based NGOs stated that responses (of varying quality) were received in only half of the cases, despite the fact that the requests were formally registered and often contained references to the Aarhus Convention. Overall, NGOs in Lviv felt that official documents were provided with great reluctance, if at all.

Similarly, NGOs in Donetsk reported having to make strenuous efforts to obtain information, by addressing all accessible public sources, and that they were granted only superficial information.

An environmental NGO in Lviv summarised the main reasons behind refusals as follows:

- Unavailability of the document, even when by law the authority must have it.
- Refusal to release a document on the pretext that this is necessary to protect the privacy or intellectual property rights of a third party (the NGO believed that these rules were abused).
- Procedural obstacles: although the law states that information has to be provided within one month, within this timeframe the authorities frequently only send a formal letter stating that the information is available but that a payment has to be made, while the information on how the payment is to be made may well be missing from the letter causing unnecessary delay and complicating the process.
- Groundless classification of information as intellectual property, in some cases based on the assumption by a public official that the information *might* be confidential.

Many NGOs reported that often no justification is provided when information is not granted.

³⁰⁷ Separate ARTICLE 19 interview with the NGO Environment-Law-People and with local journalists writing on environmental issues (Yelena Dub of the Media Club TV channel and Vera Karpiskaya of *Lvivskaya Gazeta* and *Gazeta po Kievski* newspapers). In 2007, the NGO Environment-People-Law was implementing a project on access to environmental information focusing on strategic litigation.

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NGOs interviewed in Lviv noted that most public officials have some familiarity with legal provisions on access to information, but that they sometimes use this knowledge to obstruct access rather than to facilitate it. In contrast, NGOs in Donetsk noted that hindrances to the free flow of information were often the result of public officials not being fully aware of their responsibilities and the local legislation.³⁰⁸

Some of the authorities' replies were not merely unhelpful, but dismissive and even patronising. They reveal that many public officials have little appreciation of the public's right to know. For example, a woman from Sloviansk contacted the authorities for information about the felling of trees for the construction of a car park. She was simply told that the trees were felled legally and according to approved plans, no details of which were provided. They added that the trees had to be cut because they were 'poplars that generated fluff' and that the areas would be improved by the new trees being planted.³⁰⁹

NGOs in Lviv noted that public authorities frequently instruct people seeking information to request documents directly from the originators, such as companies and factories, which, in turn, do not always disclose the relevant information and – importantly – often do not have a legal obligation to disclose information.

NGO representatives stated that they believed personal connections were of paramount importance in obtaining information. As one NGO representative said: 'The personality factor is the key issue. If an official dislikes you he won't provide any information, period.' Others reported that their professional background could be an obstacle. Public officials sometimes seem to find it difficult to relate to NGO representatives or journalists. Officials have sometimes blamed 'grant-eating' NGOs and journalists for 'artificially' creating problems where none exists.³¹⁰

According to a number of NGO representatives, some regional and local government officials think it wiser not to disclose any information because of their distrust of journalists and NGOs. On the other hand, journalists and NGO representatives might choose to avoid public officials because these often perceive them as 'troublemakers'.³¹¹ Therefore, in order to obtain up-to-date and, even more importantly, accurate information, both NGOs and journalists from the three *oblasts* stated that they routinely use personal contacts, which appears to be more effective than using official channels.

NGOs in Lviv highlighted the positive results of litigation. Institutions sued several times for illegitimate and untimely release of information tend to improve their performance. In the context of a lawsuit against the MEP, one NGO activist remarked: 'The agency was taught to provide information.'

³⁰⁸ The Law On Local Self-Government was mentioned.

³⁰⁹ Interview with Oleg Listopad, see note 82.

³¹⁰ Separate ARTICLE 19 interview with environmental journalists in Lviv.

³¹¹ *Ibid.*

Those who learned the lesson disclose, others still have to get used to working with NGOs and the media.’

Successes achieved in court also set precedents and send a signal to other public institutions. In this way, they can contribute a great deal to changing the general administrative culture. NGOs are engaging in strategic litigation in Kyiv, but this does not yet seem to be the case in Donetsk. NGOs from Donetsk *oblast* have so far mainly focused on non-judicial complaint proceedings, through which they have also achieved successes. For example, the NGO Donetsk Environmental Movement requested in-service proceedings after receiving false information from the State Environmental Inspectorate of the Donetsk *oblast*. The proceedings led to the dismissal of the head of this authority and the NGO reported that it subsequently had fewer difficulties in obtaining information.

Ordinary people acknowledged their poor awareness of their immediate environment. In Donetsk, it was noted that local people frequently fail to find out about construction projects or tree-felling even when it is near their homes. The interviewees in Kyiv complained of several environmental concerns on which greater information was needed, such as air pollution caused by car exhaust fumes and industrial emissions, the decrease of community green areas as a result of construction, the pollution of surface and underground water, and the disposal of household and production waste. In Lviv, residents further noted that they distrust information provided by the authorities and have no faith in being promptly and effectively alerted to environmental emergencies, or obtaining truthful information about their effects and potential health hazards.

6.3 Disseminating Information

6.3.1 Proactive Dissemination by Government Bodies

The Aarhus Convention and Ukrainian legislation require that various types of environmental information be disseminated by government bodies on their own initiative so that they are easily accessible to any member of the public.

Most public authorities in the Lviv *oblast* use e-formats and maintain websites, but those interviewed said that these new measures have made only a modest contribution to openness, because of restricted access to the Internet. Moreover, even on websites the authorities provide only very general information.

An NGO in Donetsk stated that government bodies rarely disseminate information proactively, pointing out that Donetsk has no information centre or website. There are some specialised

publications, but these are distributed only during some meetings involving a narrow circle of stakeholders and are not available to the public at large.³¹²

6.3.2 Lack of Procedures and Resources within Public Bodies

Those interviewed listed several issues that undermine the dissemination of information by the authorities.

In Donetsk, interviewees stated that the existing procedures are inefficient and needlessly slow. All requests for environmental information have to be addressed to the head of the State Department of the Environment for the Donetsk *oblast*, who will then forward them to the relevant bodies. This procedure has to be observed even when the person seeking information knows what office or person should be addressed directly. Several of those interviewed in Donetsk pointed to the provision of inaccurate information by numerous official bodies as a major problem. Many noted that it is particularly difficult to obtain accurate information from the Donetsk City Department of Architecture.

Interviewees also referred to lack of resources. The Donetsk City Council and the State Department of the Environment have no Local Area Networks (LAN)³¹³ so that only hard copies of documents are available. On the other hand, the authorities of the much smaller Sloviansk do operate a LAN and by 2006 had been using e-mail to provide information for nearly two years.

In Lviv it was noted that databases are often missing as the authorities keep as little information as possible. For example, they ceased to archive EIAs and instead return the documentation to the investor after a decision on a project has been made. This makes it harder to monitor the project during implementation. A company representative in Kyiv also noted that the authorities do not have the necessary skills and means to gather information from companies.³¹⁴

Interviewees in Lviv revealed problems such as poor coordination and information sharing between different authorities or even subdivisions of the same authority. Lack of effective co-operation within public bodies is also an issue in Kyiv. Partially this is due to the fact that Kyiv hosts regulatory bodies for Kyiv as a city, as an *oblast* and as the country's capital; there is no clear division of responsibilities between the State Department of the Environment and Kyiv City Council.³¹⁵

³¹² Interview with Victoria Grankina, see note 291.

³¹³ Computer networks covering small areas – as opposed to Wide Area Networks (WAN).

³¹⁴ Interview with Elena Giorgevena Paraskevas, see note 295.

³¹⁵ Interview with Oleg Listopad, see note 82.

6.3.3 Press Services

In Lviv, NGOs noted that public bodies are increasingly relying on press officers to convey information. However, this has not resulted in more information of a higher quality being available to the public. Instead, press officers sometimes seem to be fulfilling the function of a gatekeeper, closely controlling the flow of information to the public.

The strengthened role of press services, according to some, was a response to instances in which environmental public officials gave media interviews that deviated from the officially approved versions. A prominent example was a case in Drohobych, near Lviv, in 2001, when an oil pipeline leak increased the content of phenols in drinking water. The press immediately reported the news when the head of the State Department of the Environment confirmed the contamination. The Chief Sanitary Inspector of Lviv Province, however, denied that there were any abnormalities in the water. No one was injured as a result of the accident but, following this and similar cases, the State authorities attempted to ensure information was provided from one source only – the press offices.

Formal contacts with journalists are maintained only by press officers and coordinated with senior public officials. However, press officers' main task is often that of presenting their public body in a positive light, rather than informing the public.³¹⁶ They also tend to provide an interpretation of or general information on facts, rather than giving people direct access to documents. The MEP's regional departments (State Departments of the Environment) maintain contacts with journalists. In Donetsk, public officials stated that they issue press releases every week and circulate them to the regional and local media.

6.3.4 Positive Precedents

According to the NGOs interviewed, the format and content of environmental publications need to be improved to make them more readily accessible to the public. While the law requires that a project's EIAs be published, there have been cases of EIAs being printed only in the media or one city or village, even though the project would adversely affect a much larger area. In the remaining areas people were simply not informed.

A positive example of openness was the Kyiv City Administration's Department of Environmental Protection, which maintains an information centre that people can visit and from which they can request information. However, at time of going to press the centre was closed due to relocation of the department's offices.

³¹⁶ Interviews with Ukrainian environmentalists, July 2007.

An NGO representative noted that in the city of Berdyansk, information on the use of municipal funds and on urban and sustainable development programmes freely reaches the public. Public bodies and the community have also co-operated to raise funds for local development from international organisations.

6.3.5 Media Shortcomings

While some media representatives denied the claim by officials that journalists write on environmental issues only if they are paid to do so, journalists in the three *oblasts* said that, overall, environmental news has a low appeal for the public, editors and publishers. A journalist working on environmental issues in Lviv remarked that sadly environmental information only appears in the media when disasters occur.³¹⁷ Similarly, others noted that environmental issues usually come to the fore in media reports only when they are linked to prominent political events, public protests, or when they have a very visible impact, such as felled trees or toxic waste scattered over fields. In fact, the media in the three *oblasts* cover environmental issues only sporadically. NGOs and journalists interviewed in Lviv complained that journalists hardly ever venture into research and analysis of longer-term environmental issues that may not be immediately visible. This situation is partially due to journalists' limited knowledge of environmental issues and, in some cases, poor professional standards. Respondents in Lviv stressed that serious long-term research and analysis is possible only with the aid of international grants. There was a general feeling that materials that are published tend to be of relatively low quality.

Despite this, journalists interviewed in Kyiv noted that the publication of information on environmental issues has increased in recent years. They viewed publications and programmes that link environmental issues to social and economic problems rather than environmental information per se more favourably. A positive example mentioned was the programme *Vash Vykhod* broadcast by UT-1.

6.3.6 Difficulties Faced by NGOs

Local environmental NGOs in Donetsk noted the difficulties they face in publicising information about their work and objectives. The local media is not a viable option as they tend to charge for publication, while they felt that *Nash Kray*, the environmental magazine published in the Donetsk *oblast*, carries only materials from pro-government NGOs. As a result, there is a paucity of channels through which independent NGOs can disseminate information to society at large. Yet one NGO

³¹⁷ The most recent being the train crash in July 2007, which released toxic phosphorus (see Section 4.3).

representative in Donetsk stressed that the problem was not so much obstacles faced by civil society in accessing the media, but rather journalists' lack of professionalism in covering environmental issues in the *oblast*, resulting in a lack of relevant environmental information reaching the public.³¹⁸

6.4 Public Participation

6.4.1 Bogus Public Participation?

A respondent from the State Department of the Environment in Kyiv maintained that, in his view, the public should not take part in the development of environmental policies as this is the responsibility of the State. Another official interviewed, also from Kyiv, described public involvement in Kyiv as the 'mock participation of the public in the development of environmental policies'. He mentioned as an example 'ceremonial' roundtable discussions with local authorities, with the ensuing recommendations simply being filed in the environmental authorities' archives.

Public involvement in decision-making is a requirement for the Regional Environmental Protection Programmes for Donetsk. Public officials have established public councils with Donetsk' State Department of the Environment to facilitate this. However, environmentalists in this *oblast* were not able to participate in the drafting of a local environmental policy.

Interviewees emphasised that public officials tend to underrate the need to co-operate with the public and the need to provide environmental information to communities. An expert from an NGO stated '[Local public officials] fail to grasp who the public is, don't want to work with it, and don't know how to, and can't properly understand their role in such communication'.

People in Donetsk stated that they would like to be informed of construction works or other initiatives that occur in their neighbourhoods, and claimed that such activities usually take place without prior consultation or without people in the area even being informed.

6.4.2 Public Hearings

A public official from Kyiv noted that public hearings are often an 'imitation' of a proper process and do not provide substantive information that can be beneficial to people. Hearings usually last no longer than 40 minutes, during which public officials provide only superficial information, mostly just reassuring the public by stating that environmental issues will be taken into consideration in new projects.³¹⁹

³¹⁸ Interview with Victoria Grankina, see note 291.

³¹⁹ Interview with Oleg Listopad, see note 82.

Kyiv respondents noted that the authorities invite NGOs to public hearings to demonstrate ‘broad public support’ for environmentally irresponsible projects – such as building projects implemented at the expense of parks and areas listed as protected. Journalists in Kyiv also noted that ‘pseudo-NGOs’ rather than independent and committed NGOs are invited to these hearings. The latter often find it difficult to find out when meetings are to be held.

6.4.3 People’s Protests

Not only is public participation not encouraged, but it is at times repressed. In mid-2007, a businessman in Kyiv tried to implement a construction project that would involve the felling of trees and the destruction of a playground. People protested and young people were reportedly ‘hired’ to harass the demonstrators. This led to a scandal, following which the Mayor of Kyiv assured the public that nothing would be built illegally. An environmentalist interviewed expressed doubts that this promise would be kept.³²⁰

In some cases people’s actions have prevented construction projects, but could not restore what had already been destroyed. In Kyiv, in 2007 there was a fence surrounding the area where a square used to be. The planned construction of a new building had been suspended because of public protests, but the square that was destroyed to create space for the building was not replaced. If proper consultation had been carried out, an agreement might well have been reached with the local population.

6.4.4 Positive Examples

An NGO representative from Kyiv highlighted a process known as ‘local initiative’ as the best means for public participation in Kyiv. These involve an established procedure whereby if the public collects 1,000 signatures, it can demand a specific issue be added to the agenda for the forthcoming City Council’s session. This procedure was instrumental in overturning a number of decisions by the city authorities on land-related and other matters. There were approximately 30 local initiatives before 2006. Unfortunately, when the deputies for the new Council were elected in spring 2006, the majority of them ignored the local initiatives.

Those interviewed also commented positively on the co-operation between Kyiv NGOs and the State Agency for Natural Reserves (a sub-branch of the MEP), which resulted in the adoption of regulations to improve the agency’s performance and in training events for the staff of national parks

³²⁰ *Ibid.*

on issues such as media work. Positive results were also obtained in the co-operation with the Kyiv City Administration's Department of Environmental Protection, which led to a list of protected areas in the *oblast* and the identification of ancient, protected trees, with rules for their preservation.

Environmental activists in Kyiv highlighted the campaign to prevent radioactive waste storage in salt mines in the Donetsk *oblast* between 1994 and 1997 as an excellent example of co-operation between the local authorities and public. A local NGO received information on a local programme on radioactive waste and requested additional details from the authorities. When the inquiries were only partially satisfied, the NGO addressed a member of the City Council directly. This eventually resulted in a referendum and a hearing. People rejected the initiative and the plans were dropped.

Overall, however, examples of constructive co-operation remain scarce.

6.5 Examples of Litigation

6.5.1 EcoPravo-Lviv v. Brodyvodokanal

In November 2001, Lviv *oblast* Commercial Court heard a case in which EcoPravo-Lviv sued Brodyvodokanal, a State-run water supply company, for refusing to provide environmental information. EcoPravo-Lviv (which has since changed its name to Environment-People-Law) stressed the right to request and receive environmental information without any obligation to provide a justification for the request. EcoPravo-Lviv had requested information from Brodyvodokanal regarding the condition of the sanitary zone of a water intake facility and the list of the measures needed to guarantee the quality of water being supplied, as well as the condition of water supply sources.

The submissions to the court of both EcoPravo-Lviv and Brodyvodokanal referred to the Aarhus Convention. The defendant relied upon Article 4 of the Aarhus Convention, stating that a request for environmental information may be refused if it is manifestly unreasonable or formulated in too general manner. EcoPravo-Lviv – in addition to references to the Constitution of Ukraine, the Law on Environmental Protection, the Law on Information, the Decision of the Cabinet of Ministers of Ukraine On Types of Information Not Comprising Commercial Secrets – relied upon Article 2 of the Aarhus Convention. This states that NGOs promoting environmental protection and meeting requirements under national law are deemed to have an interest and can receive information. In addition, EcoPravo-Lviv relied upon Article 11(6) of the Water Code of Ukraine, which provides the public with the right to receive information on the condition of water, pollutants, water usage, plans and measures related to water protection and usage, and the renewal of water resources.

The court obliged Brodyvodokanal to provide the information and reimburse the court fee. The court's ruling was an important step towards the full realization of NGOs' right to environmental information.

This was a landmark case as the Aarhus Convention was quoted in judicial proceedings in Ukraine for the first time. It also provided a positive precedent that confirmed the obligation of companies to provide environmental information to the public. EcoPravo-Lviv also had legal victories in cases against a number of State bodies, including the General Prosecutor's Office.

6.5.2 EcoPravo-Kyiv versus the Ukrainian Ministry of Environmental Protection and the State Committee on Forestry

According to the data of the State Statistics of Ukraine for 2004, the number of animals which can be hunted substantially decreased between 1991 and 2004. The adoption of effective legislation stipulating the procedure for hunting is vital for the preservation of the Ukrainian fauna. For hunting not to have an adverse effect on the environment, the MEP and the State Committee on Forestry of Ukraine need to have accurate official State information on the number, state and geographical spread of animals subject to hunting in the country. The Law On Fauna requires the maintenance and publication (at least since 1995) of a State registry of fauna which should be published at least once every five years. However, no such registry has been published since 1995. This is a violation of the right of citizens and other interested parties to access environmental information.

For this reason, in February 2006, EcoPravo-Kyiv and the Kyiv Environmental-Cultural Centre appealed to the Economic Court of Kyiv City against the State Committee of Forestry and the MEP with a number of requirements, in particular with the requirement to keep a register. In its verdict from September 2006, the Economic Court of Kyiv City did not satisfy the plaintiff's claims, including those concerning the register.

EcoPravo-Kyiv and the Kyiv Environmental-Cultural Centre appealed to the Kyiv Economic Court of Appeals.

In April 2007, the Kyiv Economic Court of Appeals overturned the previous decision in relation to a number of the plaintiff's claims: it recognised as illegitimate the MEP's lack of compliance with its responsibilities, particularly the failure to maintain a State registry of fauna, and the violation of the plaintiffs' right of access to environmental information. The Court ordered the MEP to remedy the situation.

6.5.3 EcoPravo-Kyiv versus State Committee of Forestry of Ukraine

In May 2006, EcoPravo-Kyiv sent to 25 Ukrainian regional forestry administration bodies requests to provide copies of the orders on hunting activities during hunting seasons in their *oblast* for the last five years.

Five regional forestry governing bodies (in Luhansk, Poltava, Chernihiv, Kirovohrad and Rivne) did not provide the requested information.

In August 2006, EcoPravo-Kyiv filed lawsuits against these five bodies, seeking recognition that the State bodies' failure to provide the information requested was unlawful and asking for the information to be supplied.

After EcoPravo-Kyiv filed the lawsuits, two of the public bodies (in Luhansk and Rivne) provided the information. In their covering letters the bodies pointed out that they had previously sent the information requested to EcoPravo-Kyiv. However, they failed to prove this in court.

The Chernihiv regional forestry administration provided EcoPravo-Kyiv with the information during the court hearing at the Kyiv Economic Court in December 2006. As a result, the plaintiff decided not to take further action against these three regional administrations, revoked the lawsuits against them and the litigation proceedings were discontinued.

The Poltava and Kirovohrad regional administrations reacted to the lawsuits differently. The Poltava regional administration filed to the court a statement against the lawsuit, indicating that all administrative bodies on forestry were created in 2005. Previously they regulations were issued by the regional forestry unions. Although the failure to provide information was ultimately judged to violate the law, the court also obliged them to provide EcoPravo-Kyiv with the requested documents *only* from the time the bodies were established - that is from 2005 till 2006.

EcoPravo-Kyiv's lawyers commented that, from the legal point of view, this argument was correct, as the 'old' regional forestry bodies (forestry unions) were liquidated and 'new' ones (forestry administrations) – were created in 2005 but were not designated as successor organisations. In reality, however, the rights and responsibilities of pre- and post-2005 organisations were identical.

The plaintiff's claims were satisfied in January 2007 by the Kirovohrad regional administration of forestry, and in February 2007 by the Poltava administration. These administrations sent to EcoPravo-Kyiv the requested orders for the period 2005-2006.

In the course of the litigation EcoPravo-Kyiv's legal adviser referred to the Constitution of Ukraine, the Law Information and the Aarhus Convention, among other legal texts.

7 CONSEQUENCES OF LACK OF INFORMATION

The lack of environmental information impacts on people's lives in Ukraine in many ways. It affects people's ability to protect their health and can lead to abuse of public office. Lack of information contributes to the degradation of food production and limits people's ability to stand up for their rights. It also has a negative impact on livelihoods and economic conditions in the long term.

Lack of information prevents people from looking after their health. Studies by the Ecological League have shown that the people whose health is most affected are those who live near factories or in *oblasts* with high levels of radiation. When people do not have the necessary information, they are effectively prevented from making informed choices about their well-being. Poor environmental awareness encourages patterns of consumption which have a detrimental effect on the environment, the misuse of household and agricultural chemicals, and poor waste management.³²¹ Lack of information perpetuates unhealthy, sometimes dangerous, working conditions. The lack of timely information about emergencies (such as discharges of pollutants, fires at landfills and industrial accidents) prevents people from taking necessary precautions.

Lack of information can lead to abuse of public office and the creation of avoidable health hazards. For example, for several years the government and the local authorities attempted to hide the fact that toxic waste from Hungary was being disposed of in Western Ukraine.³²² It has been stored in inappropriate places, such as in open fields in the vicinity of grazing farm animals and near areas where children play, without the local population being aware of the nature of the waste.

Ensuring that information reaches the rural population is particularly important. Some people in the countryside do not get the necessary information on environmental hazards and their prevention. As a result, they undertake activities that lead to food contamination and environmental deterioration, such as growing unsuitable crops in contaminated areas.³²³

Without adequate information, it is difficult for people to stand up for their rights. Lack of public participation can lead to decisions that are not in people's best interest as well as being harmful to the environment. For example, people are rarely aware of the consequences of mine closures: water builds up in tunnels containing metal which, in turn, pollutes the water. The pollution affects the atmosphere, while the build-up of water can cause houses to decay.³²⁴

³²¹ Information from EcoPravo-Kyiv.

³²² Interview with Tetyana Tymochko, see note 49, July 2007.

³²³ Interview with the Civil Defence Institute, see note 80.

³²⁴ Interview with Borys Vasylykivskyy, EcoPravo-Kyiv, see note 212.

Lack of information means that, even if there were many opportunities for consultation, people would not be equipped with the necessary information to engage meaningfully in them or to protest against decisions. Poorly consulted – and as a result poorly planned – projects, such as the above-mentioned dam or the closure of mines which have led to the decay of housing, can mean economic ruin for the affected population. Environmental damage in the surrounding residential areas can also lead to a significant reduction in property values. In the difficult economic conditions still faced by a large section of the population, the value of a property can be of vital importance.³²⁵

Lack of information can lead workers to expose themselves to risks that could easily be avoided.

Lack of consultation with the population and lack of environmental accountability negatively affects the long-term sustainability of industries and their competitiveness in a global market. In the longer term, this also endangers jobs.

Lack of transparency and fairness in public procurement distorts competition, deprives companies that are not politically well-connected of opportunities, and reduces the value for money society gets from public contracts.

The following examples illustrate how people's lives have been directly affected by lack of information on environmental issues.

7.1 Lviv Train Crash

When a train transporting phosphorus derailed near Lviv in July 2007 (see Section 2.4), the authorities did not make a prompt announcement. This caused a delay in people taking precautions to protect themselves against the toxic chemicals. People were then left without information as to the exact scale of the accident and were confused by conflicting statements which caused general anxiety. Official statements later attempted to reduce the panic by saying that the situation was under control and that it was safe to consume products from the *oblast* – yet independent specialists noted this was not the case. It is also worrying that the authorities reportedly forbade people from wearing protective masks. Ultimately, no conclusive, thorough information was given about the real causes of the accident.

³²⁵ According to a 2003 estimate, 29% of Ukrainians lived below the poverty line, and the inflation rate in 2006 was 11.6%, CIA, *The World Factbook*, 'Ukraine', <https://www.cia.gov/library/publications/the-world-factbook/geos/up.html>

7.2 Transport of Waste from Hungary

In Lviv, NGOs and journalists were extremely concerned about the import and management of toxic waste from Eastern Europe, particularly from Hungary.³²⁶ The government hid the fact that toxic waste was disposed of in the Lviv *oblast* and as a result many people were exposed to health hazards which they knew nothing about.³²⁷

A substance called Premix, dumped in the town of Bakta between 2001 and 2004, exudes pungent fumes that cause severe headaches among the local population. In 2006, a mother of two in Bakta said: ‘We are always tired, with headaches and joint pain.’ A scientist at the Institute of Agriculture, based in Bakta, said: ‘[in the *oblast*] vegetables are not growing any more, the leaves are falling from the fruit trees already in the summer ... we haven’t seen a mouse in the grain depots of the Institute for several years.’

Two parents, whose house was only 200 metres from the dumped Premix, said that they could no longer live there because of the fumes. They added that their children were frequently ill and routinely complained of headaches.

7.3 Secrecy around Chernobyl

State secrecy contributed both to causing the explosion (to a lesser degree) and to worsening its effects (to a much greater extent – see Section 2.1).³²⁸ Before the accident, the State’s efforts to keep nuclear issues secret meant that the reactor’s operators did not know that withdrawing control rods could lead to an explosion. They were simply told that this was ‘forbidden’.³²⁹ Despite their frequency, nuclear accidents in the USSR were kept secret.³³⁰ This meant that the plant’s staff and the general public were unaware of the hazards posed to society and were not able to respond to the accident adequately.

Government attempts to hide the incident, usually referred to as the ‘Chernobyl cover-up’, led to the mismanagement of the crisis. Immediately after the event, the Kremlin issued ‘top secret’ instructions to classify all data on the accident, especially that relating to the health of the affected population.³³¹ As a result, rumours and misinformation multiplied. Even influential figures in the Ukrainian government did not have information, as decisions were made exclusively in the Kremlin

³²⁶ See Section 2.4. ARTICLE 19 interview with environmental journalists in Lviv, January 2007.

³²⁷ *Ibid.*

³²⁸ ‘The State and Chernobyl’, *New Scientist*, 11 November 1989.

³²⁹ *Ibid.*

³³⁰ In Chelyabinsk and Kyshtym (both in Russia), three nuclear accidents took place between 1949 and 1967, contaminating over half a million people.

³³¹ A Turevich, ‘Chernobyl – Byelorussian Tragedy’, *Byelorussian Review*, No.3, 1989, <http://www.geocities.com/CapitolHill/Senate/1447/Belrev1.htm>.

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and behind closed doors.³³² The 1 May celebrations, complete with outdoors parades, were not cancelled, even in nearby Kyiv.³³³ The participants were not informed of the possible consequences of being outdoors after the accident.³³⁴

There was a delay in the authorities advising people to take basic precautions and evacuating them.³³⁵ The Civil Defence Institute stated that, ‘the vague and untimely information ... about the accident ... caused social and psychological stress in society’.³³⁶ Moreover, ‘the lack of information ... during the evacuation process led to an inadequate response of the population (increase in the percentage of abortions ...) and development of health concerns ... All this resulted in a dramatic degradation of standards of living.’³³⁷ As noted, some people who were gravely ill were discharged from hospitals to avoid exposing the true scale of the accident. Had people had full knowledge of the risks to their health and of possible measures to minimise the impact, the health damage caused by the catastrophe could have been lower. People could have demanded adequate medical care, the prompt summoning of more experienced staff from other parts of the USSR, and better evacuation programmes and research on the true effects of the accident. People could have also avoided the consumption of food from contaminated areas. Instead, crops from some of these regions continued to be grown and consumed.

The withdrawal of information following the accident was justified as a measure to prevent panic from spreading.³³⁸ However, the Civil Defence Institute stated that the lack of information caused rumours to spread, high levels of stress, and a lack of trust in public officials. It concludes that, ‘[t]here is no doubt that concealing information about the ... catastrophe was an error.’³³⁹ It further notes that ‘the accident demonstrated the hazard of isolating the nuclear power industry from public supervision, and highlighted the necessity of an open and objective dialogue with the public in all aspects of safe utilisation of nuclear power’.³⁴⁰ It recommended a ‘renovation of ... information services’.³⁴¹

Indeed, although many people might be distressed at the prospect of knowing the full scale of the Chernobyl legacy, many others feel a psychological need to know. Similarly, many of those who have been affected by the train accident in Lviv have been demanding to know its underlying causes in

³³² Interview with Volodymyr Usachenko, see note 54.

³³³ A Turevich, see note 331.

³³⁴ Interview with the Civil Defence Institute, see note 80.

³³⁵ *Ibid.*

³³⁶ Civil Defence Institute publication, p.198, see note 60.

³³⁷ *Ibid.*

³³⁸ Interview with the Civil Defence Institute, see note 80.

³³⁹ Civil Defence Institute publication, p.8, see note 60.

³⁴⁰ *Ibid.*, p.8-9.

³⁴¹ *Ibid.*, p.200.

order to hold accountable those responsible. Conclusive information about the accident could assist them in overcoming its consequences, both psychologically and logistically. Only full transparency and analysis of what happened will enable the State and society to learn from these events.

While it is no surprise that information was suppressed during the Soviet period, it is worrying that the lack of comprehensive information on the Chernobyl accident and its consequences persists even today. This is in part due to logistic reasons, such as the fact that no comprehensive records were kept at the time about the affected population or the measures taken (for example, how many people were relocated and to where). However, a more comprehensive information policy would have been beneficial, as the severe mental health problems created by Chernobyl are exacerbated by the lack of information. A spokesperson from the UN Development Programme (UNDP) stated that ‘two decades after the Chernobyl accident people still lack the information they need to lead the healthy and productive lives that are possible’.³⁴² As a result, the UNDP has advised the Ukrainian government to take the necessary measures to inform people about living safely in inhabited areas of low contamination.

7.4 Individual Experiences

The people interviewed (see Chapter 6) referred to several other instances in which lack of environmental information negatively affected their health and quality of life.

In Sloviansk, people living near an old sodium factory complained that, despite its closure, a substantial amount of phosphorus remained on the site. The waste is highly inflammable and fires have occurred.³⁴³ Although the authorities often conceal information ostensibly in order to avoid panic, in reality the lack of information often leads to public consternation when accidents occur. Sloviansk is an example of this: in early 2000, a serious accident in the factory led to leaks of phosphorus gases; in 2004, when a second minor accident took place, the authorities did not issue an official statement, causing a period of uncertainty and fear, as well as confusion as to what body to address for information. Moreover, the continued presence of the phosphorus raises great concern, exacerbated by uncertainty and frustration caused by the absence of any known official plan to dispose of the hazardous substances. Interviewees said that they had not received information on safety measures in

³⁴² *Chernobyl: the True Scale of the Accident. 20 Years Later a UN Report Provides Definitive Answers and Ways to Repair Lives*, World Health Organisation News Release, 5 September 2005

<http://www.who.int/mediacentre/news/releases/2005/pr38/en/print.html>

³⁴³ Fortunately the fires were contained.

the event of a fire. They had simply heard in the media that the phosphorus would ultimately be transported to Kazakhstan.

Even more worryingly, in mid-2007 very high levels of radiation were recorded in the Donetsk *oblast*. It was feared this might be the cause of a series of illnesses in the area. The causes of the radiation remain unclear since there are no nuclear facilities there. Environmentalists have linked the radiation to waste present in the *oblast*, whose source is also unknown.³⁴⁴

A family from the Skvyra district (Kyiv *oblast*) stated that their village was declared safe by the authorities in 1986, following the Chernobyl accident. Yet, in 1990 it emerged that the village was in a contaminated area that had to be evacuated. Local people found out about the health hazards in the region from contacts and the newspapers; the authorities made no official statements. When they still believed that they were living in an uncontaminated area, the family had brought their granddaughter from the city of Kyiv to live with them, thinking that this would be healthier for her. In the following years, family members developed illnesses, including several severe allergies. They had to move hastily and found themselves in a house with extremely poor living conditions and no heating. This was because, a few years after the disaster, the relocation programmes had started to shrink, making finding alternative housing increasingly problematic. Had they received timely notice, they may have not developed illnesses and would have had the opportunity to arrange for better housing.

Other interviewees reported that, in the late 1980s and early 1990s, in some villages in the Shostkinskii district (at the edge of Sumy and Kyiv *oblasts*), several people started complaining of pulmonary disease. All wild birds disappeared from the area and crops died. The locals linked these events to the high levels of emissions from chemical factories in the area. The authorities did not explain these developments, instead simply assuring the public that there was no danger.

As mentioned above, at times it is less the concerns over their health and safety that motivate people to want to know more, but worries over losing livelihoods or property, as well as concerns over equal opportunities and fair competition. Frequently, people learn of construction projects only when they are already under way. Even then, it can sometimes be difficult to obtain information. For example, a resident of Donetsk submitted an information request on a building development that had started near her house. Three months later she informed interviewers that she had still not received a reply. Another woman discovered one morning that a construction project had started on land near her house which led to the felling of several trees. She addressed several public bodies for information but could not get satisfactory answers as to what was being built or by whom. In both cases, the residents were alarmed that tree felling and the construction projects would reduce the value of their house.³⁴⁵ In

³⁴⁴ Interview with Oleg Listopad, see note 82.

³⁴⁵ Interview with Oleg Listopad, see note 82.

the case of the sodium factory in Sloviansk, three women complained that they could not sell their apartments because of their proximity to the factory. Interviewees also expressed concerns over the lack of transparency of public tender procedures.³⁴⁶ The results are that very few companies participate in tenders, with opportunities benefiting only a small elite, and there is insufficient oversight of the use of public funds.

8 CONCLUSIONS

This study shows how the lack of effective access to information has serious consequences for the people of Ukraine, many of whose health and well-being are affected by environmental damage. The lack of information also has serious consequences for the protection of the environment itself, thereby undermining sustainable development.

The three *oblasts* which are the focus of this report are all facing pressing environmental concerns. Kyiv is at the edge of the Chernobyl 30 km zone, as well as being plagued by other forms of pollution. Donetsk is the most industrialised region of Ukraine and has chemical and metallurgic factories. Lviv also has chemical and metallurgic factories and has been the recipient of toxic waste from Hungary.

The Chernobyl disaster demonstrated dramatically the need for information to protect people's health and the environment. People were deprived of basic information that would have allowed them to minimise the catastrophe's effects. Information on the overall impact of the accident is still sketchy. Recent smaller-scale public emergencies have revealed once again a tendency by the authorities to release inadequate information and conflicting messages, at times with a view to downplaying the risks involved. This is often justified as a measure to contain panic.

However, the interviews in this report have shown that when people are deprived of information, fear and uncertainty grow, leading to high stress levels as well as misinformed and therefore counterproductive coping strategies. Affected people also have a psychological need to know who was responsible for an accident and that effective measures have been taken to avoid similar incidents in the future.

Lack of information disempowers. It means that people cannot take informed decisions or scrutinise the authorities' actions, and it prevents people from defending their rights.

In Ukraine there is a clear legal requirement for the dissemination of environmental information. There are international guarantees, particularly through the State's ratification of the

³⁴⁶ *Ibid.*

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Aarhus Convention. Domestic law also provides general constitutional guarantees on freedom of information. The Law on Information contains a number of relevant provisions. Moreover, environmental legislation (primarily the Law on Environmental Protection and the EIA Law) contains specific provisions on the requirement to disseminate environmental information, as well as a prohibition on keeping secret information that has an impact on people's health.

However, the existing legal guarantees do not specify in sufficient detail how the right to information can be exercised and what measures public bodies must take to ensure access to information. Different laws also contain contradictory provisions. This points to the need for a number of legal reforms. Firstly, a fully consistent and comprehensive framework for freedom of information must be established that complies with international standards. Significant progress in this area could be made through the swift adoption of a good freedom of information law. Secondly, implementation of the law, which is currently sporadic, needs to be enhanced. In this context, more effective supervision of information management and dissemination systems would be particularly welcome. Sanctions against officials who fail to comply with requirements to provide access to information should also be imposed when necessary, and openness encouraged to eradicate the prevailing culture of secrecy.

A number of factors contribute to the culture of secrecy. They include the political and business elite's perception of natural resources as a means for personal enrichment; widespread corruption; excessive bureaucracy in policy development; the lack of commitment by the authorities to establish effective dialogue with the public; public officials' failure to comply with the legislation and limited political will in resolving environmental problems; insufficient funding and resources for the implementation of policies on environmental information and public participation; the failure by the Ukrainian authorities to prioritise environmental issues; frequent changes in political leadership leading to lack of continuity and loss of experience; and lack of incentives for environment-friendly production.

In Ukraine civil society and the media play an important role in Ukrainian society in educating and informing the public on matters of public interest, including the environment. NGOs have undertaken several educational programmes, as well as training for public officials. The latter has had some success (although some public officials have shown little interest). An important instrument used by civil society to increase the transparency of the institutions has been strategic litigation. NGOs have reported success in challenging the system when information was denied. This is important not only to obtain specific pieces of information but also to challenge the overall practice of refusing information without legitimate cause.

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There is a small number of excellent, dedicated journalists, investigating and alerting the public about environmental hazards, and the media have increased coverage of environmental issues. However, in most cases, such information is not sufficiently detailed to enable the public to make informed choices in relation to their health and environment.

Often, the media limits itself to carrying information on environmental catastrophes when these occur, rather than devoting time and effort to investigating complex environmental issues in the public interest. In addition, although media freedom has increased, particularly since the Orange Revolution, some journalists have been harassed when covering sensitive subjects, including environmental issues. This has caused many journalists simply to shy away from these topics. An aggravating factor is journalists' lack of knowledge and experience in environmental issues and in investigative journalism: a number of journalists interviewed admitted to limited knowledge in these areas. This can be addressed by providing more opportunities for journalists to receive high-quality, specialised training. Similarly, many civil society organisations would benefit from training to develop the know-how required to promote access to environmental information effectively.

Even if the media and civil society had more resources, they could not replace the State as the primary disseminator of information. It is encouraging that some mechanisms for information sharing and consultation (such as public councils and public hearings) have been established. These represent a significant step towards transparent and participatory governance. However, they need to be substantially strengthened if they are to have a real impact. Even some of the public officials interviewed recognised that some such mechanisms are little better than 'mock' procedures. In order to make these mechanisms more effective, national and local authorities need to establish detailed policies to increase the level of environmental information available and public participation in decision-making. Consistent and widespread training to enhance public officials' skills in complying with Ukrainian legislation and the Aarhus Convention would facilitate this process.

The Internet has become an important means of disseminating information in Ukraine, and public bodies now have websites. The Internet is an important information tool, and it is often accessible to young people, particularly students, who, according to Eco-Pravo Kyiv, make up the social group that is most active in the area of environmental protection. However, two related problems remain. Firstly, overall only a small section of the population has access to the Internet. Secondly, the information on public websites is often overly general. The improvement and regular update of Internet sites (including, for example, the publication of reports and the results of EIAs) and the creation of readily accessible databases would improve access to information and reduce the need to lodge requests. This would also reduce the negative effects of a system in which the granting or refusal

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of information often depends on the discretion of an individual official. Environmental bodies' press releases and liaison with the media also need to be enhanced.

Ukrainian environmental NGOs have suggested that the low circulation of small environmental publications may be addressed by starting an official newsletter, under the aegis of the MEP. This could publish EIAs, announcements related to the environment and other official information. It could be funded, in full or in part, by those who commission EIAs. Additional possible measures could include the creation of open e-registers of EIAs. Such measures would also reduce appeals and litigation, cut publication costs and enhance public oversight of the implementation of potentially environmentally hazardous projects.

Regulations on transparency in the operations of private businesses regarding fulfilling public functions or holding public interest information are still underdeveloped in Ukraine, despite the fact that relevant basic legal provisions exist. The same is true for corporate social responsibility. A self-regulatory approach could lead to improved management and dissemination of information in the public interest. Nevertheless, there are examples of companies who make an effort to be more transparent and carry out their work in a manner that minimises the harm to the environment and public health. One company identified this as part of a need to modernise and enhance their competitiveness in order to respond effectively to growing competition from Western Europe. If this is the case, these tendencies will probably be replicated by other commercial enterprises. Yet, the shift in practices will be a lengthy and complex process since many companies still use old Soviet-style management techniques and machinery that is not energy-efficient. Many smaller companies simply do not have the funds to invest in research and development that can have a positive impact on the environment.

This and other problems are exacerbated by the limited awareness of environmental issues among the general population. Although many people are acutely aware of the hazards posed by radiation, in reality only a minority is concerned about general environmental issues. This is a result of the lack of educational policies by the State, and the still (overall) limited media coverage of environmental issues.

Understandably, most people are primarily interested in environmental hazards that have a direct impact on their lives. Their need for information emerges in cases where their neighbourhoods are threatened by the construction of environmentally hazardous facilities; the felling of trees and elimination of green zones near their homes; the excessive density of housing; or environmental emergencies. In addition, people are frequently concerned about how poor environmental conditions might have an impact on their – often dire – financial situation. In these cases, people may request information from State bodies, but the bureaucratic obstacles are at times so daunting that they prefer

to approach the authorities only when absolutely necessary. More often, those requesting information are representatives of civil society or the media.

The research, interviews and stakeholder discussions conducted for this study have generated a number of concrete proposals and suggestions for practical measures that should be taken to address the shortcomings and gaps identified in Ukraine's freedom of information framework in relation to environmental issues. Implementing them will enhance the protection of human rights, sustainable development and democratic governance in Ukraine.

9 RECOMMENDATIONS

ARTICLE 19 makes the following recommendations to improve access to environmental information in Ukraine:

9.1 To the Ukrainian Authorities

Legislation

- A law on freedom of information should be adopted as a matter of urgency.
- The following should be reflected in Ukrainian legislation on freedom of information:
 - the principle of maximum disclosure, which should include that all information is available to the public unless the strict three-part test outlined above is met;
 - the principle that access to information legislation takes precedence over secrecy laws;
 - protection for 'whistleblowers';
 - a partial access clause, ensuring that when a document contains classified information the remainder will be released, whenever possible.
- People should be able to challenge the classification of documents. Only the exceptions recognised in the access to information legislation can justify a refusal to disclose.
- The right to information, including of an environmental nature, should be guaranteed to everyone rather than only to Ukrainian citizens.
- The Law on Environmental Protection should be amended to insert precise provisions as to the frequency and manner of proactively disseminating environmental information in the public interest.

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- The EIA Law should be amended to include detailed provisions on State bodies' responsibilities with regard to participatory decision-making.
- The definition of 'environmental information' in the Law on Environmental Protection should be expanded and brought in line with the definition found in the Aarhus Convention.
- The law should set out detailed obligations for private companies that receive public funds, fulfil public functions or hold information of public interest, for instance information on the environmental impact of their activities. The implementation of these provisions should be ensured.
- The provisions on public councils should be amended to include: a procedure of nomination and appointment of public council members; details on terms of office and on possible discharge of members from their duties; and conflict of interest regulations.
- The requirement to provide information on radiation to people about their place of residence and employment in the Law On Human Protection against Ionising Radiation should be replaced with a requirement to provide information for 'the territory of Ukraine', thereby bringing the Law into line with the Law On the Use of Nuclear Energy and Radiation Safety.
- The provision in Article 3(2) of the MEP Order 'On the Approval of the Procedure of Providing Environmental Information' limiting environmental information requests to three queries should be repealed.
- Article 32 of the Law on Information should be amended to make local administration bodies and companies obliged to provide information to the public.

Systems and Policies

Oversight

- An effective oversight system for compliance with freedom of information obligations should be established, for instance through the creation of a freedom of information commission or a freedom of information commissioner to oversee implementation of existing legislation and hear appeals.

Proactive dissemination and environmental education

- The authorities should ensure that the public receives full, accurate and clear information on all plans and policies that affect environmental development.

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- In addition to other official documents in the public interest, draft laws should be made widely available to give the public the opportunity to feed into their discussion.
- The National State of the Environment report should be published without undue delay every year, in line with Ukrainian law.
- Systems should be set up to ensure the proactive and wide dissemination of these and other State reports. Electronic versions should be available in a timely manner on the Internet; hard copies should be available at central as well as regional or local branches of government and in public libraries.
- The publication of an official newsletter containing EIAs and environmental announcements, and the launching of open e-registers of EIAs should be considered.
- The government should step up public education measures on environmental issues and on the right to information, and include these topics in school and university curricula.

Dissemination upon request

- Every public institution should have effective policies and guidelines for the provision of information to the public.
- Mechanisms to provide information upon request should be simple, quick and effective; bureaucratic obstacles should be removed.
- Information requests should be examined in a non-discriminatory manner, without considerations on the identity, status, profession and political orientation of the person making the request.
- Documents made secret through 'not for publishing' and other similar stamps should be declassified.
- Public officials should consider information requests for all information held by their public bodies; the practice of referring people who request information to the originator of information should be discontinued.
- Public officials who do not comply with their responsibilities in relation to the provision of information should be sanctioned or reprimanded.

Public participation

- Procedures for effective public participation in decision-making should be set up.
- Decisions by public bodies that affect the environment should explain how the decision took into account comments and feedback from the public and affected stakeholder groups.

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- Public hearings should be publicised widely and in advance to give all interested parties the opportunity to attend – subject only to space limitations.
- Public hearings should be improved: more time should be allocated to discussions, presentations from State representatives should have more detail, and the public should receive comprehensive answers to their questions.
- The public should be given sufficient time to feed into the process of State EIAs.

Emergencies

- Improved systems should be set up to ensure that people are promptly and fully informed in case of environmental emergencies; the practice of ‘downplaying’ danger and issuing conflicting information should be rooted out, as this causes further stress for the public and may have an adverse effect on people’s health.
- Following accidents, thorough and impartial investigations should be carried out and the results made public.

Resources and Development of a Culture of Openness

- Financial resources for providing public access to information (including for training) should be allocated to public bodies.
- More financial resources should be injected into programmes to generate information in the public interest, for example into mechanisms measuring environmental impact, radiation contamination or water quality.
- Public bodies’ websites should be improved so that they are fully operational, comprehensive and up-to-date.
- Improved systems should be set up to reach those who have no access to the Internet, particularly the rural population.
- Training for public officials should be provided (in compliance with Article 7 of the Law on Environmental Protection) to ensure their full familiarity with Ukraine’s provisions on freedom of environmental information and Ukraine’s responsibility under international law (particularly the Aarhus Convention), as well as the role and significance of public participation.
- Internal systems for information exchange within the MEP, and between the MEP and its State Departments should be improved.

- Other measures to encourage openness among public officials should be considered, such as a system of incentives.
- Training events for judges on freedom of information should be organised to ensure fair judgments, in line with international standards, in freedom of information cases.
- In order to enhance the free flow of information, the authorities should improve mechanisms to tackle corruption.

9.2 To Local and International Civil Society

- Training programmes for journalists should be set up, in particular on how to make use of the right to information and investigative journalism techniques.
- Training programmes for public officials and judges on freedom of information should be held.
- Civil society should attempt to further engage the media to expose environmental problems of which the general public has little knowledge. Engaging the international media can also assist in further exposing maladministration and induce positive change.
- Projects involving litigation in case of illegitimate denial of information or any other irregularities (such as undue delays or release of incomplete information) should be intensified.
- Regular monitoring projects are crucial to provide independent assessment of progress, gaps and weaknesses of the State's performance on access to information.

9.3 To the Ukrainian Media

- The media should intensify its reporting of environmental information in the public interest, particularly by investigating health hazards, poor decision-making or maladministration in depth and over longer periods of time, rather than by providing only coverage of emergencies.
- The media should provide information on environmental and information rights; training should be made available to journalists, for enhanced professionalism in the reporting of environmental matters.
- The State media should broadcast more informative television and radio programmes to educate the public on environmental issues and how these affect their welfare.
- In order to ensure that information carried by the State-owned media serves only the public interest and is protected from political interference, State television should be transformed into a fully independent public broadcaster.

9.4 To Companies Based in Ukraine

- Companies whose activities may harm human health and the environment should set up comprehensive mechanisms to inform the general public and their own staff of such hazards and the measures they are taking to minimise the risks.
- Private companies should consider replicating the positive steps taken by the few Ukrainian companies that have pioneered policies of environmental protection and openness.



