

# THE RIGHT TO ENVIRONMENTAL DISCLOSURE REGARDING HAZARDOUS SUBSTANCES AND WASTE

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## Abstract

*Mismanagement of hazardous materials and waste, and exposure to them, have serious impacts on all human rights, especially the right to a healthy and safe environment. Therefore information is a crucial element in preventing human rights violations resulting from exposure to hazardous materials and waste. However, vital information related to hazardous materials and waste is often unavailable and difficult to obtain.*

*Information is a critical element for enjoying human rights and is essential for good governance. It is necessary to obtain information on hazardous materials to prevent risks, reduce harm, conduct research focusing on finding safer alternatives, provide treatment, ensure transparency, participation, and consensus in decision-making and policies.*

**Keywords:** Hazardous waste; Environmental information; Right to a healthy environment.

## INTRODUCTION

The management of hazardous materials and waste disposal has recently received great attention, both internationally and nationally, with the aim of preserving human life and public health through safe and sustainable methods. However, hazardous waste still poses a significant threat to enjoying many human rights, including the right to life, the right to the highest attainable standard of physical and mental health, and the right to safe and healthy working conditions.

The issue of hazardous waste is one of the most important environmental issues facing the world, as it poses a threat to public health and the environment, affecting both terrestrial and marine life, increasing the risks of environmental pollution and the destruction of ecosystems. As hazardous waste is produced by many economic activities, such as various industries, farms, hospitals, laboratories, and others, identifying the sources of hazardous waste, its management, and reducing its impact represents a significant environmental, economic, and social challenge.

Obtaining information is a crucial element in preventing human rights violations resulting from exposure to hazardous materials and waste. However, vital information related to hazardous materials and waste is usually unavailable and difficult to obtain.

The study of the right to access environmental information on hazardous waste aims to achieve several objectives, including increasing public awareness of the danger of hazardous waste and its negative impact on public health and the environment, promoting the right to access environmental information for citizens, local communities, and environmental organizations, enabling them to participate in decision-making related to hazardous waste, and revealing the extent to which there are limits to exercising this right.

Within the context of what was presented, we raise the following issue:

**To what extent does the scope of the right to access information related to hazardous materials and waste extend?**

This is answered by following the descriptive and inductive approach of various decisions and reports related to the right to access environmental information regarding hazardous materials and waste, through the following elements:

- ❖ The conceptual framework for the right to access information regarding hazardous waste.
- ❖ The standard content of the right to access information about hazardous waste.
- ❖ The limits of the right to access information about hazardous materials and waste.

### 1. Hazardous waste information access framework

Hazardous waste has become a source of concern in many countries around the world today, and has become an extremely important environmental and health issue. This makes providing access to information about it a necessary and obligatory matter. In this context, the definition of hazardous waste

is discussed on one hand, and the definition of the right to access environmental information is discussed on the other hand.

### **1.1- Definition of hazardous waste**

The United States Environmental Protection Agency defines hazardous waste as "waste or a combination of wastes that pose a substantial danger to human health or the environment, whether immediately or over time, because they are non-degradable and persist in nature, or because they may cause harmful cumulative effects." (Benfriha, 2018, p. 120)

The World Health Organization defines hazardous waste as "waste that can cause significant risks to human health or the environment due to its quantity, physical, chemical or infectious characteristics, when handled, stored, processed, transported or disposed of improperly." (WHO, 1986, p. 03)

Therefore, hazardous waste can be defined as any solid, liquid, or gaseous materials or byproducts containing toxic or hazardous substances, which if improperly disposed of, may cause significant harm to the environment and public health.

### **1.2- The concept of the right to access environmental information**

The right to environmental information refers to the legal empowerment of individuals to access and obtain information related to the environment in any form, making it one of the procedural environmental rights that grants individuals the right to demand authorities that hold information related to the environment to disclose and provide it. (Bouat, 2017, p. 287)

According to the 1998 Aarhus Convention, environmental information includes written, visual, audible or electronic form, in any other material form, such as: (UN, Convention on access to information, 1998)

- ❖ The state of environmental elements, such as air, atmosphere, water, soil, land, natural landscapes, biodiversity, and its components.
- ❖ Environmental factors, such as materials, energy, noise, radiation, administrative activities or measures, environmental agreements, policies, legislation, plans, and environmental programs that affect or may affect environmental elements.
- ❖ The state of human health and safety, living conditions, cultural sites, and facilities, in terms of their severity or potential impact on the state of environmental elements.

The text affirms the right to access environmental information in many international treaties and agreements, such as (UN, Convention on access to information, 1998):

- ❖ The Stockholm Conference of 1972, which was dedicated by principle 20, stating that "scientific information and experiences should be supported to facilitate the solution of environmental problems... Environmental technologies should be made available to developing countries to encourage their widespread dissemination without placing undue economic burdens on developing countries." (Declaration on The Human Environment, 1972)

- ❖ The Rio Declaration of 1992, which was dedicated by principle 10, stating that "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." (Report of the United Nations Conference on Environment and Development, 1993)

- ❖ The Aarhus Convention of 1998, which specifies in article 4 that "each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public..." and article 5 confirms this by stating that "each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible to the public."

### **1.3- International attention to the management of hazardous materials and waste**

In 1995, the Committee on Human Rights established jurisdiction to consider the effects of exposure to hazardous materials and toxic waste on human rights. This includes the effects of practices such as the trafficking of toxic and hazardous products, and their illegal release during conflicts. Shipbreaking, medical waste, and extractive industries are also included within the scope of areas to be investigated. In 2011, the United Nations Human Rights Council affirmed that hazardous materials and waste can pose a serious threat to the full enjoyment of human rights, and expanded the scope of jurisdiction to cover the entire life cycle of hazardous products, from their manufacture to their final disposal. This is known

as the "cradle to grave" approach. The rapid increase in the production of chemicals indicates the likelihood of exacerbating this threat, particularly for the human rights of the most vulnerable communities. (website of the United Nations, 2022)

The last renewal of the mandate took place in 2020 under decision A/HRC/RES/41/15. According to this decision, the Human Rights Council requests that the Special Rapporteur continue to provide detailed and up-to-date information on the harmful effects that may result from the management and disposal of hazardous materials and waste in relation to the full enjoyment of human rights. This may include information on:

- ❖ The harmful effects on vulnerable individuals and groups, including indigenous peoples;
- ❖ The interaction between science and policies related to the risks associated with the life cycle of hazardous materials and waste, including risks that threaten the right to freedom of expression, which includes the freedom to seek, receive, and impart information, and the right to enjoy the benefits of scientific progress;
- ❖ Developments, gaps, and shortcomings in the effectiveness of international regulatory mechanisms related to hazardous materials and waste and their impact on the enjoyment of human rights, including those related to emerging issues in the management of chemical substances and waste disposal;
- ❖ Human rights issues related to all business institutions, both national and international, in relation to the management and environmentally sound disposal of hazardous materials and waste.

## **2. The standard content of the right to access information about hazardous waste**

International human rights standards can be used alongside international chemical standards to clarify the normative content of the right to information about hazardous substances and wastes. The right to information about hazardous substances and wastes requires the provision, accessibility, and dissemination of relevant information in a practical and nondiscriminatory manner. It is also important to ensure that individuals who may be exposed to hazardous substances and wastes are aware of their right to information and understand its significance. This will be further detailed as follows (Report of the Special Rapporteur, 2015):

### **2.1- Availability of information**


This information becomes available when its current data is produced and collected in a suitable manner that facilitates the assessment of the potential harmful effects of hazardous materials and waste on human rights. The information may include necessary details about hazardous materials and waste, such as inherent hazards and characteristics, actual and potential uses and release processes, as well as protection measures and systems. It also includes details about the quantities of these materials present in people's bodies and environments, comparing them to the risks and the extent of the spread of the serious effects associated with them, such as cancer, disruption of brain functions, heart disease, and other non-communicable diseases. (Karmoush, 2018, p. 147)

### **2.2- Facilitating access to information**

Access to information regarding hazardous materials and wastes becomes easier when each individual has the possibility to request, obtain, receive, and retain available information, unless there is a strong and justifiable reason related to public interest for not disclosing it. Access to information should be facilitated both physically and economically, and the public should be informed about its availability and how to use it. Information is physically available when it is timely provided in response to public requests or effectively published by its owner or provider. Required information should be provided and made available to those who request it in a timely manner. Furthermore, information should be effectively available at the time of purchase and use of the product containing hazardous materials. To make information economically accessible, the cost of obtaining it should be kept at a minimum and limited to the cost of reproduction if possible. (Kessi, 2019, p. 109)

### **2.3- The practical nature of information**

Information should be appropriate for the intended purpose. Providing information or making it easily accessible does not necessarily mean that it is practical. Meeting the standards of information availability and accessibility requires that the information be practical. Information is not practical unless it leads to preventing harm, empowering democratic decision-making, ensuring accountability, access to justice, and effective redress.



In order for information to be practical, it should be easily accessible to the recipient in a scientific manner and provide the desired knowledge with reasonable effort. Some professionals always need to obtain more technical information about hazardous materials and wastes than consumers and potentially affected community members. For example, technical information suitable for regulators and researchers may not be user-friendly for consumers when purchasing products. The technical aspects must be translated into practical language that enables individuals and groups to make informed choices. At that point, the basic data used to draw conclusions should be available to verify the accuracy of those conclusions.

#### **2.4- Non-discrimination and equality**

Non-discrimination is one of the pillars of human rights law, and regarding information about hazardous waste, ensuring consistency between the risks posed by hazardous materials and waste and this principle is crucial. Detailed and specialized information must be available to understand the disproportionate effects and consequences of hazardous materials and waste, which affect individuals and specific population groups of different genders, ages, income levels, ethnic backgrounds, as well as minorities and indigenous peoples, and ensure prevention of those effects and consequences.

Special care must be taken when exercising the right to access information, so that no one is excluded through direct or indirect discrimination, especially by imposing unreasonable eligibility conditions or ignoring special circumstances.

#### **3. The limits of the right to access information about hazardous materials and waste**

The principle of disclosure of the maximum amount of information involves assuming that all information held by public entities is subject to disclosure, according to a limited set of restrictions imposed for the public interest. Therefore, the right to access information is subject to some legitimate restrictions imposed for the public interest, according to Article 19(3) of the International Covenant on Civil and Political Rights. Any limitation must be prescribed by law, must aim to protect the rights or reputation of others, or protect national security, public order, health or morals, and must be necessary and not go beyond what is required to achieve the intended purpose. (Report of the Special Rapporteur, 2015)

##### **3.1 Mandatory disclosure of environmental information related to serious violations of human rights and international humanitarian law due to hazardous materials and wastes**

It is generally recognized that there is a consensus on the crucial importance of the public interest in disclosing information related to serious violations of human rights and humanitarian law. Article 6 of the Declaration on the right of individuals and groups to promote and protect universally recognized human rights and fundamental freedoms openly and responsibly states that every individual has the right to know information related to human rights violations. Countries have laws to invalidate claims of confidentiality in cases where the requested information concerns human rights violations, investigations into human rights violations, the protection of rights, or the prevention of violations.

Types of information that should never be confidential include information about widespread or systematic human rights violations, information about other human rights violations that hinder accountability or meaningful public participation, or information about effective remedies. It is widely known that poor management of hazardous materials and waste entails the possibility of widespread and systematic human rights violations. (Report of the Special Rapporteur, 2015)

Therefore, it is not permissible by law to demand confidentiality of certain types of information, and it is not permissible by law to claim confidentiality of information related to health and public safety regarding hazardous materials. There is a widespread recognition that information related to health and safety cannot be kept confidential, and states have a legally binding duty to achieve this goal. There are multiple aspects to interpreting information related to health and safety, and the Stockholm Convention on Persistent Organic Pollutants provides implicit and non-exclusive guidance on the nature of information related to health and safety, as necessary to implement the Convention. This includes information related to health and safety necessary for implementing the Chemical Identity Convention, physical properties, information on the material's ability to cross borders through wind and water, evidence of its harmful effects on human health, such as cancer and other non-communicable diseases... Additionally, the Convention makes it mandatory to disclose information on the use of substances eligible

for inclusion in the Convention lists, and the use of such substances becomes prohibited if the information is not disclosed. (Report of the Special Rapporteur, 2015)

Emissions of hazardous substances in the environment and improper waste disposal are public health information that should not be kept confidential except in extremely rare circumstances. For example, Spain does not allow the claim of confidentiality of reported emissions in its records related to the release and transfer of pollutants. This information is necessary to assess the likelihood of human exposure to hazardous materials and waste, which is closely linked to the protection of human rights.

### **3.2 The extent to which trade secrets can be considered an exception to the right to access information in the context of hazardous materials**

Frequent challenges to accessing information regarding hazardous materials create exceptions for trade secrets. Refusing to disclose information on the grounds that it harms the value of intellectual property and business confidentiality or industrial information is unjustified if it creates a barrier to maintaining public health or the public interest in general. One government's self-assessment states that "the current method of handling requests for confidential industrial information tends to protect industrial information rather than making it available to the public," contrary to the purpose of the law. Legally, it is not permissible to protect the competitive advantages of commercial enterprises that threaten public health and other public interests. The World Trade Organization agreement on trade-related aspects of intellectual property rights states that objections to disclosing some types of information related to public health and safety "are not permitted unless public health requires protection". (Report of the Special Rapporteur, 2015)

The agreement of the Economic Commission for Europe on the access to information about the environment, public participation in decision-making regarding the environment, and access to justice in environmental matters allows for the protection of intellectual property and commercial information. However, this protection does not apply when the information sought relates to environmental emissions, and when the public interest in such information overrides claims of secrecy under the agreement.

In 2013 (The judgment of the General Court , p. 2013), the General Court of the European Union ruled that if a request for access to a document concerns information related to environmental emissions, the relevant institution must disclose the document, even if such disclosure undermines the protection of a specific natural or legal person's commercial interests, including their intellectual property.

The court indicates that "the public interest prevails in the disclosure of information when it concerns environmental emissions." As such, the court invalidated the European Commission's refusal to grant access to information about the widespread use of the pesticide glyphosate, which the International Agency for Research on Cancer, a subsidiary of the World Health Organization, classified in 2015 as a possible human carcinogen.

## **4. Requirements for implementing the right to access information on hazardous materials and waste**

Implementing the right to access information on hazardous materials and waste requires that states take all necessary measures to ensure its implementation, with participation in international cooperation to facilitate access to information and identify those who may be disproportionately affected and inform them. In addition, information should be effectively disseminated, identifying harmful effects and assessing them. This will be detailed as follows (See report CCPR/C/GC/34 , 2011):

### **4.1 States must take all necessary measures to ensure the right to access information**

States bear primary responsibility for respecting, protecting, and fulfilling human rights, and are obliged to take all necessary measures to ensure the right to access information regarding the harmful effects of hazardous materials and waste. States must ensure the availability of relevant information and facilitate its accessibility and provision in a practical manner to every individual. This commitment does not only require states to refrain from interfering with the distribution and free flow of information, but also obligates them to provide or disclose information to the public whether requested or not.

The right to access information on hazardous materials and waste is inherent in various rights, including those related to the harmful effects of hazardous materials and waste, and those that specifically require states to facilitate access to information. For example, within the framework of the right to the highest attainable standard of health, given that this right is comprehensive and extends to the basic components



of health such as access to culture and health-related information, access to information is a fundamental feature of the right itself and of any effective healthcare system. After twenty years since the formulation of Principle 10 of the Rio Declaration on Environment and Development, the relevant bodies issued, at the United Nations Conference on Sustainable Development held in 2012, several calls to strengthen transparency, access to information, and public participation.

#### **4.2 Effective dissemination of information**

It is the duty of states to effectively disseminate information to individuals who may be affected by the production, storage, use, release, and disposal of hazardous materials and waste. This includes the obligation to transfer information effectively and upon request, as well as provide practical information.

#### **4.3 Identification of those disproportionately affected and informing them**

To protect individuals most at risk, states must provide detailed information on the risks of harm that hazardous materials may pose to different population groups, such as children and pregnant women, and facilitate their access to that information. At the same time, information should be monitored and classified by gender and population group, such as workers exposed to hazardous materials in factories, low-income communities, indigenous peoples, minorities, and other groups most at risk of harmful effects. States should also ensure the effective flow of information to at-risk communities to enable them to understand these risks and be aware of options for preventing harm.

#### **4.4 Participation in international cooperation to facilitate the availability and accessibility of information**

It is the duty of states under various legal instruments to participate in international cooperation to protect human rights, including efforts to protect human rights from the effects of the misuse of hazardous substances and waste. As the pace of international trade in hazardous materials, whether they are chemicals or basic components of other goods and waste, accelerates due to globalization, it is also added that many of the challenges facing countries in protecting those within their territories from hazardous materials are due to actions or inactions abroad, such as exporting products containing hazardous materials, or releasing hazardous materials capable of traveling long distances through winds, water, and food sources. (The report on the human rights impact of the management and disposal of hazardous substances and waste in an environmentally sound manner is document A/HRC/30/40)

#### **4.5 Identification and evaluation of harmful effects.**

Businesses must identify and evaluate any actual or potential harmful effects on human rights that may be involved in their activities or as a result of their business relationships when taking due diligence measures.

The main challenges facing all businesses include "limited understanding of [hazardous material] health effects," (report number 5/2013, 2013, p. 25) which is a critical and important element for all businesses regarding ensuring due care. For materials whose hazards are understood, ensuring their safe use is another major challenge for commercial entities.

Ensuring the integrity of information about hazardous materials still poses a recurring challenge when identifying and evaluating harmful effects. In some cases, scientists may not disclose their financial relationships with chemical manufacturers and other possible forms of conflicts of interest when issuing statements as "independent" scientific experts. In other cases, the integrity of pollution sampling and information monitoring has been a source of concern.

### **CONCLUSION:**

Through the study of the right to access information in the field of hazardous materials and waste management, the following results and recommendations were reached:

#### **Results:**

- ❖ Access to information is an independent and inherent right and is one of the foundations of free and democratic societies.
- ❖ Information is a crucial element for enjoying human rights and is essential for wise governance. It is necessary to obtain information about hazardous materials to prevent risks and mitigate damage, conduct research aimed at finding safer alternatives, provide treatment, and ensure transparency, participation, and compliance in decision-making and policies.

❖ In some countries, businesses are not required to provide any information to determine the safety of chemicals before producing them and using them in products sold to consumers. Businesses exploit gaps in laws aimed at preventing the use of hazardous materials in food by introducing new chemical additives to food without government supervision or public disclosure of information about the nature or safety of these additives.

❖ Overblown and unjustified claims of confidentiality have led to the classification of information about hazardous material properties in the secret category, far exceeding the need to protect trade secrets.

❖ With regard to hazardous waste, there is no clear and comprehensive understanding of the volume of hazardous waste produced, its sources, its designated destination, its hazardous material content, or the approach to dealing with it. It is regrettable that illegal dumping of toxic waste is only discovered after people have been harmed by it.

#### **Recommendations:**

❖ It is necessary to obtain the necessary information to evaluate the effects of hazardous materials on the most vulnerable groups.

❖ The necessary information must be disclosed to ensure the legitimacy of claims despite the confidentiality of trade information, particularly in cases where the material is chemical and hazardous. Environmental information should not be considered confidential.

❖ States must ensure that individuals and communities, particularly those disproportionately affected, have access to information on the presence of hazardous substances in their environments, bodies, and food, as well as in consumer products, including the harmful effects that may result from exposure to these substances. Biological monitoring data, as well as mortality records, particularly those related to the most vulnerable populations to adverse effects, should be improved.

❖ States must establish a centralized system that is accessible at a reasonable cost and includes all relevant information on hazardous substances and waste and their impact on public health and the environment, including concerns raised by national and non-national authorities and businesses.

#### **LIST OF REFERENCES:**

##### **1- International Agreements:**

1. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

##### **2- Decisions:**

3. World Health Organization: Approaches To Hazardous Wastes Management, paper presented at WHO Regional Workshop on Chemical Safety, Kuala Lumpur, 24-28 November 1986.

4. Decision number A/HRC/RES/41/15, which includes the appointment of a special rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, 2020, available at the following link: <http://undocs.org/A/HRC/RES/45/17>

##### **5. 3- Official reports:**

6. Report of the Special Rapporteur A/HRC/30/40, on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, July 08, 2015.

7. Report CCPR/C/GC/34 containing General Comment No. 34 by the Committee on Human Rights on freedom of opinion and expression, paragraph 19, Geneva, July 11-29, 2011.

8. Report of the United Nations Conference on Environment and Development, A/CONF.151/26/Rev.1, Rio de Janeiro, June 3-14, 1992, Volume I "Resolutions adopted by the Conference," United Nations, New York, 1993.

9. Report No. 5/2013 titled "Environment and human health" issued by the Joint Research Centre of the European Commission and the European Environment Agency, 2013.

10. Declaration on the Human Environment: Adopted by the UN Conference on the Human Environment, see U.N. General Assembly Resolutions no 2994/XXVII, 2995/UVII and 2996/XXII, Stockholm, June 16, 1972.

##### **11. 4- Judicial rulings:**

12. Ruling of the General Court (Second Chamber) issued on 8 October 2013, in the case of Stichting Greenpeace Nederland and Pesticide Action Network Europe PAN Europe v European Commission, case number T-545/11.

**13. 5- Articles:**

14. Ahmed Khidhl, Zahira Kessi: "The trend towards green information technology", Al Ijtihad Journal for Legal and Economic Studies, Tamanghasset University, Volume 09, Issue 02, Algeria, 2019.

15. Fatima Zahra Kermouch, "Freedom of access to environmental information in international and Arab legislations", Msakia Journal, Higher Military School of Information and Communication, Volume 01, Issue 01, Algeria, 2018.

16. Mohamed Bouat, "Environmental rights between substantive and procedural content", Academy Journal for Social and Human Studies, Hassiba Ben Bouali University of Chlef, Volume 09, Issue 02, Algeria, June 2017.

17. Mohamed Bouat, Rashid Ben Friha: "Hazardous waste and its impact on the enjoyment of human rights", Human Rights and Public Freedoms Journal, Ibn Badis University of Mostaganem, Volume 03, Issue 02, 2018.

**18. 6- Websites:**

19. The official website of the United Nations, Office of the High Commissioner for Human Rights, Special Rapporteur on Toxics and Human Rights, available at the following link: <https://www.ohchr.org/ar/special-procedures/sr-toxics-and-human-rights/about-mandate> , accessed on 07-01-2025.