**Submission of the United Kingdom of Great Britain and Northern Ireland in response to the request for information from the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, received 18 December 2018**

The Government of the United Kingdom welcomes the opportunity to provide comments on the present Draft Principles on the rights of workers and protection from exposure to toxic and otherwise hazardous substances, presented by the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

The UK is firmly committed to protecting workers’ rights and we have a long-standing record of ensuring that workers’ rights are protected. This includes employment, equality rights and protections for health and safety at work. However, the UK remains of the view that the UN human rights system is not the appropriate vehicle for considering the practical management of hazardous substances. Equally, we do not think that formulating principles is the correct approach. There is no mention of establishing a set of principles within the resolution establishing the mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, nor in any of the subsequent resolutions of the Human Rights Council on this subject. As such, there has been no agreement on, or indeed discussion of, this approach. The UK continues to believe that compiling best practices, to inform States about how they might better protect human rights when managing and disposing of hazardous substances and wastes, is the most appropriate way to fulfil this mandate.

The UK has concerns with many of these draft principles, including the language used, the consistency of the text, and their content. To highlight particular areas:

1. It is not clear what “toxic” means in the context of this document. As one example, the inclusion of the reference to the International Commission on Radiological Protection (ICRP) within these principles means that it could be presumed that the topic at hand includes radiological sources, which do not fit a simple definition of “toxic”. The document uses similar and interchangeable terms inconsistently. Sometimes “toxic substances” is used, sometimes “toxic and hazardous substances” and sometimes “hazardous substances”. Different terms (such as hazardous work) are also used. This leads to confusion as it makes the scope of the principles, and the document as a whole, unclear.
2. The term ‘hazardous substances’ is also used throughout the document without explanation of its scope. Is the document just referring to health hazards other than toxic, or does it include other hazards, for example physical ones such as explosive, flammable, etc.?
3. The reference to the principles of the ICRP in paragraph 5, gives the impression that workers should only be exposed in “exigent circumstances or other public interest necessity”. This assumes any exposure to a substance is an ‘all or nothing’ proposition, with any exposure only permitted in, for example, an emergency. This is not a realistic representation of how substances hazardous to health are encountered in the world of work. We are all exposed, to some measurable degree, to chemicals for which a definitive “safe” level is not identifiable, such as in the air, in our food, in drinking water, etc.
4. The principles are not clear in their use of ‘hazard’ and ‘risk’: risks are controlled (and reduced), not hazards. It is not possible to completely eliminate hazards in many workplaces where substances hazardous to health are routinely used. However, the risks of exposure to such hazards can be managed.
5. The document asserts, in a number of places, that exposing workers to hazardous substances is a violation of a worker’s human rights. However, only a State can violate human rights. Failure by a State to implement a system that adequately protects workers can be a violation, however the draft principles do not make this clear.
6. In paragraph 3, the use of the term ‘all possible measures’ is problematic. There is no definition given as to what ‘all possible measures’ would amount to in order to give States or enterprises a benchmark to meet. Furthermore, it appears to create an ‘absolute duty’. If a State must take ‘all possible measures’, it is not clear where this duty stops and where the check and balance of practicability is.
7. Principle 4 suffers from problems of scope. Despite the title of this principle (Hazard elimination is paramount to preventing occupational exposures), three of the four paragraphs are actually about consent and the right of workers to withdraw labour.
8. We do not consider that failing to provide full information to workers is commonly understood as constituting modern slavery or forced labour. Modern slavery is a serious issue in its own right and we do not consider that the global fight against modern slavery is well served by conflating these different issues.
9. Principle 5, paragraph 16, is also problematic. The UK Government believes in the importance of the business and human rights agenda and that the promotion of business and respect for human rights go hand in hand. The UK is committed to fully implementing the UN Guiding Principles on Business and Human Rights. However, the UK does not believe that it is either practical or enforceable for business enterprises to have a duty “up and down their supply chains” or “through their products’ lifecycles”.
10. The UK strongly supports the right to freedom of opinion and expression. We are concerned by the implications within Principle 6, paragraph 17, regarding the infringement of this right. The UK is strongly opposed to any person or organisation *tampering* with data. However, there should always be room for reasonable disputation of some claims or experimental findings.
11. We are concerned by Principle 12. Hazardous substances are routinely used in workplaces across the world. In most cases they are used safely because the risks are known, understood and controlled. What is important here is that all substances should be used safely. The current wording of this principle does not reflect this, but instead implies that hazardous substances should not be worked with at all, which is unrealistic/disproportionate.
12. The UK considers the approach suggested in Principle 14, paragraph 39, to be misguided. We do not consider that it is practically possible to “prove no harm” – i.e. to prove a negative and prove no harm has arisen.
13. We do not consider that the approach suggested on jurisdiction in Principle 15 to be correct or workable. To the extent that we are considering a human right, a State would not be responsible for any violation (whether arising under a negative or positive obligation) with respect to activities outside its jurisdiction. It is for the State in which any exposure occurs to properly regulate within its territory in order to prevent abuses or violations. Successful and fair criminal prosecutions, outside the jurisdiction in which a harm occurred, would be very difficult in such cases.

In conclusion, the UK reiterates its strong commitment to protecting workers’ rights. However we are concerned both with the approach taken towards establishing principles on this matter, and with the contents of the proposed draft.