

nificant levels of recycling of paper, glass, plastics and metal; few companies practised waste avoidance; no annual statistics or databases were available; waste disposal facilities and transporters often lacked detailed information on the make-up of the wastes they handled; there was inadequate control over the transport of waste; and, there was a lack of sites for disposal of hazardous waste and a lack of adequate controls over existing sites.

The report then refers to several incidents in which environmental contamination was a main concern and which, in their effect, prompted the government to look at the issue of toxic wastes and products, and regulation of their handling and management more closely. Measures taken by the government are noted as having included: preparation of a White Paper on Environmental Management Policy, a draft framework policy on waste management; establishment of a process to develop new environmental legislation, the Consultative National Environmental Policy Process (CONNEPP), to which all stakeholders were given the opportunity to contribute; publication in May 1997 of a discussion paper "Towards a White Paper on integrated pollution control and waste management" (Department of Environmental Affairs and Tourism in collaboration with the Department of Water Affairs and Forestry), with a workshop later convened to elicit comments and suggestions from NGOs; and ratification of the Basel Convention in 1994.

The report cites information related to an attempt, in 1995, by a Finnish Company, Kikkola Chemicals OY, to export a consignment of cupric arsenite to a South African company, JAD Metal Concentrators (Pty.) Ltd. In response to an outcry from "green movements" the government established a commission of inquiry, in consultation with all the parties involved — including NGOs and with the process advertised in newspapers to ensure transparency. The Commission of Inquiry was empowered to call and cross-examine witnesses, and its terms of reference were to investigate: all legal, financial, and administrative matters relating to the approval of the importation of a consignment of material containing cupric arsenite and whether it complied with the requirements of the Basel Convention; all matters pertaining to the history, conclusion, and the terms and conditions of the contracts between the Department of Environmental Affairs and Tourism and the consultant, Daan Malan and Associates; all matters pertaining to decisions taken by, and within, the Department since 27 April 1994 to delegate — including delegations by way of contract — any of the Department's powers, duties or functions to any other person, consultant, company or legal person; and to report to the President, as soon as possible, the results of the inquiry. The report notes that by the end of January 1997, a 2,000-page report, reflecting all the contributions received, had been prepared and, by February 1997, the parties were prepared to argue their position in front of the magistrate. A final report reflecting discussions and recommendations was scheduled to be submitted to the President at a later date.

The report notes that a similar commission was appointed in March 1995 to inquire into the Thor Chemicals mercury-recycling operations at its plant, and cites information indicating that the company had exploited loopholes in legislation in order to import and stockpile more than 3,000 tons of toxic waste which it could not handle. The Commission established to investigate this matter was granted juridical powers, viz. it could call witnesses, who had the right to legal representation. NGOs were granted the right to represent the workers and provide legal assistance to those in need. The report notes that the government was not obliged to implement the Commission's recommendations but, if it accepted the report, it automatically committed itself to enforcing them.

The results of the Commission's first phase of work are noted as having included a decision by the Commission that the handling and transporting of the waste to a site for disposal was in itself a hazardous operation to which enormous costs were attached. The Commission also decided that the only viable option was to treat the mercury waste in an environmentally sound manner by recycling via incineration or roasting, decommission the plant upon completion of the recycling, request the company to bear the costs of the operations of the plant in the disposal of the waste, and assign all other costs incurred in the disposal of the waste, including costs in terms of expertise, to the government. The Commission also: stated that the tenacity of the non-governmental sector caused the problem to surface publicly more quickly than it might otherwise have done and expressed the opinion that the non-governmental sector, however vigilant, should not be seen as a substitute for government; recommended that pollution control legislation in force for different departments be integrated; noted that a wider awareness on the part of the public has caused many companies to keep their "backyards" in order; noted continued opposition by NGOs to any substandard disposal methods which could threaten human health and the environment; and noted that the proposed standards would be illegal in those countries in which most of the waste originates.

The SR referred to the recognition by the Department of Environmental Affairs that the accident involving Thor Chemicals had occurred because of the dilution of responsibilities between numerous departments involved. The SR noted that the Commission had identified contributing factors such as a substantial lack of manpower to enforce legislation fully, the fragmentation of competences and laws, the existence of loopholes in the legislation, and the fact that exemptions were granted with a lack of transparency during the previous regime. The SR referred to a decision by the Department of Mines and Energy to focus on neutralizing, or at least mitigating, environmental impacts from the mining sector, with more stringent regulations approved and implemented. The SR also noted a decision by the Department of Health to organize an international conference on health and environment in Africa in September 1997 with