



**High Level Expert Meeting on the New Future
of Human Rights and Environment:
Moving the Global Agenda Forward
Co-organized by UNEP and OHCHR**



Nairobi, 30 November-1 December 2009

BACKGROUND NOTE ON:

**Special Rapporteur on the adverse effects of the movement and dumping of toxic
and dangerous products and wastes on the enjoyment of human rights**

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Office of the United Nations High Commissioner for Human Rights



Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Background note

In 1995, the Commission on Human Rights – the main United Nations organ in charge of promoting and protecting human rights – noted that the illicit dumping of toxic and dangerous wastes and products has an adverse effect on the enjoyment of several human rights, and decided to appoint, for a period of three years, a Special Rapporteur with a mandate to examine the human rights aspects of this issue. Ms. Ouhachi-Vesely from Algeria was appointed as Special Rapporteur in 1995, and her mandate was renewed twice, in 1998 and 2001. Following the end of Ms. Ouhachi-Vesely's mandate in 2004, Mr. Okechukwu Ibeanu was appointed new Special Rapporteur in July 2004.

The mandate was reviewed during the 9th session of the Human Rights Council. Resolution 9/1 extended the mandate of the Special Rapporteur for a further period of three years, and strengthened it so as to cover all kinds of movement and dumping of toxic and dangerous products and wastes. On the basis of resolution 9/1, the Special Rapporteur has now the task to investigate the adverse effects that both transboundary and national movements and the dumping of hazardous products and wastes have on the enjoyment of human rights. Furthermore, the resolution requests the Rapporteur to study the potential adverse effects of all hazardous products and wastes, whether illicit or not.

Resolution 9/1 urges the Special Rapporteur “to continue to undertake, in consultation with the relevant United Nations bodies, organisations and the secretariats of relevant international conventions, a global, multidisciplinary and comprehensive study of existing problems and new trends of, and solutions to, the adverse effects of the trafficking and dumping of toxic and dangerous products and wastes on human rights, (...) with a view to making concrete recommendations and proposals on adequate measures to control, reduce and eradicate these phenomena” (para. 4).

It also invites the Special Rapporteur, in accordance with his mandate, to include in his report to the Council comprehensive information on:

- (a) The adverse effects on the full enjoyment of human rights, including in particular the right to life, the enjoyment of the highest attainable standard of physical and mental health resulting from the movement and dumping of toxic waste and dangerous products and wastes;
- (b) Human rights responsibilities;

- (c) The question of rehabilitation of and assistance to victims;
- (d) The scope of national legislation in relation to transboundary movement and dumping of toxic and dangerous products and wastes;
- (e) The human rights implications of waste-recycling programmes, the transfer of polluting industries, industrial activities and technologies from the developed to developing countries and their new trends, including e-waste and dismantling of ships
- (f) The question of ambiguities in international instruments that allow movement and dumping of toxic and dangerous products and wastes, and any gaps in the effectiveness of the international regulatory mechanisms. (para. 5)

Over the years, the current mandate holder and his predecessor have developed specific approaches and methodologies to carry out the mandate entrusted to the Special Rapporteur by the Commission (and then the Council).

Reporting obligations

As is the case for all experts appointed by the Human Rights Council, the Special Rapporteur reports annually to the Human Rights Council. Annual reports provide an in-depth analysis of selected thematic issues. In deciding which thematic issues to focus on, the Special Rapporteur considers factors such as the extent and gravity of the real or potential human rights violations, whether an international regulatory framework has been established to address a particular problem, and whether an analysis from the perspective of victims of human rights violations could add impetus to ongoing efforts towards multilateral regulation to address the particular issues. Recent annual reports focused on the following issues:

- (a) human rights impact of shipbreaking (2009);
- (b) the right to information and participation (2008);
- (c) the use of toxic and dangerous products in contemporary armed conflict (2007);
- (d) human rights impact of the chronic, low-level exposure to hazardous chemicals (2006).

Country visits

In addition to reporting to the Human Rights Council, the Special Rapporteur carries out, upon the invitation of the Government, visits to countries relevant for the mandate. These countries are identified on the basis of information gathered by the Rapporteur or received from third parties. Country visits enable the Special Rapporteur to examine, in a spirit of co-operation and dialogue, existing problems relating to the movement and dumping of toxic and dangerous products and wastes, with a view to making concrete recommendations and proposals on adequate measures to control, reduce and eradicate these phenomena. During these visits, the Special Rapporteur holds meetings with a wide range of governmental and non-governmental actors and visits places, such as mines, dumping sites or landfills

designed for the controlled storage of pesticides and other hazardous waste, which enable him to understand better problems associated with the dumping of toxic and dangerous products and wastes in the country concerned and their adverse effects on the local population. In recent years, the Special Rapporteur visited the following countries:

- (a) Kyrgyzstan (September 2009), to examine the adverse impact of uranium tailings and obsolete pesticides on the human rights of individuals and communities living close to toxic dump sites;
- (b) Côte d'Ivoire (August 2008) and the Netherlands (November 2008), to assess the human rights impact of the *Probo Koala* incident, in which the *Probo Koala*, a ship flying the Panamanian flag chartered by a Dutch transnational corporation, Trafigura, allegedly disposed of 500 tonnes of toxic wastes in Abidjan (Côte d'Ivoire);
- (c) Tanzania (January 2008), to study the adverse effects caused by small-scale and medium-scale gold and diamond mining activities on the human rights of local population;
- (d) Ukraine (January 2007), to examine reported cases of illicit transfer of toxic wastes and dangerous products to the country and examine the problems posed by existing stockpiles of domestically-produced toxic waste and obsolete pesticides;
- (e) Turkey (March 2004), to consider the adverse human rights impact of ship breaking activities carried out in Aliaga facilities and examine several cases of illicit transfers of end-of-life vessels containing large amounts of toxic and hazardous substances and materials to the country.

Individual complaints

The Special Rapporteur can receive and consider complaints from victims of human rights violations that come within the scope of his mandate, and intervene with Governments on their behalf. The intervention can relate to situations in which a human rights violation has already occurred, is ongoing, or has a likelihood of occurring. The process, in general, involves the sending of a letter to the concerned Government requesting information and comments on the allegation, and asking that preventive or investigatory action be taken. Information concerning the alleged violation and replies received from concerned Governments, if any, are included in a communication report that the Rapporteur submits to the Council on an annual basis along with the annual report.

Communications are not only addressed to States. Resolution 9/1 requires the Special Rapporteur to consider the human rights responsibilities of transnational corporations and other business enterprises that dump toxic and dangerous products and wastes (para. 5(b)), and in several occasions the Special Rapporteur entered in a direct dialogue with transnational corporations, for example mining companies, to request information about alleged human rights violations relating to their activities.

ANNEX

Human Rights Council resolution 9/1

**Mandate of the Special Rapporteur on the adverse effects of
the movement and dumping of toxic and dangerous products
and wastes on the enjoyment of human rights**

The Human Rights Council,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Vienna Declaration and Programme of Action, particularly on the question of the human rights of everyone to life, the enjoyment of the highest attainable standard of physical and mental health, food, adequate housing and work, access to information, access to safe drinking water and sanitation, public participation and the right to development,

Bearing in mind paragraph 6 of General Assembly resolution 60/251 of 15 March 2006,

Recalling all previous resolutions of the Commission on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, in particular resolutions 1995/81 of 8 March 1995, 2004/17 of 16 April 2004 and 2005/15 of 14 April 2005,

Affirming that transboundary and national movements and the dumping of toxic and dangerous products and wastes may constitute a serious threat to human rights, including the right to life, the enjoyment of the highest attainable standard of physical and mental health, food, adequate housing and work, access to information and to safe drinking water and sanitation, public participation and the right to development,

Reiterating that all human rights are universal, indivisible, interdependent and interrelated,

Reaffirming that the international community must treat all human rights in a fair and equal manner, on the same footing and with the same emphasis,

Recalling Council resolutions 5/1 on institution-building of the United Nations Human Rights Council and 5/2 on the code of conduct for special procedures mandate-holders of the Human Rights Council, of 18 June 2007, and stressing that the mandate-holder shall discharge his/her duties in accordance with those resolutions and the annexes thereto,

1. *Strongly condemns* the dumping of toxic and dangerous products and wastes that have a negative impact on human rights;

2. *Acknowledges with appreciation* the work undertaken by the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights;

3. *Decides* to extend the mandate of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights for a further period of three years;

4. *Urges* the Special Rapporteur to continue to undertake, in consultation with the relevant United Nations bodies, organizations and the secretariats of relevant international conventions, a global, multidisciplinary and comprehensive study of existing problems and new trends of, and solutions to, the adverse effects of the trafficking and dumping of toxic and dangerous products and wastes on human rights, in particular in developing countries, as well as in those sharing borders with developed countries, with a view to making concrete recommendations and proposals on adequate measures to control, reduce and eradicate these phenomena;

5. *Invites* the Special Rapporteur, in accordance with his mandate, to include in his report to the Council comprehensive information on:

(a) The adverse effects on the full enjoyment of human rights, including in particular the right to life, the enjoyment of the highest attainable standard of physical and mental health, resulting from the movement and dumping of toxic and dangerous products and wastes;

(b) Human rights responsibilities of transnational corporations and other business enterprises that dump toxic and dangerous products and wastes;

- (c) The question of rehabilitation of and assistance to victims;
- (d) The scope of national legislation in relation to transboundary movement and dumping of toxic and dangerous products and wastes;
- (e) The human rights implications of waste-recycling programmes, the transfer of polluting industries, industrial activities and technologies from developed to developing countries and their new trends, including e-waste and the dismantling of ships;
- (f) The question of ambiguities in international instruments that allow the movement and dumping of toxic and dangerous products and wastes, and any gaps in the effectiveness of the international regulatory mechanisms;

6. *Calls upon* countries to facilitate the work of the Special Rapporteur by providing information and inviting him to undertake country visits;

7. *Encourages* the Special Rapporteur, in accordance with his mandate and with the support and assistance of the Office of the United Nations High Commissioner for Human Rights, to continue to provide Governments with an appropriate opportunity to respond to allegations transmitted to him and reflected in his report, and to have their observations reflected in his report to the Council;

8. *Reiterates* its call to the Secretary-General to continue to make all necessary resources available to the Special Rapporteur so that he may carry out his mandate successfully and, in particular:

- (a) To provide him with adequate financial and human resources, including administrative support;
- (b) To provide him with the necessary specialized expertise to enable him to carry out his mandate fully;
- (c) To facilitate his consultations with specialized institutions and agencies, in particular with the United Nations Environment Programme and the World Health Organization, with a view to improving the provision by such

institutions and agencies of technical assistance to Governments that request it and appropriate assistance to victims;

9. *Stresses* the need to ensure adequate financial, technical and human resources to the Special Rapporteur for the effective fulfilment of his mandate;

10. *Decides* to continue consideration of the issue of the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights under the same agenda item in 2009, in accordance with its annual of programme of work.

22nd meeting
24 September 2008
[Adopted without a vote. See chap. III.]