



**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**

**PAPER ON:**

**The Adverse Effects of the Movement and Dumping of Toxic and Dangerous  
Products and Wastes on the Enjoyment of Human Rights**

**Presentation by Mr. Stefano Sensi,  
Human Rights Officer, Special Procedures Division,  
Office of the High Commissioner for Human Rights**

**OFFICE OF THE HIGH COMMISSIONER  
FOR HUMAN RIGHTS**



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***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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Distinguished participants, colleagues, ladies and gentlemen,

I am pleased to have been invited to participate in this expert meeting on human rights and the environment to offer you some remarks on the adverse effects that the unsound movement and disposal of toxic and dangerous products and wastes may have on the enjoyment of human rights.

As you all know, in the last three decades, an emerging body of norms, standards and principles of international environmental law have been developed to regulate the production, management, trade and disposal of toxic and dangerous products and wastes. This extensive international legal framework seeks to eliminate, or reduce to a minimum, the risks that these hazardous products and wastes pose to human health and the environment, and includes:

- the Basel Convention<sup>1</sup> and the Bamako Convention,<sup>2</sup> which establish an international regime for the control of the transboundary movement and sound disposal of hazardous and other wastes;
- the Rotterdam Convention,<sup>3</sup> which regulates the international trade in certain hazardous chemicals and pesticides; and
- the Stockholm Convention,<sup>4</sup> which seeks to protect human health and the environment from the harmful impacts of persistent organic pollutants.

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<sup>1</sup> The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereinafter, “Basel Convention”) is the first global instrument that seeks to protect human health and the environment against the threats posed by the international trade in hazardous and other wastes. The Convention, which entered into force in 1992, establishes rules aimed at regulating trade in waste, rather than prohibit it. It has 172 parties as of 23 November 2009. The text of the Convention is available at <http://www.basel.int/text/documents.html>

<sup>2</sup> The Convention on the Ban of Imports into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (“Bamako Convention”) is a regional agreement adopted in 1991 under the auspices of the Organisation of African Unity to address certain problems relating to the movement and disposal of hazardous waste that the Basel Convention did not cover. In particular, the Convention ban the importation of any hazardous waste, including those that are excluded from the Basel regime, into African States from non-parties to the Convention. It entered into force in 1998, and has been ratified by 23 countries as of 31 January 2009.

<sup>3</sup> The Rotterdam Convention on the Prior Informed Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (“Rotterdam Convention”) is a multilateral treaty that aims to provide an efficient method for exchanging information and control the international trade of certain hazardous industrial chemicals and pesticides that have been banned or severely restricted for health or environmental reasons by States parties. It entered into force in 2004, and has 130 parties as of 23 November 2009.

<sup>4</sup> The Stockholm Convention on Persistent Organic Pollutants is a global treaty that aims to protect human health and the environment by eliminating or restricting the production and use of persistent organic pollutants (POPs). POPs are chemicals that remain intact in the environment for long periods, become widely distributed geographically and accumulate in the fatty tissue of humans and wildlife. Exposure to POPs can lead serious health effects including certain cancers, birth defects, dysfunctional immune and reproductive systems, greater susceptibility to disease and even diminished intelligence. The Convention entered into force in 2004, and has 168 parties as of 23 November 2009.

While it is now widely accepted that hazardous chemicals, pesticides and toxic wastes may pose a serious threat to human health and the natural environment, their potentially adverse impact on the enjoyment of human rights and fundamental freedoms has not yet been fully recognised. This is partly due to the fact that despite the obvious relationship between the goals of environmental protection and the promotion of human rights, human rights law and international environmental law have until recently developed in isolation from one another. Environmental degradation and human rights abuses have been treated as unrelated issues, even in cases where the links between environmental degradation and violation of specific human rights were evident, and distinct mechanisms and procedures have been put in place to address these phenomena.

Ladies and gentlemen,

In 1995, the Commission on Human Rights (now Human Rights Council) adopted its first resolution specifically related to the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. The Commission noted with grave concern that the increasing rate of illicit dumping of toxic and dangerous products and wastes in developing countries continued to affect adversely the human rights to life and health, and decided to appoint a Special Rapporteur with a mandate to

- (a) investigate and examine the effect of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights;
- (b) investigate, monitor, examine and receive communications and gather information on the subject;
- (c) make recommendations and proposals on measures to control, reduce and eradicate illicit traffic and dumping; and
- (d) compile a list of the countries and transnational corporations engaged in such practices, in addition to a list of victims.<sup>5</sup>

Ms. Fatma-Zohra Ksentini (at present Ms. Ouhachi-Vesely) from Algeria was appointed as Special Rapporteur in 1995, and her mandate was renewed twice, in 1998 and 2001.<sup>6</sup> Following the end of Ms. Ouhachi-Vesely's tenure as Special Rapporteur, Mr. Okechukwu Ibeanu (Nigeria) was appointed new Special Rapporteur in July 2004.<sup>7</sup>

The Special Rapporteur is mandated by the Human Rights Council to undertake a comprehensive analysis of existing problems and new trends in the movement and dumping of toxic and dangerous products and wastes and their adverse effects on human rights, with a view to making concrete recommendations on adequate measures to control, reduce and eradicate these problems. A brief description of the specific approaches and methodologies developed by the current

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<sup>5</sup> Commission on Human Rights resolution 1995/81.

<sup>6</sup> Commission on Human Rights resolutions 1998/12 and 2001/35.

<sup>7</sup> Commission on Human Rights resolution 2004/17.

mandate holder and his predecessor to carry out the mandate entrusted to the Special Rapporteur by the Commission (and then the Council) is provided in the background note that has been distributed to all of you.

Ladies and gentlemen,

The added value of the mandate entrusted to the Special Rapporteur arises from its human rights focus, i.e. from the attention it devotes to the needs and concerns of those who may be adversely affected by the unsound management and disposal of hazardous products and wastes. By focusing on the human rights of the victims, the Special Rapporteur's mandate complements, rather than duplicating, the protection afforded by existing environmental treaties and mechanisms.

Another advantage arising from the mandate comes from its comprehensive nature. The resolution establishing the mandate of the Special Rapporteur, and the resolutions adopted thereafter, do not provide a definition of toxic or dangerous products or wastes, nor do they define what is meant by "transboundary movement" or an "illicit disposal" of hazardous products and wastes. The lack of definitions allowed the Special Rapporteur to develop her own definition of these terms. In this way, the Special Rapporteur managed to fill the gaps that hamper the effectiveness of the international regulatory mechanisms so as to ensure greater protection to the victims of the unsound management or disposal of hazardous products and wastes.

As regard to the definition of "hazardous products" and "toxic wastes", the Special Rapporteur developed a comprehensive definition based solely on the potential adverse effects that these products and wastes may have on the enjoyment of human rights. Accordingly, any product which contains hazardous substances and/or possesses hazardous qualities (e.g. radioactive, toxic, explosive or flammable) falls within the scope of the Special Rapporteur's mandate. This allowed the Special Rapporteur to overcome the legal difficulties commonly associated with the definition of "hazardous products" and "toxic wastes" under international environmental law.

Let us take the example of shipbreaking. It is uncertain whether in accordance to the Basel Convention, a ship containing asbestos, PCBs or other hazardous wastes can be classified as hazardous waste when destined for recycling or disposal. The comprehensive definition of hazardous products and wastes developed by the Special Rapporteur allows defeating these practical and legal uncertainties with regard to the application of the Basel Convention to end-of-life ships. Due to the presence of toxic and hazardous substances and materials aboard, end-of-life vessels fall within the scope of the Special Rapporteur's mandate, without the need to establish whether they represent a "product" that is being traded or a "waste" that is being disposed of.

Another example is provided by the legal difficulties associated with defining e-waste. Electronic equipments such as obsolete mobile phones or computers contain some serious contaminants such as lead, cadmium, beryllium and brominated flame retardants, which may cause serious health and pollution problems if disposed of in an unsafe manner. As in the case of shipbreaking, in accordance with the comprehensive definition of "hazardous products" and "toxic wastes" adopted by the mandate holder, the Special Rapporteur does not need to establish whether electronic equipments

represent a “product” or a “waste” in order to identify the applicable legal regime. Due to the potential adverse effects that such products may have on the right to life and health of individuals and communities that may be exposed to them, e-wastes fall automatically within the scope of the mandate.

The “transboundary movement” and the “illicit disposal” of hazardous products and wastes are narrowly defined in international environmental law. With regard to the former, the Special Rapporteur held that a movement from the territory of a State to the territory of another State was not necessary for an issue to fall within the scope of the mandate. An example of “transboundary movement” not involving an international trade in hazardous wastes is represented by the transfer of polluting industries, industrial activities and/or technologies which generate hazardous products and wastes to developing countries. Over the years, the Special Rapporteur considered several cases where transnational corporations had moved their plants to developing countries to continue the production of pesticides and pharmaceuticals that had been banned or severely restricted in industrialised countries for environmental or health reasons.

As to the “illicit” nature of activities involving hazardous products and wastes, the Special Rapporteur considered that the term “illicit” encompassed not only activities carried out in violation of national or international norms and standards on the sound management and disposal of toxic and dangerous products and wastes, but any movement and dumping of toxic and dangerous products and wastes that have a harmful or a potentially harmful impact on the enjoyment of human rights.

The mandate of the Special Rapporteur has recently been strengthened so as to cover all kinds of movement and dumping of toxic and dangerous products and wastes.<sup>8</sup> Consequently, 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 Rapporteur is now mandated to study the potential adverse effects of any dumping of hazardous products and wastes, whether illicit or not.

Ladies and gentlemen,

Before I conclude, let me give you a few selected examples of the way in which the movement and dumping of toxic and dangerous products and wastes infringe upon the enjoyment of human rights. Over the years, the Special Rapporteur has gained a considerable expertise on the adverse impact that these phenomena may have on the enjoyment of human rights – including the rights to life, health, safe and healthy working conditions, adequate food, safe drinking water, adequate housing, access to information, public participation, and other human rights enshrined in the Universal Declaration of Human Rights and international and regional human rights treaties.

a) Right to life

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<sup>8</sup> Human Rights Council resolution 9/1.

The right to life, enshrined in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights, requires States to take all appropriate measures to ensure the safe management and disposal of hazardous products and wastes, and to prevent, investigate, punish and redress the loss of life caused by these phenomena.

Over the years, the Special Rapporteur considered many cases of alleged violation of the right to life associated with acute poisoning or long-term exposure to toxic chemicals, pesticides and wastes. One example is provided by the “Probo Koala” incident, in which several people died or were hospitalised as a result of the alleged dumping of 500 tonnes of a mixture of fuel, caustic soda, and hydrogen sulphide in and around Abidjan (Côte d’Ivoire). In his report to the Council, the Special Rapporteur affirmed that while the existence of a causal link between the alleged violations of the rights to life and health and the waste offloaded and dumped from the *Probo Koala* had not yet been fully established, there seemed to be strong prima facie evidence that the reported deaths and adverse health consequences were related to the dumping of the waste from the *Probo Koala*.<sup>9</sup>

b) Right to the highest attainable standard of physical and mental health

The right to health is recognised in numerous international instruments, including article 25(1) of the Universal Declaration of Human Rights and article 12(1) of the International Covenant on Economic, Social and Cultural Rights.

Since the establishment of the mandate, the Special Rapporteur has documented several cases of violations of the right to health related to the movement or dumping of hazardous products and wastes. In his latest annual report, the Special Rapporteur noted that shipbreaking activities exposed workers to a wide range of workplace activities or conditions which may cause permanent or temporary disabilities and serious injuries, and that long-term exposure to hazardous substances and wastes could also lead to serious or irreversible work-related diseases, including lung diseases, several forms of cancer and asbestos-related illnesses.<sup>10</sup> The Rapporteur has also addressed a number of letters of allegations to States alleging violations of the right to health caused by the exposure of individuals and communities to hazardous and toxic products, such as pesticides, persistent organic pollutants (POPs) or heavy metals.

c) Right to safe and healthy working conditions

The right to safe and healthy working conditions is part of the broader right of everyone to the enjoyment of just and favourable conditions of work, enshrined inter alia in article 23 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Economic, Social and Cultural Rights. Its realisation presupposes the formulation and implementation of appropriate legislation and policies aimed to improve occupational safety and health and prevent work-related accidents and injury.

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<sup>9</sup> A/HRC/12/26/Add.2, paras. 29-38.

<sup>10</sup> A/HRC/12/26, paras. 21-22.

The Special Rapporteur has stated in several occasions that the effective realisation of this right presupposes that workers exposed to hazardous substances be provided with appropriate personal protective equipment (PPE) aimed at ensuring the safe handling of hazardous materials or preventing the inhalation of toxic substances. Workers should also receive appropriate information on the hazards or risks to health and safety connected with the tasks they perform, and receive trainings on how to minimise these risks.

#### d) Participatory rights

The right to information and participation are both rights in themselves and also essential to the exercise of other rights, such as the right to life and the right to the highest attainable standard to health, among others. In his annual report submitted to the 7<sup>th</sup> session of the Human Rights Council, the Special Rapporteur highlighted the importance of these rights in the in the context of the adverse effects of the movement and dumping of toxic and dangerous products on the enjoyment of human rights.<sup>11</sup>

Affected individuals and communities have the right to have access to appropriate information and knowledge on the hazardous products and wastes they may be exposed to, including their intrinsic properties, their potential uses, their possible adverse effects on human health and the environment, as well as the measures and precautions to be adopted to ensure their proper handling, management and disposal. Such information should be available, accessible, user friendly, adequate and appropriate to the needs of all stakeholders. Furthermore, all concerned stakeholders, and in particular those that are particularly vulnerable to risks from hazardous products and wastes, such as workers in the agricultural or industrial sector, have the right to participate in the design, implementation and monitoring of regulations, strategies and policies on the sound management and disposal of toxic and dangerous products and wastes that affect, or may affect, them.

Thank you.

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<sup>11</sup> A/HRC/7/21, paras. 31 ff.