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**Adverse effects of the illicit movement and dumping of toxic and dangerous
products and wastes on the enjoyment of human rights**

Report of the Special Rapporteur, Okechukwu Ibeanu

Summary

This report is submitted pursuant to Commission resolution 2004/17. It consists of an introduction and four chapters. It is supplemented by an addendum containing updates on cases reported previously by the Special Rapporteur.

The introduction provides an overview of the history of the mandate and refers to previous reports submitted to the Commission. The introduction also outlines the scope of the present report, lists the activities of the Special Rapporteur, provides an overview of individual communications received by the Special Rapporteur and lists the Governments and non-governmental organizations that have submitted observations and information.

Section I of the report outlines the scope of the mandate entrusted to the Special Rapporteur by the Commission and analyses the value-added of the mandate compared to other international instruments, including in the environmental field. The Special Rapporteur stresses that the value-added of the mandate arises from its human rights focus. The Special Rapporteur intends to adopt a thematic focus in his future reports, and outlines the elements to be covered in the analysis of the main thematic issues to be addressed in his reports to the Commission. The Special Rapporteur intends to rely heavily on information received directly from communities or individuals when identifying the thematic issues to be the focus of his reports, and also to follow up allegations of violations with Governments and others implicated in the alleged violations.

Section II describes relevant legal developments since the submission of the Special Rapporteur's report to the sixtieth session of the Commission. Section III contains summaries of general observations and information received by the Special Rapporteur from Governments and other sources. Section IV contains conclusions and recommendations. In particular, the Special Rapporteur encourages Governments:

- To continue to respond to his requests for comments on the allegations brought to his attention;
- To respond positively to requests for invitations to in situ visits;
- To consider ratifying the range of multilateral and regional environmental instruments relevant to his mandate and ensure their effective implementation.

The Special Rapporteur welcomes information from individuals, communities and non-governmental organizations about issues relevant to his mandate in general, and information about particular incidents or situations where illicit movements of dangerous products and wastes have had an adverse effect on human rights.

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Introduction

1. At its fifty-first session, the Commission on Human Rights, aware of the growing practice of dumping hazardous wastes and products in Africa and other developing countries by enterprises from industrialized countries, adopted its first resolution specifically concerning “the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights”. Commission resolution 1995/81 affirmed that the illicit traffic and the dumping of toxic and dangerous products and wastes constitute a serious threat to the human rights to life and health, and established the mandate of the Special Rapporteur to analyse the adverse effects on human rights of such phenomena. The Commission has since adopted a resolution each year on this issue (1996/14, 1997/9, 1998/12, 1999/23, 2000/72, 2001/35, 2002/27, 2003/20 and 2004/17). Commission resolution 2004/17 extended the mandate of the Special Rapporteur for an additional three years.

2. Ms. Fatma-Zohra Ksentini (now Ms. Ouhachi-Vesely) (Algeria) was appointed Special Rapporteur pursuant to resolution 1995/81, which was approved by Economic and Social Council decision 1995/288. During her tenure as Special Rapporteur, Ms. Ouhachi-Vesely submitted a preliminary report (E/CN.4/1996/17) and progress reports (E/CN.4/1997/19, E/CN.4/1998/10 and Add.1, E/CN.4/1999/46, E/CN.4/2000/50, E/CN.4/2001/55 and Add.1, E/CN.4/2002/61 and E/CN.4/2003/56). She submitted her final report to the Commission on Human Rights at its sixtieth session (E/CN.4/2004/46, and Add.1 and Corr.1). She conducted in situ visits to countries in Africa, Europe and North and South America (see reports of missions to South Africa, Kenya and Ethiopia (E/CN.4/1998/10/Add.2); to Paraguay, Brazil, Costa Rica and Mexico (see E/CN.4/1999/46/Add.1); to the Netherlands and Germany (E/CN.4/2000/50/Add.1); to the United States of America (E/CN.4/2003/56/Add.1); to Canada (E/CN.4/2003/56/Add.2); and to the United Kingdom of Great Britain and Northern Ireland (E/CN.4/2004/46/Add.1). Her last mission was to Turkey in March 2004, the report of which is transmitted to the Commission at its sixty-first session by the Secretariat (E/CN.4/2005/44).

3. Following the end of Ms. Ouhachi-Vesely’s tenure as Special Rapporteur, Okechukwu Ibeanu (Nigeria) was appointed the new Special Rapporteur by the Chairperson of the sixtieth session of the Commission in July 2004.

4. Mr. Ibeanu wishes to extend his sincere appreciation and regard to Ms. Ouhachi-Vesely for her important and pioneering work as Special Rapporteur on identifying and analysing the causes and adverse effects on human rights of the illicit movement and dumping of toxic and dangerous products and wastes, as well as for her recommendations on how to address the problem.

The scope of the present report

5. This preliminary report by the new mandate holder will focus on presenting his substantive and strategic approach to the mandate. As such, the report does not contain new independent analyses of issues related to his mandate.

Recent activities

6. From 20 to 24 September 2004, the newly appointed Special Rapporteur visited Geneva to be briefed by officials from the Office of the High Commissioner for Human Rights (OHCHR) about substantive and logistical issues relating to the execution of his mandate. The Special Rapporteur would like to thank OHCHR officials for the assistance and support extended to him during his stay in Geneva.

7. While in Geneva, the Special Rapporteur also had a very fruitful consultation with the Executive Secretary of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the Basel Convention) and members of her staff on how to ensure continued constructive collaboration and exchange of information between the two mechanisms. He furthermore consulted with the World Conservation Union (IUCN) and representatives of non-governmental organizations (NGOs), including the Center for International Environmental Law (CIEL), Earthjustice, the Environmental Health Fund, the Global Alliance for Improved Nutrition (GAIN), the International POPs Elimination Network (IPEN), the National Toxics Network Inc. and the Pesticide Action Network (PAN), on substantive issues, possibilities for collaboration, and strategic approaches on how to carry out the mandate in a way that would contribute most effectively to the promotion and protection of human rights.

8. Arising from his concern about the human rights impact of highly toxic electronic waste being exported to developing countries for recycling and disposal, the Special Rapporteur joined a petition by the Computer TakeBack Campaign (CTBC) to the United States Environmental Protection Agency calling for implementation of Environment Justice Executive Order 12898 in all the federal electronic waste recycling and disposal programmes and policies. Executive Order 12898 requires that each federal agency include environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately adverse human health or environmental effects of its programmes, policies and activities, including on populations in developing countries.

Individual communications

9. The Special Rapporteur is mandated by the Commission on Human Rights to give Governments an opportunity to respond to allegations of violations of human rights as a result of illicit movement and dumping of toxic and dangerous products and wastes submitted by individuals and communities. Several such allegations received by the Special Rapporteur throughout the existence of the mandate have related to activities by transnational corporations, a number of them from the extractive sector operating in areas with indigenous populations. Other allegations have referred to the impact of recycling operations in developing countries of toxic and dangerous products and wastes, including electronic wastes, and of the hazards faced by poor and/or vulnerable groups from unregulated exposure to pesticides. The Special Rapporteur wishes to emphasize that some of the allegations would appear to be extremely serious and highly credible.

10. The Special Rapporteur would like to encourage Governments to continue to respond to his requests for comments on the allegations brought to his attention in order to allow for constructive dialogue with a view to clarifying or addressing the issues raised in the allegations.

11. Updates on some allegations previously reflected in the Special Rapporteur's reports are included in addendum 1 to the present report.

Information submitted by Governments and NGOs

12. A note verbale was sent to the permanent missions to the United Nations Office at Geneva on 4 August 2004, requesting comments on the resolutions and decisions adopted by the Commission on Human Rights, including resolution 2004/17. The Governments of Namibia and the Philippines provided information pertaining to resolution 2004/17. The information is summarized in section III of the present report.

13. The Governments of the Democratic Republic of the Congo and of Italy transmitted information in relation to Commission resolution 2003/20 after the finalization of the Special Rapporteur's report to the sixtieth session of the Commission. Summaries of that information are therefore also included in the present report.

14. On 7 October 2004, a letter was sent to specialized agencies and NGOs requesting any information or observations deemed relevant for the implementation of Commission resolution 2004/17. Submissions received in response to the request for information are summarized in section III.

15. Throughout the year, the Special Rapporteur has received information from NGOs about legal and other developments in the areas of concern to the mandate. The NGOs providing information to the Special Rapporteur on a regular basis include the Basel Action Network, CIEL, Earthjustice, Greenpeace, Human Rights Advocates and OXFAM. The information received is used as background information for the preparation of the analytical sections of the Special Rapporteur's reports.

I. MANDATE AND METHODOLOGY OF THE SPECIAL RAPPORTEUR

A. Scope of the mandate

16. The Commission has mandated the Special Rapporteur to undertake a global, multidisciplinary and comprehensive study of existing problems, new trends of, and solutions to, illicit traffic in and dumping of toxic and dangerous products and wastes, in particular in developing countries, with a view to making concrete recommendations and proposals on adequate measures to control, reduce and eradicate these phenomena.

17. The Commission has invited the Special Rapporteur to include in his reports (a) comprehensive information on persons killed, maimed or otherwise injured in developing countries; (b) the question of impunity, including racially motivated discriminatory practices, and recommendations regarding measures to end impunity; (c) the question of rehabilitation and assistance to victims; (d) the scope of national legislation; and (e) comprehensive information on fraudulent waste-recycling programmes, the transfer of polluting industries, industrial activities and technologies from the developed to developing countries, ambiguities in international instruments, and any gaps in the effectiveness of the international regulatory mechanisms.

B. The value-added of the mandate

18. Several mechanisms and bodies are in place at the international and regional levels to regulate the transboundary movement of hazardous wastes and products. In particular, several environmental agreements - including the Basel Convention, the Rotterdam Convention on the Prior Informed Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC) and the Stockholm Convention on Persistent Organic Pollutants (POPs) - have among their overall objectives to reduce the negative effects that the movement of these dangerous products may have on human health and the natural environment. Existing multilateral environmental agreements (MEAs) most relevant to the mandate of the Special Rapporteur have been analysed in previous reports by the Special Rapporteur, most recently in E/CN.4/2004/46.

19. Although several of the existing MEAs aim to protect human health, the scope of their respective mandates - focusing largely on the technical and procedural aspects of movements of hazardous products and wastes - does not extend to considerations of the adverse effect on the full range of existing human rights of illicit movements. Furthermore, with the exception of the newly established Compliance Committee of the Aarhus Convention, the MEAs do not allow for consideration of individual communications concerning alleged non-compliance resulting in human rights violations.

20. Thus, the value-added of the Special Rapporteur's mandate arises from its human rights focus, i.e. from the attention devoted to the link between the movement and dumping of dangerous products and wastes and their potential or real negative effects on the enjoyment of human rights, and how a human rights approach can ensure effective redress for any harm occurring as a result of such movements. In other words, the unique character of the Special Rapporteur's mandate derives from the fact that it poses human beings and their rights at the core of his mission.

C. Thematic focus

21. Keeping human rights at the centre of his work, and conscious of the need to avoid duplicating the excellent work done by the Secretariats of the key international environmental instruments relevant to his mandate, the Special Rapporteur intends to provide the Commission with in-depth analyses of selected thematic issues. In deciding which thematic issues to focus on, the Special Rapporteur will consider factors such as the extent and gravity of the real or potential human rights violations, whether a particular theme falls entirely outside the scope of other international instruments and therefore will not be addressed by any other existing mechanism, or whether an analysis from the perspective of victims of human rights violations can add impetus to ongoing efforts towards multilateral regulation to address the particular issues.

22. Having identified one or possibly two thematic issues to be the focus of each annual report to the Commission, the analysis will consist of the following elements:

- Firstly, a description of the factual aspects of the issue. This part will be based on information, statistics and analyses received from relevant international organizations, NGOs, individual communications and other sources;

- Secondly, the analysis will focus on the actors responsible for the type of illicit movement that has been identified as the subject of the report (perpetrators, sponsors or collaborators, etc.) and on their responsibilities under existing international, regional and possibly national regulatory mechanisms;
- Thirdly, the analysis will focus on the direct (objective) and indirect (structural/potential) adverse effect on human rights of the illicit movement;
- Finally, the analysis will focus on the right of victims to obtain redress for the violation of their human rights under existing human rights instruments. In this section, the Special Rapporteur will assess the effectiveness of remedies existing under human rights law, examine cases where victims have been denied access to justice, and address the question of impunity with regard to human rights violations as a result of the illicit movements subject to the analysis.

23. The Special Rapporteur intends to send a note verbale to Governments, asking for information and comments relating to the thematic issue(s) chosen for the next annual report to the Commission. Similarly, a letter will be sent to international organizations and NGOs, asking for information and comments on the specific issue(s) chosen to be the focus of the report.

24. Country missions will also be undertaken for the purpose of obtaining information at the national level about the thematic issue(s), although other issues relevant to the Special Rapporteur's mandate will also be considered during an in situ visit. The Special Rapporteur strongly urges Governments to respond positively to requests for invitations for in situ visits, as such visits offer unique opportunities to assess directly the human rights impact of illicit movements of dangerous products and wastes and to provide advice to Governments on how to address the human rights dimension of such illicit movements.

D. The function of individual communications in the work of the Special Rapporteur

25. The Special Rapporteur attaches great importance to information he receives directly from communities or individuals allegedly affected by illicit movements of hazardous wastes and products, or from credible organizations acting on their behalf. It is in particular by following up on such allegations that the Special Rapporteur hopes to add value to the mandate, as such a mechanism does not fall within the scope of most existing MEAs. He intends to rely heavily on credible information received directly from communities or individuals when identifying the thematic issues to be the focus of his reports, and also to follow up allegations of violations with Governments and others implicated in the alleged violations.

26. The Special Rapporteur is in the process of developing a template for the types of information that he would like to be included in individual allegations in order to facilitate the process of establishing the credibility of the allegation and deciding on appropriate follow-up. The template and information about the Special Rapporteur's mandate will be distributed through a wide variety of existing intergovernmental and non-governmental networks.

E. Reporting on developments in international regulatory mechanisms

27. The previous mandate holder, Ms. Ouhachi-Vesely, devoted considerable attention to identifying and analysing relevant MEAs with a view to identifying any gaps in the effectiveness of the international regulatory mechanisms. The present mandate holder does not intend to replicate the work done by Ms. Ouhachi-Vesely in analysing the scope and operations of MEAs, and he fully endorses the findings and recommendations made by his predecessor in relation to this issue, particularly the recommendation that Governments should consider ratifying the Aarhus, Basel, Rotterdam and Stockholm Conventions, and the Ban amendment to the Basel Convention.

28. The Special Rapporteur does, however, intend to bring to the Commission's attention in his annual reports any relevant normative developments in relation to MEAs or jurisprudence from international, regional or national bodies concerning the phenomena of concern to his mandate (see below in section II). His analysis of the thematic issues to be the focus of his reports will also include analyses of normative or jurisprudential developments relevant to the issues.

II. RELEVANT LEGAL DEVELOPMENTS

Stockholm Convention

29. The 2001 Stockholm Convention entered into force in May 2004, marking the start of an international effort to rid the world of polychlorinated biphenyls (PCBs), dioxins and furans, and nine highly dangerous pesticides. Of all the pollutants released into the environment every year by human activity, POPs are amongst the most dangerous. For decades these highly toxic chemicals have killed and sickened people and animals by causing cancer and damaging the nervous, reproductive and immune systems. They have also caused uncounted birth defects.

30. The Special Rapporteur welcomes the entry into force of the Convention and urges Governments that are not yet parties to the Convention to ratify and implement its provisions.

The Basel Convention and dismantling of ships

31. The Seventh Conference of Parties of the Basel Convention, held in October 2004, adopted, by majority vote, a decision according to which ships can be considered a waste and a vessel at the same time under various international instruments. The decision also called on the parties to fulfil their obligations under the Basel Convention with regard to dismantling of ships where applicable, in particular their obligations concerning prior informed consent, minimization of transboundary movements of hazardous wastes and the principles of environmentally sound management.

The Inter-American Commission on Human Rights (IACHR)

32. In 2004, IACHR was presented with a number of petitions which argued that environmental pollution caused by foreign and domestic mining projects in a State party to the American Convention on Human Rights had violated human rights.

33. In one case of particular relevance to the Special Rapporteur's mandate, *San Mateo de Huanchor v. Peru* (case 12.471), IACHR, before deciding on the admissibility, requested the State party to take interim measures to ensure the life and personal integrity of the members of the San Mateo community. The case involved toxic mine tailings containing dangerous heavy metals including arsenic, lead, mercury and cadmium, which have allegedly poisoned some members of the indigenous community of San Mateo and contaminated the environment. In particular, IACHR requested the State party to initiate a public health assistance programme, with a view to providing medical assistance to those persons who may have been affected. IACHR also requested that the State party prepare, without delay, the environmental impact study required for the removal of the toxic waste and, upon completion of the study, initiate the removal of the tailings dump. Other measures requested included the preparation of a schedule of operations to facilitate monitoring of compliance. IACHR also requested the State party to take into account the information provided by the affected community.

34. In November 2004, IACHR decided that the petition in the *San Mateo* case was admissible and invited the parties to explore a "friendly settlement". The State party had argued that the petition was inadmissible because petitioners had not exhausted domestic remedies. However, IACHR noted that the petitioners had sought administrative and judicial remedies, but that such remedies had not been effective, had not afforded legal protection, and had been subjected to undue delay.

35. The Special Rapporteur welcomes such interventions by regional human rights commissions and finds that the IACHR decision sets an important precedent for the State's residual responsibility with respect to existing and abandoned mine tailings that affect surrounding communities.

III. SUMMARY OF GENERAL OBSERVATIONS AND INFORMATION RECEIVED FROM GOVERNMENTS AND OTHER SOURCES

Governments

36. The Government of Namibia reported having adopted policies aimed, inter alia, at prohibiting dumping or recycling of foreign and toxic waste on Namibian territory. Namibia has acceded to international legal instruments which prohibit dumping of waste materials, such as the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, and the Basel Convention.

37. The Government of the Philippines provided information about the Toxic Substances and Hazardous Wastes Act (Republic Act No. 6969). According to section 2 of the Act, it is the policy of the State to regulate, restrict, or prohibit the importation and disposal of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment. The State also prohibits the entry, even in transit, of hazardous wastes and their disposal in the Philippines for whatever purpose. Furthermore, Presidential Decree No. 979 on Marine Pollution declares it a national policy to prevent and control the pollution of the seas by dumping wastes and other matter that create hazards to human health.

38. The Government of the Democratic Republic of the Congo transmitted its comments and information in relation to resolution 2003/20 on 20 January 2004, after the finalization of the Special Rapporteur's report to the sixtieth session of the Commission. The comments are therefore included in the present report. The Democratic Republic of the Congo is a party to the Basel Convention and intends to apply strictly the provisions of the Convention in order to prevent illicit traffic in dangerous wastes. However, the Government does not yet know the full extent of illicit international traffic in toxic and dangerous products and wastes, and even less so the extent to which such illicit traffic occurs as a result of fraudulent recycling programmes.

39. The Government of Italy also transmitted comments and information too late for inclusion in the Special Rapporteur's report to the sixtieth session of the Commission. The Government provided information on new laws adopted in the field of treatment and disposal of wastes. These include Law Decree No. 314/2003, which establishes a National Deposit for Radioactive Wastes; Legislative Decree No. 182/2003, which aims to reduce the illicit dumping of cargo-related wastes at sea; and Legislative Decree No. 36 of 13 January 2003, which contains measures relating to waste management. Waste management should be inspired by the principles of accountability and cooperation among all the subjects involved in the production, distribution, utilization and consumption of products from which wastes derive.

Non-governmental organizations

40. The Basel Action Network transmitted a detailed submission to the Special Rapporteur in relation to four major issues: the status of ratifications of the Ban Amendment to the Basel Convention; the global electronic waste problem, including obsolete mobile phones; some developments in the regulation of the dismantling of obsolete ships containing toxic materials; and the prospect of an increase in the global trade in mercury following the European Union's decision to phase out chlor-alkali plants within its borders by 2007.

41. CIEL submitted information about a case pending before IACHR in which it is acting on behalf of communities affected by foreign and domestic mining projects.

42. Human Rights Advocates transmitted a detailed report focusing on the adverse effects on human rights of the illicit movement of pesticides and e-waste.

IV. CONCLUSIONS AND RECOMMENDATIONS

43. **This preliminary report by the new mandate holder has focused on presenting to the Commission his analysis of the mandate, the value-added of the mandate, its relationship to existing multilateral environmental agreements, in particular the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and on outlining the methodology he intends to adopt in the process of implementing his mandate.**

44. In order to assist him in implementing the mandate entrusted to him by the Commission, the Special Rapporteur makes the following recommendations to Governments:

- The Special Rapporteur encourages Governments to continue to respond to his requests for comments on the allegations brought to his attention;
- The Special Rapporteur urges Governments to respond positively to requests for invitations to in situ visits.

45. The Special Rapporteur welcomes the entry into force of the Convention on Persistent Organic Pollutants. He recommends that all Governments not already parties to the range of multilateral and regional environmental instruments relevant to his mandate consider ratifying them and that those already parties undertake measures to ensure their effective implementation.

46. The Special Rapporteur welcomes information from individuals, communities and non-governmental organizations about issues relevant to his mandate in general, and information about particular incidences or situations where illicit movements of dangerous products and wastes have had an adverse effect on human rights. The Special Rapporteur urges all affected individuals and communities to continue to submit information about such cases to him.
