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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of 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, Okechukwu Ibeanu***

Summary

This report summarizes the activities of 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 since his last report to the Human Rights Council submitted on 18 February 2008 (A/HRC/7/21).

The report also focuses particularly on the Special Rapporteur's participation at the ninth Conference of Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal from 23 to 27 June 2008 in Bali, Indonesia.

In view of the review that the Council will conduct at its ninth session of the mandate on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, the report also outlines some challenges that the Special Rapporteur has faced in the discharge of his mandate and provides some proposals to enhance the mandate for the consideration of the Human Rights Council.

* The present report was submitted late in order to reflect the most recent information.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 7	3
I. UPDATE ON THE ACTIVITIES OF THE SPECIAL RAPPORTEUR	8 - 16	4
A. Country missions	8 - 15	4
B. Statements and interventions	16	5
II. NINTH CONFERENCE OF PARTIES TO THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL	17 - 32	5
The contribution of the Special Rapporteur	25 - 32	6
III. REVIEW OF THE MANDATE	33 - 36	7
IV. CONCLUSIONS AND RECOMMENDATIONS	37 - 41	8

Introduction

1. The present report is submitted in accordance with General Assembly resolution 60/251 and Human Rights Council resolution 5/1.
2. The Commission on Human Rights adopted its first resolution on “the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights” in 1995. Resolution 1995/81 affirmed that the illicit traffic and the dumping of toxic and dangerous products and wastes constituted 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 adopted yearly resolutions on this issue, with resolution 2004/17 extending the mandate of the Special Rapporteur for an additional three years.
3. In his first report as mandate-holder (E/CN.4/2005/45), Mr. Okechukwu Ibeanu informed the Commission that he intended to adopt a thematic focus in his subsequent reports. The Special Rapporteur identified criteria such as the extent and gravity of the actual or potential human rights violations arising from a particular issue, and whether an analysis from the perspective of victims of human rights violations could add impetus to international efforts to address a particular issue, to be applied when choosing the themes on which to focus his reports.
4. In his last report to the Human Rights Council on 18 February 2008 (A/HRC/7/21), the Special Rapporteur chose to focus on the right to information and its relevance to his mandate. He noted that access to and communication of information about toxic and dangerous products and wastes and their effects on the environment are essential to the promotion and protection of other internationally guaranteed rights, such as the right to life, the right to health and the right to food amongst others.
5. This will be the second report that the Special Rapporteur presents to the Human Rights Council in 2008 due to the Council’s wish to have a number of special procedures submit their annual reports to its autumn session in the future. It thus reflects the activities undertaken by the mandate during an unusually brief period.
6. In view of the review of the mandate that the Council will conduct at its ninth session, the Special Rapporteur has provided some points for discussion, for the deliberation of the Council, on challenges he has faced in the discharge of his mandate. He also provides some suggestions on how to strengthen the mandate.
7. The Special Rapporteur also provides an overview of his participation in the ninth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention) in Bali, Indonesia.

I. UPDATE ON THE ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Country missions

1. United Republic of Tanzania

8. At the invitation of the Government, the Special Rapporteur carried out a mission to the United Republic of Tanzania from 21 to 30 January 2008. The main objective of the mission was to study the impact of small-scale and large-scale mining activities on the local population.

9. The Special Rapporteur is grateful to the Government of the United Republic of Tanzania for its invitation and the cooperation that was extended to him during his mission. He would like to highlight in particular the excellent cooperation and assistance that was extended to him by the Ministry of Foreign Affairs and International Cooperation and the Ministry of Energy and Minerals. He would like to call on the Government of the United Republic of Tanzania to be better prepared for forthcoming missions of special procedures mandate-holders.

10. The Special Rapporteur would also like to thank the United Nations country team, in particular the United Nations Resident Coordinator's Office (UNRCO) and the United Nations Industrial Development Organization (UNIDO) for their efficient and generous support in organizing the mission, particularly in providing the technical and local knowledge for the mission.

11. The Special Rapporteur has submitted to the Council a report on his mission to the United Republic of Tanzania (A/HRC/9/22/Add.2).

2. Côte d'Ivoire/Netherlands

12. At the time of writing, the Special Rapporteur is scheduled to visit Côte d'Ivoire from 4 to 8 August 2008. The Special Rapporteur is grateful to the Government of Côte d'Ivoire for extending an invitation to him. The Special Rapporteur will also be carrying out a visit to the Netherlands in the coming months. He warmly thanks the Government of the Netherlands for its cooperation.

13. The objective of the joint mission to Côte d'Ivoire and the Netherlands is to study the human rights impact of the Probo Koala case. On 19 August 2006, a ship called the Probo Koala offloaded up to 500 tons of toxic waste for disposal around the district of Abidjan, Côte d'Ivoire. The toxic waste, which was composed of an alkaline mix of water, gasoline, and caustic soda, allegedly gave off many poisonous chemicals, including hydrogen sulphide. According to official statistics from the Government of Côte d'Ivoire, a total of 16 persons died and up to 100,000 sought medical treatment due to exposure to these wastes. However, some sources give higher figures.

14. The Probo Koala was chartered to the Dutch company, Trafigura. Before the waste was dumped around the city of Abidjan, Trafigura attempted to have the waste processed in Amsterdam. Reports indicate that Amsterdam Port Services BV, the company that had contracted to take the waste, changed its mind after its staff reported a foul smell emanating from the waste.

15. The Special Rapporteur will report on his joint mission to Côte d'Ivoire and the Netherlands to the Human Rights Council in his annual report for 2009.

B. Statements and interventions

16. The Special Rapporteur conveyed a statement to the third Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) held from 8 to 14 June 2008 in Riga. The Special Rapporteur would like to thank the United Nations Economic Commission for Europe for the opportunity to contribute to the meeting. In his statement, the Special Rapporteur stressed that Governments should stop considering themselves as controllers of information, but as custodians for the public rather than for the State. He urged that information on environmental issues should be held in trust for the public interest, instead of the interest of those who control the State. The Special Rapporteur reiterated that public access to information and the right to be informed are imperative for the prevention of human rights violations and the protection of the environment. He called on more States to accede to the Aarhus Convention, which correctly recognizes the importance of the right to information and public participation in environmental matters.

II. NINTH CONFERENCE OF PARTIES TO THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

17. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the Basel Convention) was adopted in 1989 and entered into force on 5 May 1992. It was created to address concerns over the management, disposal and transboundary movement of the estimated 400 million tons of hazardous wastes that are produced worldwide each year. The guiding principles of the Convention are that transboundary movements of hazardous wastes should be reduced to a minimum; that hazardous wastes should be managed in an environmentally sound manner; that they should be treated and disposed of as close as possible to their source of generation; and minimized at the source. There are currently 170 parties to the Convention.¹

18. In June 2008, the Special Rapporteur was invited by the Secretariat of the Basel Convention to address the high-level segment during the ninth meeting of the Conference of Parties (COP9) to the Basel Convention. The theme of COP9 was "Waste Management for Human Health and Livelihood".

19. The aim of choosing this theme for the meeting was not to advocate or launch new activities under the Basel Convention, but to establish the close link of the Convention with the Millennium Development Goals (MDGs) by highlighting how environmentally sound waste management contributes in concrete ways to sustainable development.

¹ See <http://www.basel.int/ratif/convention.htm>.

20. Environmentally sound management and adherence to the Basel Convention are essential for the protection of human health and livelihood, as well as the achievement in particular of MDG 1 (eradicate extreme poverty), MDG 3 (promote gender equality and empower women), MDG 4 (reduce child mortality), MDG 5 (improve maternal health), MDG 6 (combat HIV/AIDS, malaria and other diseases), MDG 7 (ensure environmental sustainability) and MDG 8 (develop a global partnership for development).²

21. COP9 had a full programme of work. States parties adopted more than 30 decisions prepared by the Open-ended Working Group on, inter alia: cooperation and coordination; the budget; legal matters; review of the Basel Convention Regional and Coordinating Centres (BCRCs); the Partnership Programme; the Strategic Plan; and technical matters.

22. In her opening statement to COP9, Katharina Kummer Peiry, Executive Secretary of the Basel Convention, reminded delegates about the Convention's recent achievements. They include: tackling the problem of e-waste, which resulted in the Nairobi Declaration which was adopted during COP8; international efforts on ship dismantling; collaborating with the United Nations Environment Programme (UNEP) to strengthen the hazardous waste handling capacity of the Côte d'Ivoire; increasing stakeholder involvement; strengthening the capacities of developing countries through the Basel Convention Regional and Coordinating Centres (BCRCs); and formulating draft technical guidelines for used tyres and mercury wastes. Ms. Kummer Peiry also pointed out some of the challenges facing the Convention. She noted that the Convention is currently facing difficult times and hoped that COP9 would place the Basel Convention firmly on the international agenda and reaffirm its implementation as a prerequisite to sustainable development.³

23. Despite the efforts of many delegates in pushing the agenda forward, COP9 failed to adopt the Basel Ban Amendment. The Ban Amendment prohibits all forms of hazardous waste exports from the 29 wealthiest industrialized countries of the Organisation for Economic Co-operation and Development (OECD) to all non-OECD countries.

24. Positive outcomes of the meeting included the agreement to build greater synergies with the Stockholm Convention on Persistent Organic Pollutants (POPs) and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The meeting reached an agreement on the Strategic Framework as well as on the e-waste partnership workplan.

The contribution of the Special Rapporteur

25. In his statement to the high-level segment, the Special Rapporteur praised the organizers of COP9 on the choice of a theme focusing on human health and livelihood and setting it against the backdrop of the MDGs.

² <http://cop9.basel.int/cop9theme.pdf>.

³ See <http://www.iisd.ca/download/pdf/enb2027e.pdf>.

26. He explored the links between his mandate and the Basel Convention, in particular, the transboundary movement of hazardous products and wastes. He noted the paradox inherent in the use of chemicals in food production, and argued that while fertilizers, pesticides and herbicides have been useful in increasing food production and improving preservation, their long-term effects on health and the environment continue to generate concern.
27. The stockpile of obsolete pesticides is another issue to which the Special Rapporteur drew the attention of the meeting. He argued that the majority of such pesticides that have reached developing countries have done so within the context of providing development aid to the agricultural sector. However, they pose a great threat to life and health, and their improper disposal has led to the contamination of farmland and rivers. The Special Rapporteur argued that more often than not, developing countries do not have the technical and financial capacity to dispose of these chemicals safely.
28. The Special Rapporteur also suggested to the meeting that poverty encourages desperate measures and practices among developing countries, including the indiscriminate acceptance of hazardous products and wastes and unregulated use of hazardous chemicals in various activities, which in turn threatens agriculture and food production.
29. The Special Rapporteur appealed to COP9 not to forget the human rights dimension of the waste trade. He regretted the insufficient attention paid to the issue of waste management at the national, regional and international levels. He reiterated that the challenge remains to ensure that hazardous products and wastes are properly managed in order to promote and protect internationally guaranteed human rights.
30. Finally, the Special Rapporteur invited the Government of Nigeria to consider hosting the first Conference of Parties to the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa. While the Bamako Convention entered into force in 1996, there has been no meeting of the Parties so far.
31. The Special Rapporteur praised UNEP and the Basel Convention for following up on the Probo Koala incident in Côte d'Ivoire, for establishing a hazardous waste management plan for the district of Abidjan, and for launching a joint project to set up a more rigorous surveillance system on the movement of waste on the African continent.
32. He also acknowledged the efforts of the International Maritime Organization, the World Health Organization and the International Convention for the Prevention of Pollution from Ships (MARPOL) which have worked closely with the Government of Côte d'Ivoire by providing technical assistance and helping with the implementation of the Programme of Action.

III. REVIEW OF THE MANDATE

33. The Special Rapporteur would like to provide some comments on the challenges he has faced in the implementation of his mandate. He hopes that the Human Rights Council will consider them during the review of resolution 2005/15 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.

34. The Special Rapporteur remains discouraged by the lack of attention paid to the mandate. During consultations with Member States, the Special Rapporteur is often confronted with arguments that issues of toxic waste management are more appropriately discussed in environmental forums than at the Human Rights Council. He would like to remind Member States that the transboundary movement of hazardous toxic and dangerous products and wastes has far-reaching human rights implications, as demonstrated by the impact of the Probo Koala incident in the city of Abidjan which resulted in the death of 16 people, while up to 100,000 experienced a variety of health problems. He calls on the Human Rights Council to take this issue more seriously. He is discouraged by the limited number of States willing to engage in constructive dialogue with him on the mandate during the interactive sessions at the Human Rights Council.

35. Resolution 2005/15 set forth an ambitious agenda for the mandate. While the Special Rapporteur remains committed to effectively implementing his mandate, he is unable to carry out all the work requested by the Commission on Human Rights, now assumed by the Human Rights Council due to limited resources. He would like to appeal to States to provide more funds and support to the Office of the High Commissioner for Human Rights in order to enable it to support his work more effectively.

36. The Special Rapporteur notes that resolution 2005/15 calls for him to investigate cases and phenomena related to the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. In practice, however, a greater part of the information he receives concerns movements and transportation of toxic and dangerous products and wastes that appear to be officially legal, particularly in the form of trade and development assistance. Yet, some of such movements could be considered “illicit” based on human rights norms and they carry far-reaching adverse consequences for the enjoyment of most internationally guaranteed human rights. He would like to request the Council to consider enhancing the mandate by broadening it to include all types of movement and dumping of toxic and dangerous products and wastes.

IV. CONCLUSIONS AND RECOMMENDATIONS

37. The Special Rapporteur would like to warmly thank the Basel Convention secretariat for the invitation to address the ninth Conference of Parties to the Basel Convention. He appreciated the opportunity to hold consultations with delegates working in the environmental area and with other specialized agencies. He greatly appreciated the opportunity to remind delegates of the human rights dimension to waste issues and looks forward to future engagements with the Conference of Parties to the Basel Convention.

38. He would like to explore identical engagements with the Rotterdam and Stockholm Conventions in order to intensify coordination and international cooperation in providing a human rights perspective on the environmentally sound management of toxic chemicals and hazardous wastes. These would complement the Special Rapporteur’s earlier involvement in the Strategic Approach to International Chemicals Management (SAICM) process.

39. The Special Rapporteur would like to call upon countries that have not done so to consider ratifying the Basel, Rotterdam and the Stockholm Conventions.

40. **The Special Rapporteur calls upon States to provide more resources to the Office of the High Commissioner for Human Rights for the effective implementation of his mandate, particularly in order to enable him to continue to undertake consultations with a variety of stakeholders on the global, multidisciplinary and comprehensive study of existing problems of, and new trends in and solutions to, all forms of movements 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 their adverse effects on the enjoyment of human rights.**

41. **The Special Rapporteur would like to request the Council to consider enhancing the mandate to include all forms of movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.**
