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### **IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Written statement\* submitted by Human Rights Advocates, Inc. (HRA),  
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 February 2007]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Effects of and recommendations for the eradication of the illicit transfer and dumping of toxics**

### **Definition of toxic waste and resolutions by the Human Rights Commission.**

1. Toxic waste is defined as waste material that can cause death or injury to living creatures. This waste is produced from industry or commerce, but is also derived from residential use, agriculture, the military, medical facilities and radioactive sources. The term is often used interchangeably with “hazardous waste,” or discarded material that can pose a long-term risk to health or environment. Toxics can be released into air, water, or land.<sup>1</sup> Some examples of toxic waste include chemical waste, medical or pharmaceutical waste, and electronic waste (“e-waste”) which includes discarded computers and other electronic devices that contain highly toxic chemicals such as lead, mercury, arsenic, cadmium and beryllium.

2. The United Nations Commission on Human Rights determined that toxic waste affects the human right to health, both physical and mental, and the human rights to clean water, food, adequate housing and work, among others.<sup>2</sup> The Commission also reaffirmed that illicit traffic in and dumping of toxic wastes constitute “a serious threat to the right to life and the enjoyment of the highest attainable standard of physical and mental health.”<sup>3</sup> Thus, the Commission appointed a Special Rapporteur in 1995 to study the adverse effects of the illicit movement and dumping of toxic wastes on the enjoyment of human rights.

### **International Legal Instruments on the right to a healthy environment**

3. As toxic waste degrades the environment, it also impacts the human right to a healthy environment. The Stockholm Declaration, adopted 16 June 1972, is the first document in international environmental law to explicitly recognize the right to a healthy environment.<sup>4</sup> The United Nations General Assembly also stressed the need to ensure a healthy environment for the well-being of individuals.<sup>5</sup> Toxic waste also affects the human rights to food, housing and clean water.

### **The effects of the illicit transfer and dumping of toxic waste**

4. People in developing countries are in the greatest danger from the illicit transfer of toxics. These countries often lack the technology to safely dispose of the waste. Many of the countries also suffer from a lack of environmental laws or lax enforcement of the few laws that do exist. The governments of these countries are unlikely to address this problem as they must often turn a blind eye to environmental abuses to successfully compete for foreign investment. The complicity of some government officials is also sometimes bought by bribery.<sup>6</sup> The dumped toxics leach into the soil and water of the affected region

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<sup>1</sup> The Columbia Electronic Encyclopedia, Sixth Edition Copyright © 2003, Columbia University Press. Licensed from Columbia University Press. All rights reserved. [www.cc.columbia.edu/cu/cup/](http://www.cc.columbia.edu/cu/cup/)

<sup>2</sup> Commission on Human Rights resolution 2004/17, “Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights .”

<sup>3</sup> *Id.*

<sup>4</sup> United Nations Conference on the Human Environment (Stockholm, June 5-16, 1972), available at <http://cesr.org/healthyenvironment/instruments.>>

<sup>5</sup> General Assembly Resolution 45/94 (1990): Need to ensure a healthy environment for the well-being of individuals. The operative paragraph states: “...all individuals are entitled to live in an environment adequate for their health and well-being.”

<sup>6</sup> James Copnall, “Toxic Waste Adds to Ivory Coast’s woes” BBC News, Sept. 6., 2006 available at <http://news.bbc.co.uk/2/hi/africa/5323222.stm>

contaminating the people's water and food supply. Some of the toxics may also be radioactive or carcinogenic and result in skin ailments and respiratory problems such as asthma.

5. People in developed countries are also adversely affected by the illegal dumping of toxic waste. The toxic waste that is dumped in developing countries leaches its way into the soil and eventually into the agricultural products grown on it. And as many developed countries depend on developing nations for agricultural products, toxins eventually find their way to dining tables in developed nations.

6. Africa has been particularly affected by the dumping of toxic waste. One recent example involved the dumping of toxic waste in Ivory Coast by Trafigura, a Dutch Company in 2006. The waste was not incinerated as required for health reasons and the emissions from the waste resulted in the death of 10 people and the hospitalization of 69 others.<sup>7</sup> Although a lawsuit has been instituted against the corporation and both the Ivorian and Dutch authorities have started criminal proceedings against the corporation and its officers, it remains to be seen whether these actions will afford a suitable remedy to the victims.<sup>8</sup>

7. The dumping of electronic waste (e-waste) has been a particular problem in Asia (specifically China, India and Bangladesh) and is a growing problem in Africa (specifically Nigeria). Last year, Britain sent more than 200,000 tons of e-waste to China for recycling, along with 2 million tons of used paper or cardboard and large quantities of steel and redundant electrical goods.<sup>9</sup> At about £500 to send a 26-tonne container of waste to China, it is now cheaper to send plastic to the Far East than by road from London to Manchester.<sup>10</sup> The human and environmental cost to China seems to be dire however as the Environment Agency has already prosecuted several British companies for attempting to export "green" paper waste mixed with unrecycleable rubbish.<sup>11</sup> Although the European Union has issued the Waste Electrical and Electronic Equipment (WEEE) directive in order to regulate how companies and consumers are to recycle and dispose of e-waste, the effectiveness of this directive is questionable as the responsibility of regulating e-waste lies only on the producer, and individual member states may transpose the directive into law as they see fit. As of 2005, only Cyprus has adopted the entire directive; Malta and the United Kingdom have failed to incorporate any part of the directive.<sup>12</sup>

8. Reports show that as of April 2006, "500 loads of computer equipment are arriving in Lagos [in Nigeria] each month."<sup>13</sup> As much as 75 percent of the incoming equipment (mostly from governmental entities in the United States) is unusable and are simply

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<sup>7</sup> "Dechets Toxiques: Le 2e Navire a quitte Abidjan, [www.jeuneafrique.com/jeune\\_afrique/article\\_depeche](http://www.jeuneafrique.com/jeune_afrique/article_depeche)

<sup>8</sup> Peter Murphy "British Lawyers to Sue Trafigura over Toxic Waste," Jan. 9, 2007, Basel Action Network available at <[www.ban.org/ban\\_news/2007/070109\\_lawyer\\_of\\_victims.html](http://www.ban.org/ban_news/2007/070109_lawyer_of_victims.html)>

<sup>9</sup> Basel Action Network, "The Slow Boats to China filled with our refuse," by Cahal Milmo, The Independent, UK, Jan. 26, 2007. available at <[www.ban.org/ban\\_news/2007/070126\\_slow\\_boats.html](http://www.ban.org/ban_news/2007/070126_slow_boats.html)>

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> "Waste Electrical and Electronic Equipment Directive," European Commission, available at <[http://ec.europa.eu/environment/waste/weee\\_index.htm](http://ec.europa.eu/environment/waste/weee_index.htm)>

<sup>13</sup> Elizabeth Grossman, "Where computers go to die -- and kill" April 10, 2006. available at <[www.ban.org/ban\\_news/2006/060410\\_where\\_computers\\_go.html](http://www.ban.org/ban_news/2006/060410_where_computers_go.html)>

dumped. Photographs taken by BAN in Lagos show scrapped electronics lying in wetlands, along roadsides, being examined by curious children and burning in uncontained landfills.<sup>14</sup>

9. While the United States is an exporter of e-waste, it is commendable that California has passed legislation to stem illicit transfers. The law is effective because of its dual requirement 1) that exporters notify the state and demonstrate that all devices sent to foreign destinations will be handled in a manner that is at least in accordance with the environmental and public health laws of recycling and disposal of such devices in the state; and 2) that manufacturers must demonstrate that the country of destination does not prohibit the importation of hazardous electronic waste.<sup>15</sup>

10. The European Union should be extolled for its recent draft law that would punish corporations and individuals found responsible for environmental disasters with criminal charges resulting in five years in prison or a \$975,000 fine. Among the activities that would be covered are “releasing hazardous substances that pollute the air, water or soil [and] illegal shipments or treatment of waste.”<sup>16</sup> As the EU Justice Commissioner Franco Frattini noted, corporations are behind 73 percent of environmental crimes and thus it is important that offending corporations are punished with fines. The proposed law, however, faces stiff opposition from governments like Britain and Denmark who view it as infringing upon their sovereignty.<sup>17</sup>

#### **The cause of the illicit transfer and dumping of toxic waste**

11. Many countries lack an established regime for the disposal of toxic waste by their public and private entities. There is an economic incentive to engage in the illicit transfer of toxics because it is cheaper to dispose of such wastes in developing countries than to pay for their proper disposal. As many countries fail to hold their corporations responsible for these acts, there is no deterrence. The problem is further exacerbated by the lack of legal mechanisms for victims to redress their wrongs or affect change.

12. Many member states have yet to ratify the Multilateral Environmental agreements (MEAs) such as the Bamako Convention and the Basel Action Network (BAN) and even then these MEAs suffer severe limitations in terms of enforcement and incentive for compliance.

#### **HRA Recommends:**

13. That the Council continue the mandate of the Special Rapporteur on the illicit transfer and dumping of toxics. The Special Rapporteur should continue to focus his investigation on the effects of illicitly dumped toxic waste on human rights including analyzing the effectiveness of remedies for the victims such as those in the Ivory Coast.

14. The Council should urge all member states to ratify the Basel Convention and Ban Amendment or the Bamako Convention. The Council should also advise governments to:

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<sup>14</sup> *Id.*

<sup>15</sup> Cal Health & Saf Code § 25214.9 et seq. The e-waste legislation also provides “emergency” power to the California Department of Toxic Substances Control to implement rules necessary to protect public health.

<sup>16</sup> Aoife White, “EU Make Harming Environment a Crime” Feb. 9, 2007, available at <[www.sfgate.com/cgi-bin/article](http://www.sfgate.com/cgi-bin/article)>

<sup>17</sup> *Id.*

a) enact legislation banning export of waste to “recycling” centers abroad that lack standards for safe disposal;

b) require that corporations produce goods with fewer toxic components and oblige corporations that export and deal in toxic waste to adopt a code of ethics/conduct.

15. The Council should appoint a Working Group to:

a) specify the human rights standards applicable to corporations, including those involved in toxics transfer and dumping;

b) continue work on the norms for corporate accountability (such as the Norms on the Responsibilities of Transnational Corporations) and the enforcement mechanisms for the norms such as:

i) fines, revocation/loss of corporate charter for repeat offenders, and a bar on re-incorporations;

ii) holding individual officers liable when they violate human rights.

c) draft a model framework for extra-territorial application of environmental laws such that:

i) States may use the laws of the nation where the offending corporation is incorporated in prosecuting violations;

ii) States may allow foreign victims to sue corporations under their jurisdiction.

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