



General Assembly

Distr.
GENERAL

A/HRC/9/NGO/07
28 August 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Ninth session
Agenda item 3

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

**Written statement* submitted by Human Rights Advocates (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.

[23 August 2008]

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

THE HUMAN RIGHTS IMPACT OF THE ILLICIT MOVEMENT AND DUMPING OF TOXIC WASTES

1. Explosive levels of consumption and rapid technological advances have magnified the need to find ways to dispose of its consequential waste. Electronic waste or e-waste in particular,¹ contains toxic chemicals that, when disposed of improperly, damage the environment and health of its inhabitants. These effects are felt more in developing countries than in developed countries, the principal creators of e-waste.² As the landfills in developed countries fill up and disposal costs associated with stricter regulations rise, there is increasing pressure to dispose of the waste elsewhere and as inexpensively as possible. The search for the cheapest method of disposal has created a race to the bottom, in which developed nations ship their toxic wastes to countries with ineffective environmental regulation and limited capacity to safely handle the toxic waste.
2. The Human Rights Council has recognized that the illicit traffic in and dumping of toxic and dangerous products and wastes constitutes a serious threat to human rights, including the right to life, health, water, food, housing and work.³ Nevertheless, even the legal transfer of toxic substances may violate these and other human rights. One reason is because the definition of “hazardous” is underinclusive and not standardized among nation-states. The transfer of the same waste in the same manner may be illicit in one nation and legal in another. Because exposure to toxics, whether resulting from an illicit or legal transfer, causes the same devastating effects, the Council should renew and expand the mandate of the Special Rapporteur to include legal transfers and dumping of toxic and dangerous substances.

Human Rights Impact of Recycling E-Waste

3. Eighty percent of U.S. “recycled” electronic waste ends up in *Gùiyǔ* (贵屿⁴), China, a one-industry town filled with enterprises called “recyclers.” About eighty percent of families work in the *Gùiyǔ* recycling industry and recover copper, gold, and other valuable materials from electronics without adequate, if any, protective equipment. The effects on residents’ health include birth defects and some of the world’s highest levels of dioxins and lead. Furthermore, the town’s drinking water has been rendered useless, with once potable water now able to dissolve a coin in a few minutes.⁵ Without water, villagers cannot seriously consider either growing their own food or any alternative sources of income other than recycling. Thus, in

¹ In 2005, used or unwanted electronics in the United States amounted to approximately 1.9 to 2.2 million tons. U.S. Env’tl Prot. Agency, eCycling, <http://www.epa.gov/ecycling/> (last visited January 20, 2008).

² The UK, for example, produces 400 million tons of waste a year. Global Footprints, Waste, <http://www.globalfootprints.org/issues/global/waste/global.htm> (last visited January 20, 2008). The EU and the US produce the most waste. Fiona Harvey, *Waste and the Environment: Reduction Should be the Target*, FINANCIAL TIMES, Apr. 18, 2007, available at <http://search.ft.com/ftArticle?page=7&queryText=veolia&id=070418000869&ct=0> (last visited January 20, 2008).

³ Comm. on Human Rights Res. 2004/17, U.N. Doc. E/CN.4/Sub.2/RES/2004/17 (April 16, 2004).

⁴ Literally translated, the name means “expensive or valuable island.”

⁵ Greenpeace, *Toxic Tea Party* (Jul. 23, 2007), <http://www.greenpeace.org/international/news/e-waste-china-toxic-pollution-230707> (last visited Jan. 20, 2008).

order to survive, they have become perversely dependent on an industry that continues to harm them in many ways.⁶

4. While Gùiyǔ is the world's leading e-dump, the U.S. is the world's leader in generating hazardous wastes. In 2005, the U.S. produced about 2 million tons of e-waste⁷ and exported about 107,500 tons of CRT⁸ monitors and TVs⁹ and 24,000 tons of CRT glass abroad.¹⁰ While most e-waste still ends up in landfills, many states have recently instituted new laws prohibiting disposing of such e-waste like computer monitors in landfills. With other states surely following, the amount of e-waste collected for recycling and exported will increase.¹¹

Need for Corporate and Government Accountability

5. Because of the nature of the lifecycle of wastes—its passage through many hands from production to use to disposal—it is sometimes difficult to ascertain how to assign percentages of culpability for human rights violations resulting from illicit toxic dumping. Nevertheless, the role of corporations is too great to ignore.
6. Corporations often escape from accountability. For example, in 2007, Chile's Supreme Court ruled that the government must compensate 356 Arican residents for health problems due to toxic waste exposure from the town's mining industry. It is good that governments who allow or contract with polluting corporations take responsibility for their part in the action. The company responsible for importing the toxic materials, however, cannot pay the residents because it no longer exists.¹² No entity should be able to flout environmental standards by exploiting a country that lacks the infrastructure to handle toxic wastes. Corporations should be held accountable for all costs associated with injuries resulting from illegal toxic dumping.
7. Even where companies are held liable, compensation is usually inadequate. In 2006, a Netherlands-based company, Trafiguera, discharged 500 tons of toxic waste near Abidjan, Côte d'Ivoire. Seven people died and estimates ranging from 40,000¹³ to 95,247¹⁴ people suffered from serious health problems. Although Trafigura agreed to pay the equivalent of US\$198 million to the Ivorian

⁶ Terry Allen, *China is Our E-Waste Dumping Ground* (Jan. 5, 2008), IN THESE TIMES, available at <http://www.alternet.org/story/72529/>.

⁷ U.S. Environmental Protection Agency, e-Cycling, Frequent Questions, <http://www.epa.gov/epaoswer/hazwaste/recycle/ecycling/faq.htm#exported> (last visited February 10, 2008).

⁸ Cathode ray tubes.

⁹ U.S. Environmental Protection Agency, *supra* note 7. Note: Its exportation of e-waste is hard to determine because the Environmental Protection Agency has only studied figures for CRTs. *Id.*

¹⁰ *Id.*

¹¹ Human Rights Advocates, *The Adverse Effects of the Illicit Transfer of Toxics on Human Rights*, E/CN.4/2005/NGO/192, ¶ 7, March 4, 2005.

¹² Daniela Estrada, *Chile : Pollution Victims Win Court Battle For Compensation*, INTER PRESS SERVICE, (June 4, 2007). See also Mike Hager, *Chile Must Pay US\$5.4 Million to Aricans Living Amid Toxic Waste*, SANTIAGO TIMES (June 1, 2007), available at http://www.tcgnews.com/santiagotimes/index.php?nav=story&story_id=13886&topic_id=1.

¹³ Ikenna Goodyear Okpara, *The Realities of Waste Trading*, (Jan. 21, 2007) <http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=117641> (last visited Jan. 20, 2008).

¹⁴ URIN, Cote d'Ivoire: Thousands of Toxic Waste Victims Could Miss Out on Compensation, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/RMOI-774M9V?OpenDocument&rc=1&emid=AC-2006-000134-CIV>.

government, many victims will nevertheless remain uncompensated. This is because in order to be compensated the victims had to have gone to a government center after the injury. Many went to non-certified health centers, however, and thus will not be eligible.¹⁵

8. In both of these examples, the compensation awarded was inadequate. First, the compensation amount was insufficient because not everyone injured was included. Second, the costs do not cover comprehensive monitoring and treatment of lingering health effects. Only when compensation is adequate and given to all victims will human rights be respected.
9. While the current increase of government recycling initiatives should be applauded, governments must take into account a private recycler's environmental practices when deciding what company to use or recommend. For example, the U.S. EPA admits that only business practices, not environmental practices of private recycling companies are evaluated for inclusion on the U.S. General Services Administration's ("GSA") Environmental Services Schedule.¹⁶ Considering competitive prices and not environmental practices encourages "sham recycling."
10. There are two things governments should do to prevent waste from going to sham recyclers and to assume accountability for the role it plays in the e-waste trade: (1) Implement a publicly-accessible tracking system for e-waste that traces ownership through the stages of recycling. (2) Implement certification program that, adhering to international standards and domestic legislation, certifies recycling companies based not only on their good business practices, but on best environmental practices. Certification must be contingent on the good practices of any subcontracted company or second-hand recycler. Moreover, there should be real consequences for sham recyclers.
11. Governments should also standardize and enforce the definitions of "hazardous" and "recycling." Since recycling is defined as "further use", it can be used as a pretext for exporting hazardous wastes for energy production, as road-building or construction material, or as fertilizer.¹⁷ One European initiative to standardize "recycling" excludes "recycling" non-material forms, such as combustion, chemical energy, or waste-to-fuel processes.¹⁸
12. Lack of a standard definition of "hazardous" actually encourages a race to the bottom, with entities shopping for places that do not consider their toxic goods

¹⁵ Okpara, *supra* note 13.

¹⁶ EPA, RECYCLING OF ELECTRONIC EQUIPMENT 3 (2006), available at <http://www.federalelectronicschallenge.net/resources/docs/recycling.pdf>. The Schedule facilitates the contracting process by providing a list of service providers that have a regular relationship and pre-negotiated prices with the government. GSA, ENVIRONMENTAL SERVICES, GSA SCHEDULE 899, at 2, available at http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Schedule%20899%20-%20FY07_R2FIKM_0Z5RDZ-i34K-pR.pdf.

¹⁷ Fatma-Zohra Ouchachi-Vesely, Special Rapporteur on Toxic Wastes, Comm. on Human Rights, *Economic, Social and Cultural Rights: Adverse Effects of Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*, at 13 ¶ 25, U.N. Doc. E/CN.4/2001/55 (Jan. 21, 2001); see Greenpeace International, TOXIC TRADE UPDATE, No. 6.4, 1993, at 26.

¹⁸ APPEAL, SHAM RECYCLING NEEDS TO BE AVOIDED 1 (May 25, 2007), available at <http://www.eurofer.be/docs/pressRelease/070530-ShamRecycling.pdf>.

“hazardous”¹⁹ and governments offering lax definitions in order to attract businesses.

Need for Internal Controls in Addressing Transboundary Transfers

13. In order to tackle the problem of transboundary toxic transfers, Member States must address the problem domestically before the pressure to look beyond the borders becomes irresistible. For instance, disposal problems in Italy have made Naples a popular dumping spot but locals have been increasingly vociferously protesting against the use of their city as a landfill. A recent report alleged that Italy has begun illegally shipping toxic wastes to Croatia, which the Croatian government has denied.²⁰ Effective domestic legislation that meets the standards of international treaties and a good regulatory system would provide a space for citizens to address their grievances, encourage prevention and facilitate compensation if necessary.²¹ Transboundary dumping is often a too easy solution and avoidance of complex domestic issues. Nations should be encouraged to make significant domestic efforts to resolve their toxic waste issues before taking transboundary shortcuts.

Need For a Special Rapporteur

14. It is difficult to document all instances of the human rights impact of toxic transfers. Having a Special Rapporteur on Toxic Wastes is necessary in order to further investigate little documented problems and to develop standards and enforcement mechanisms when governments fail to do so.

Recommendations

15. Human Rights Advocates urges the Council to renew the mandate of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxics and dangerous products and expand said mandate to enable the Rapporteur to investigate the human rights impact of both illicit and legal transboundary toxic transfers.
16. Human Rights Advocates urges all Member States to:
 - a. Assume responsibility for private recycling companies with whom they contract and prosecute sham recyclers. Align domestic environmental standards with international obligations and enact domestic environmental legislation and waste management practices that prohibit the export of waste to “recycling” centers abroad that lack standards for its safe disposal, and include:
 - i. A strict international standard for “recycling” and “hazardous;”
 - ii. A publicly-accessible tracking system for e-waste;

¹⁹ See JENNIFER CLAPP, TOXIC EXPORTS: THE TRANSFER OF HAZARDOUS WASTES FROM RICH TO POOR 88 (2001).

²⁰ Karmen Horvat, *Croatia Italian Toxic Waste Dump Site?* (Jan. 7, 2008), <http://www.javno.com/en/croatia/clanak.php?id=112354> (last visited Jan. 20, 2008).

²¹ Chilean and Côte D'Ivoire examples also demonstrate inadequate internal regulatory and procedural systems that made it difficult for victims to address grievances and access compensation. See ¶¶ 6–7 of this report.

- iii. A government program, adhering to international and domestic standards, that certifies recycling companies based on good business and environmental practices.
- b. Hold transnational entities accountable for any non-compliance with the laws of the importing country, and when necessary, hold them accountable for their actions under the law of their home country if its standards and regulations are stricter.
- c. Institute an adequate and efficient procedural and regulatory infrastructure that provides victims with access to grievance mechanisms, compensation, and administrative and judicial proceedings in the exporting State.

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