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## Human Rights Council

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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 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.

[14 February 2010]

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

## The Right to the Truth: beyond armed conflicts

Historically the right to the truth has been approached from its narrow dimension: a remedy provided to the victims of gross human rights violations occurred during repressive regimes or armed conflicts. Nevertheless the recent reports and resolutions of the Human Rights Council and the General Assembly have shown that the aforementioned approach is about to change. In a recent report, the Office of the High Commissioner for Human Rights concluded that the right to the truth is evolving steadily thanks to the laws adopted by the States Members and the body of jurisprudence developed by international organizations and national courts which is helping to “flesh out the meaning of the right”. The most important of such developments is the expansion of the scope of protection of the right to the truth which is now “one of the mainstays of action to combat impunity for grave human rights violations”.<sup>1</sup>

From the aforementioned HRC resolution infers that the right to the truth may be used as a tool to combat impunity in all cases of gross human rights violations. The resolution acknowledged that the interrelationship between the right to truth and the right to access to justice and the right to obtain effective remedy and reparation is a valuable tool for the study of gross human rights violations. It was also recognized the importance of the international community in the realization of the right to the truth.<sup>2</sup> The OHCHR reported that the right to access to justice and the right to a remedy and reparation constitute the means that the States may use domestically to ensure the right to the truth.<sup>3</sup> Breaches to the right to the truth should be analyzed in the context of those three factors.

This report focuses on the importance of the right to the truth in addressing issues of corporate accountability, as exemplified in the following examples.

AGROJELL, S.A. de C.V., an agrochemical company, closed in 1998 a warehouse located in the proximities of the community Las Brisas in the department of San Miguel, El Salvador, leaving behind 92 barrels of Toxaphene a pesticide prohibited in the United States since 1982 under suspicion of being carcinogen by the United States Department of Health and Human Services. Toxaphene was banned or severely restricted for health or environmental reasons by the Rotterdam Convention of 1998.

The chemicals have lain in the warehouse since 1986 after its importation from Mexico.<sup>4</sup> Following neighbors complaints, the police confirmed on 2000 that the pesticide had leaked out of the barrels. More than 10,000 members of poor communities that inhabit the surrounding area have been affected from the spill: the chemical has filtered into the underground water polluting the wells used for consumption and household activities; more than 250 m<sup>2</sup> of soil where the community sow their subsisting crops have been contaminated. The consequences on the health of the community include kidney, lungs and skin diseases; the local clinic reports abortions, child malformations and an increasing number of cancer cases.<sup>5</sup> Thus, the right to life, the right of a healthy environment, and the right to access to drinkable water have been systematically violated.

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<sup>1</sup> Report of the Office of the United Nations High Commissioner for Human Rights on the right to the truth A/HRC/5/7 (7 June 2007)

<sup>2</sup> Human Rights Council Resolution 12/12. A/HRC/RES/12/12 (1 October 2009)

<sup>3</sup> Ibid 1

<sup>4</sup> Concluye juicio por tóxicos, Liliana Fuentes Monroy, La Prensa Grafica (March 19, 2004);

<sup>5</sup> Tóxicos de la muerte siguen contaminando, Liliana Fuentes Monroy, La Prensa Grafica (February 11, 2005); Condena al MARN por Toxafeno en San Miguel, Liliana Fuentes Monroy, La Prensa Grafica (April 13, 2009)

Proper methods to address corporate accountability issues are needed in this case vis-a-vis the problems for achievement of the right to the truth:

- Identification of perpetrators: One of the most important elements of the right to the truth is the identification of the perpetrators of human rights violations and the causes surrounding said violations. The Attorney General's Office found serious obstacles to bring the corporate representatives to the courts due to the corporate shield advantages, the government bureaucracy and the slow burdensome court procedures.
- Prosecution problems: TREDI, S.A., an international company dedicated to the disposal of hazardous substances, was awarded by the Salvadoran Government to execute the removal of the pesticide, receiving an advance payment of US\$58,000. The company never performed the required procedure. The Salvadoran Government has been unable to prosecute the aforementioned company.
- Remedy and Reparation: To this date the Toxaphene has not been cleaned. No reparation for the victims has been considered in said judicial procedures and no compensation has been required directly from the shareholders. The court award of 2005 was limited to a fine of US\$150,000 for the disposal of the pesticide, an amount that recent studies have found insufficient.<sup>6</sup> The fine has not been executed.

Also, in El Salvador recent murders of human right defenders have created new concerns about the right to the truth. In 2009, three activists opposed to the execution of mining projects in San Isidro, Cabañas, were murdered under circumstances not yet clarified; two of them Ramiro Rivera and Dora de Rodríguez were murdered in the last days of December. Dora was in her 8<sup>th</sup> month of pregnancy.<sup>7</sup> The crimes are still under investigation.

These crimes occurred under a convulsive environment that originated after the denial by the Salvadoran Government of an exploitation permit for a Canadian mining company Pacific Rim for the El Dorado mine, where the company had estimated it could obtain a net value of US\$196.7 millions from gold and silver. The Salvadoran Government based the denial on previous experiences that demonstrate the adverse polluting effects of mining projects.<sup>8</sup> Two mining companies affected by this denial have sued the Salvadoran Government before International Centre for Settlement of Investment Disputes for more than US\$70 million.<sup>9</sup>

The right to access to justice and the right to a remedy and reparation constitute the means that the States may use domestically to ensure the right to the truth<sup>10</sup>. The aforementioned cases illustrate situations of gross human right violations involving corporate accountability issues where the right to the truth may provide a proper framework to obtain an adequate remedy when national systems are not able to address them.

<sup>6</sup> Una condena que la corte todavía no resuelve firme, Liliana Fuentes Monroy, La Prensa Grafica (May 8, 2007)

<sup>7</sup> Comunidad condena el asesinato de Dora Alicia, Fernando Romero, La Prensa Grafica, (December 29, 2009)

<sup>8</sup> Proyectos mineros siguen en suspenso, Keny López de Carballo, La Prensa Grafica (December 31, 2009)

<sup>9</sup> El Salvador con nueva demanda por minería, Keny López de Carballo, La Prensa Gráfica (September 2, 2009)

<sup>10</sup> Ibid 1.

A positive example of the achievement of the right to the truth derives from the outcome of the Abidjan disaster in Côte d'Ivoire. Thanks to the international cooperation and the involvement of the Special Rapporteur,<sup>11</sup> the general bases of the right to the truth were achieved: the perpetrators were identified, the victims had access to justice from an impartial court and remedy was provided. Nevertheless claims about possible fraud in the management of the indemnification and the possibility that many of the victims will not receive any compensation threaten to jeopardize the effectiveness of these measures.<sup>12</sup>

## **Recommendations**

HRA encourages the Office of the United Nations High Commissioner for Human Rights to take in consideration the situations herein presented for the preparation of its following reports on the right to the truth to be presented to the HRC, including in it the importance to use the right to the truth in cases dealing with corporate accountability.

HRA urges the special rapporteurs and other mandate holders to follow the example set by the Rapporteur on the independence of judges and lawyers on the recognition of the right to the truth, its scope and implementation in relation to their mandates.

HRA appeals the HRC to oversee the reparation process in Côte d'Ivoire, to guarantee the transparency in the delivery of the compensation awarded to the victims of the Abidjan disaster, and therefore assuring their right to obtain effective remedy and reparation.

HRA requests that the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises investigate the cases addressed above and include an analysis of the right to the truth in relation to the human rights violations.

HRA compels the HRC to explicitly extend the scope of the right to the truth in order that it may be use under the framework of human rights violations involving corporate accountability

HRA urges the HRC to create an office for a Special Rapporteur on the right to the truth in order that it may be defined, promoted, and enforced.

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<sup>11</sup> Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

<sup>12</sup> BBC News Friday, 22 January 2010; <http://news.bbc.co.uk/2/hi/africa/8475362.stm>