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**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., 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.

[9 February 2013]

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

Human Rights and the environment: A preliminary assessment of the need for adequate regulation of private actors

Human Rights Advocates (HRA) supports the progress of international recognition for the connection and synergy between environmental and human rights protection. Great strides have been made in articulating and addressing the threat environmental degradation has on fundamental human rights and sustainable development. Still, the realization of protecting human rights and achieving sustainable growth remains plagued with inadequate support, inconsistent standards and insufficient enforcement measures. Furthermore, current international norms and regulation dramatically overlook private interests' threat to protection of human rights and the environment.

While reaffirming the Millennium Development Goal 7 on ensuring environmental sustainability, the Human Rights Council's (HRC) Resolution 19/10 recognized that human beings are at the center of concerns for sustainable development which includes the environmental needs of present and future generations equitably. An analysis of current international law addressing transboundary and national movements of hazardous waste and disposal exemplifies insufficient implementation of an international environmental protection scheme as it pertains to sustainable development and human rights.

The role regulation of hazardous waste and disposal plays in the human rights protection scheme is underscored by the Council's recognition of the relationship between human rights and the environment including Resolution 16/11 on human rights and the environment, Resolutions 9/1 and 12/18 on the adverse effects on the movement of dumping of toxic and dangerous products and wastes on the enjoyment of human rights, and Commission Resolutions 2003/71 and 2005/60 on human rights and the environment as part of sustainable development.

Hazardous waste: A threat to human rights

One case provides a cogent example of the multilayered issues involved in the link between human rights and the environment. In 2006, A Mexican state-owned oil company, Pemex, reached its storage capacity and sold its waste to a Swiss-based, Dutch oil and commodity shipping company, Trafigura Beheer BV.¹ Trafigura chartered a vessel, which sailed under a Panamanian flag, to Amsterdam. A misrepresentation or mislabeling of chemical concentration in the shipment resulted in a higher estimate for disposal. Consequently, Trafigura procured services from Tommy Ltd. to unload 500 tons of fuel mixture in Abidjan, Cote d'Ivoire for a lower price. Among the 18 dumping sites in that country, none had proper facilities required for treatment of chemical waste. As a result, it was reported that 15 deaths, 69 hospitalizations and more than 108,000 medical visits resulted from the contamination. Although over \$198 million was given to the Ivorian government for cleanup efforts, victims were not consulted before the agreement was signed and complaints of under-compensation and inequitable distribution of funds remain unsettled. Furthermore, insufficient decontamination efforts ensure lingering environmental and health effects.²

¹ See Adam Duckett, Trafigura Story Breaks, The Chemical Engineer (Oct. 13, 2009), <http://www.tcetoday.com/tcetoday/NewsDetail.aspx?nid=12188>.

² Report on the Adverse Effects of the Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, U.N. Doc. A/HRC/12/26/Add.2 (Sept. 3, 2009).

The consequences of the Cote d'Ivoire incident and other hazardous waste calamities not only devastate the local environment but also infringe upon international human rights enumerated in human rights treaties. These consequences include, among others, violations of the right to life and contamination of food and drinking water, violating article 6 of the International Convention on Civil and Political Rights,³ and article 11 of the International Convention on Economic and Social Rights.⁴ Furthermore, the improper practices of the international waste disposal trade contravenes the principles of sustainable development articulated at the World Summit in Johannesburg in 2002, Millennium Development Goal 7 supported by the HRC, and Resolutions 2003/71 and 2005/60.

International law regulating waste disposal: Basel convention

Despite its groundbreaking achievements, the 1989 Basel Convention, which regulates transboundary movements of hazardous waste and their disposal, has unmistakably fallen short of effective international regulation of waste disposal. Reliance on this current regulatory regime will undoubtedly lead to more environmental catastrophes that violate international human rights. Within its own framework Basel has been ineffective in 3 key areas.

1. Insufficient financial and political support

Because compensation from violators is often inadequate, victims must rely on the Basel Trust Fund to aid with clean-up costs and supply training and technology transfers for implementation of proper disposal methods. Without the proper financial and political support, however, the Fund currently lacks the capacity to meet the needs to carry out its own mandate.⁵ As evident in Cote d'Ivoire, citizens of underdeveloped countries are particularly threatened by a poorly financed Fund and thus highly vulnerable to human rights violations from environmental calamities because these domestic governments often lack the technology to properly dispose of hazardous waste, strict environmental protection regime, and/or financial means to assist victims of improper hazardous waste disposal.

2. Ineffective standards and enforcement

Although Basel maintains a prior informed consent (PIC) procedure – obligatory but nonbinding pre-trade discussions between exporting and importing nations to verify competency of the disposal facility – due to ambiguous standards, the voluntary nature of the procedures and ineffective enforcement mechanisms, improper hazardous waste dumping easily escapes punishment. The incident in Cote d'Ivoire exposes the inadequacy of the compliance monitoring of the PIC procedure as the shipment was improperly labeled as to its high chemical content and none of the dumping sites qualified as proper disposal facilities for chemical waste disposal. Exacerbated by ineffective monitoring and enforcement, the current system relies too heavily on parties' own determination of adequacy of facilities and proper disposal methods.⁶

³ "Every human being has the inherent right to life."

⁴ "Everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

⁵ Lisa Widawsky, In My Backyard: How Enabling Hazardous Waste Trade to Developing Nations Can Improve the Basel Convention's Ability to Achieve Environmental Justice, 38 *Envtl. L.* 577, 604 (2008).

⁶ *Id.* at 606.

3. Ignores key incentives of major players in international waste disposal

The Basel Ban and the Convention inadequately address the underlying narrative of international hazardous waste disposal. The Basel Ban proposing a complete ban of hazardous materials from developed to developing countries ignores the needs of developing countries and realities of the waste disposal market. Implementation of the Ban would be ineffectual for two reasons. First, as evident in the Cote d'Ivoire incident, developing nations often welcome hazardous materials for disposal to support the economic growth even at the expense of human health and the environment. Second, transnational corporations (TNCs) dealing in the generation, production and/or disposal of waste look to developing countries with lower compliance and disposal costs as the most economical location for disposal. Because of such strong economic incentives for both the import and export of hazardous waste, the Ban would likely just invigorate a black market of hazardous waste trade, which would undermine gains attained under the current regulatory regime.

The Conventions' relative exclusion of non-state actors as major players in waste disposal leaves too many loopholes for TNCs to evade responsibility. The Convention places much of the regulation responsibility on states parties, but absent sufficient extraterritorial and other regulatory authority coupled with the dynamic interplay of TNCs with ambiguous allegiances to nations, effective state regulation of the hazardous waste trade remains problematic.⁷ In the Cote d'Ivoire incident, the transport of hazardous waste consisted of a highly entangled web of collaborating companies. Discerning the exporting or importing country and obligations under Basel can be challenging under the current framework with such complex trade regimes.

Recommendations

HRA recommends the following:

- The HRC should continue support of both the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. HRA urges the Working Group and Special Rapporteur to cooperate with the independent expert on human rights and environment to address the threat TNCs have on human rights and the environment.
- The Working Group and Special Rapporteur should consider and study additional measures addressing the causes of environmental hazards resulting in human rights violations. As it pertains to hazardous waste disposal, these measures should include incentivizes for waste reduction and incorporate concepts such as 'extended producer responsibility' (EPR) measures and advanced recovery fees (ARFs). While maintaining the regulatory role of governments but shifting waste disposal responsibilities to corporations, these mechanisms in still costs to the private sector to take responsibility for the pollution created by the products. Funds generated by the costs will be accumulated by governments and dispersed to accredited recycle and disposal organizations. By incorporating this 'tax' on specified products or chemicals, companies will be encouraged both to use less hazardous materials as well as produce less waste. California's Electronic Waste Recycling Act of 2003, Costa Rica's EPR system, and Europe's Directive on Waste and Electrical Equipment (WEEE Directive) offer workable frameworks to begin developing an international regime to effectively threats to human rights and the environment.

⁷ Dr. Kiarie Mwaura, *Internalization of Costs to Corporate Groups: Part-Whole Relationships, Human Rights Norms and the Futility of the Corporate Veil*, 11 J. Int'l Bus. & L. 85 (2012).