

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

COUNCIL UPDATE – ITEM 3, REPORT OF THE SPECIAL RAPPORTEUR ON THE ADVERSE AFFECTS OF THE MOVEMENT AND DUMPING OF TOXIC WASTE HUMAN RIGHTS COUNCIL, 12TH SESSION 18 SEPTEMBER 2009

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Overview

On 18 September 2009 the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Mr Okechukwu Ibeanu, presented his latest report to the Council, including a study on the harmful effects of ship breaking and recycling.¹ He also presented a country visit report on a joint mission to Cote d'Ivoire and the Netherlands, two States engaged in resolving a recent dispute over the movement and dumping of toxic waste in the area of Abidjan, Cote d'Ivoire.²

In his last address before standing down from the post as Special Rapporteur, Mr Ibeanu spoke of the success of the mandate since its inception in 1995, since when it has been expanded to investigate both national and trans-boundary movements and dumping of waste. He also announced that he would be undertaking a country visit to Kyrgyzstan from 30 September 2009 to 9 October 2009. He also noted that India had invited him to visit the country in November 2009.

Presentation by the Special Rapporteur

The Special Rapporteur outlined his concerns related to ship breaking as extremely poor working conditions and environmental conditions in ship yards generate significant pollution of soil, air, sea and ground water resources. He welcomed the adoption in May 2009 of the *Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships* but warned that this would not be sufficient to bring about necessary changes. He therefore called on all relevant actors to adopt additional measures to address the negative impacts of ship breaking.

The Special Rapporteur also described the main findings of his visits to Cote d'Ivoire and the Netherlands in relation to the dumping of toxic waste belonging to *Trafigura*, a Dutch trading company, by the ship *Probo Koala* in the territorial waters of Cote d'Ivoire. He claimed that there was *prima facie* evidence that 15 deaths and 69

¹ A/HRC/12/26.

² A/HRC/12/26/Add.2 (joint visit to Cote d'Ivoire and the Netherlands)..

further hospitalisations were caused as a direct result of the dumping from the *Probo Koala*, and he called upon all actors to address the long-term health and ecological effects of the incident. He also called upon the wider international community to continue to assist Cote d'Ivoire in these efforts. He also made direct reference to the Dutch trading company, appealing to it to adopt a more cooperative attitude and to show 'willingness to work with other actors in bringing this incident to a just closure'.

In response, Cote d'Ivoire reaffirmed the facts as established by the Special Rapporteur and welcomed the 'impartiality and excellence' of his report. It also called upon the Council to address the transportation and dumping of toxic materials and waste in developing States. It stated that structural weaknesses in State legislation allows and even encourages such abuses by transnational companies. It therefore suggested that a study be undertaken of legal gaps in this respect, and suggested that OHCHR and the Council might draft appropriate guidelines on the safe management and disposal of toxic waste.

The Netherlands also responded, saying that it welcomed the report and 'regretted' the incident and its consequences for the citizens of Cote d'Ivoire. It updated the Council by saying that judicial proceedings are still ongoing, but that a robust legal framework is in place to detain ships which undertake dumping of toxic waste illegally. It reiterated its intentions to continue dialogue on the case and reasserted its support for the work of the Special Rapporteur.

Interactive dialogue

During the interactive dialogue that followed, Sweden (on behalf of the EU) addressed the subject of ship breaking, which it acknowledged causes a detrimental impact upon health and the environment if carried out in unregulated conditions. Specifically, it raised concern about whether recent international conventions provide sufficient protection against the harmful waste products of ship breaking. Nigeria (on behalf of the African Group) made similarly positive statements, asking the Special Rapporteur to examine the effectiveness of existing conventions on the subject of ship breaking. It recognised that many industrial States have not ratified relevant conventions and urged the Special Rapporteur to look into this. Turkey called for all ship breaking States to ratify the major conventions so as to put all States on an 'equal playing field' competitively. The US emphasised that the current protection afforded by international conventions, specifically the recent International Maritime Organisation's (IMO) *Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships*, is adequate at present. Japan described the IMO Convention as a 'valuable first step in protecting people from toxic waste'.

But addressing the liability of transnational companies, Amnesty International stated that more needs to be done to make them accountable for their actions, as some are evidently not interested in respecting their obligations. It suggested creating additional due diligence guidelines for such companies to abide by. The International Federation for Human Rights Leagues (FIDH) also criticised current protection mechanisms and the IMO Convention, saying that it does not push for the banning of the 'beaching' method of ship breaking, which is amongst the most dangerous and unregulated forms of recycling.

Brazil stated that whilst it does not carry out ship breaking itself, it recognises the importance of pushing for international standards, and asked the Special Rapporteur to address illegal movement of toxic waste, more specifically a case it experienced within its own territories recently.

Pakistan (on behalf of the OIC) complained that the report lacked statistical data and logistical impediments to improving protection from the harmful dumping of toxic waste, but welcomed the Special Rapporteur's focus on the need to recycle old ships safely, so as to protect workers in the industry from toxic poisoning. It did however emphasise the need to focus on the economic and political exigencies of developing a response to the issue. It called for a balanced focus, looking at the need to manufacture ships with fewer toxic materials in the first place as much as looking at the safe dismantling of them. Indonesia echoed this statement, calling for regional solutions to the problem rather than develop a universal set of best-practices.

Mr Ibeanu closed the meeting by responding to several points raised, including to thank Cote d'Ivoire for suggesting the establishment of effective guidelines for transnational corporations, and he said he would address the issue as soon as possible. He also acknowledged that the IMO Convention has protection gaps, and called for a better balance of responsibilities between ship owning and ship breaking countries. On the suggestion made by FIDH to enhance corporate social responsibility and accountability of non-state actors, the Special Rapporteur stated that various principles have already been developed by the Special Rapporteur on human rights and transnational corporations, and called upon such actors to respect these guidelines.

Further information

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- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to information@ishr.ch.
- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 12th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/12session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/12session/reports.htm>.

NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.

COUNCIL MONITOR STAFF

Eléonore Dziurzynski, Communications Officer
Michael Ineichen, Human Rights Officer
Gareth Sweeney, Deputy Manager
Katrine Thomasen, Manager International Programme

CONTRIBUTORS

Felice Drott, Intern
Jade Johnston, Intern
Mabel Kirabo Kiggundu, Intern
Isabella Ries, Intern
Peter Tubman, Intern
Katelan Wick, Intern

ABOUT THE PUBLICATION

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