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**Written statement* submitted by Human Rights Advocates, Inc. (HRA) and Earthjustice,
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.

[30 January 2004]

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

The Adverse Effects of the Illicit Movement and Dumping of Toxic Wastes on the Enjoyment of Human Rights

1. The Special Rapporteur on toxic waste was appointed in 1995 to study and monitor adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. The most common problem is the export of toxic waste to developing nations by industrialized countries or large transnational corporations in order to save on the cost of disposal—which can be up to 50 times lower—often with little regard for the health and safety of the affected communities.¹ Developing nations frequently lack the technological capabilities and legal enforcement powers to process the waste safely.
2. From the numerous complaints communicated to the Special Rapporteur and described in her annual reports, it is clear that the Commission should renew the toxics mandate and continue to investigate the impact of toxics on human rights.
3. Toxic exposure can impair the fulfillment of various human rights including life, health, water, food, housing and work. Both export and import countries must accept greater responsibility to regulate the transfer of toxics in order to promote safer standards of trade and protect human rights affected by weak environmental protection. The following are examples of some of these problems.

Electronic Waste

4. The export of hazardous electronic waste (e-waste) to developing nations—that often fail to enforce safe processing—is a severe threat to human rights. The responsibility is twofold: exporting countries who fail to ensure that receiving nations can process the waste safely *and* importing countries like India and China who fail to enforce e-waste regulations thereby allowing corporations to process waste in unsafe and environmentally unsound working conditions. E-waste is exported from developed countries to take advantage of cheaper “recycling” programs offered in developing and predominantly Asian countries.² However, e-wastes like mercury and lead—if not disposed of properly—create dangerous working conditions and compromise the health, safety and environmental quality of local communities.³
5. Discarded computers and electronic devices contain highly toxic wastes such as lead, mercury, arsenic, cadmium and beryllium, which prevent the machines from catching fire during normal use but are highly dangerous when improperly discarded.⁴ Improper disposal can cause respiratory illness, skin infections, stomach disease and nervous system conditions.

¹ Joseph DiMento, *International Environmental Law: A Global Assessment*, 33 ENVTL. L. REP. 10387 (2003).

² The Basel Action Network and Silicon Valley Toxics Coalition, *Exporting Harm: The High-Tech Trashing of Asia*, Feb. 25, 2002.

³ *Tracking e-wastes in Asia*, VASTIS 2003, available at <www.techmonitor.net/techmon/03mar_apr/was/was_news.htm>.

⁴ David Wood & Toral Jha, *Click on India to Dump a Dying Computer*, Jan. 4, 2004, available at <www.web.mid-day.com>.

Because today's electronic technology is out of date soon after it is purchased, a huge amount of waste is accumulating.

6. A few U.S. states have instituted legislation addressing e-waste. California now requires recycling for devices like cell phones and charges recycling fees for hazardous e-waste. California has also banned the export of e-waste to developing countries unless it can be recycled in an environmentally sound way.⁵

Pesticides

7. Toxic pesticides are commonly exported to developing nations even though they are banned in the country of export. This directly impacts various human rights including the right to work as laborers are forced to work with dangerous chemicals or not work at all. Another problem is that containers carrying toxics are often not labeled in the language of the community, and sometimes not labeled at all. Children, pregnant women and nursing mothers are the most vulnerable to the adverse effects of toxic pollution.

8. For example, the herbicide Paraquat is banned in the United States and the European Union, who have found the substance to be unfit for use on any level. However, Paraquat—produced by Syngenta, a transnational corporation based in Switzerland—continues to be exported to a number of developing countries. The side effects of Paraquat include skin damage, cancer, breathing difficulty, kidney failure, Parkinson's disease, death and mental depression resulting in a high rate of suicide among farmers.⁶

9. In Guatemala, such illicit transfers are having devastating effects, according to reports received by the Special Rapporteur. Solid and liquid toxic wastes pollute nearly all of the lakes, rivers and waterways, affecting the rights to drinking water, food, environment and the very right to life itself.⁷

10. The aerial spraying of dangerous herbicides and pesticides to entire regions often results not only in numerous health problems for residents, but also destruction of food resources and contamination of surface water. For example, in the fall of 2000, the United States and Colombia began an intensive aerial herbicide application program to eradicate coca and poppy crops in drug-producing areas of Colombia. To date, the spraying has destroyed more than 1,500 hectares of legal food crops and fruit trees and has resulted in the death of livestock, contamination of surface waters and death of fish. The same aerial spraying can force spray

⁵ The Recycling Advocate, Winter 2003, Vol. 9, No. 2; Summary of SB 20, available at <www.cawrecycles.org>.

⁶ Svenska Naturskyddsforeningen, *Time to Phase Out Paraquat* ¶ 5, available at <www.snf.se/snf/english/nyh-paraquat-singenta.htm>.

⁷ *Observations and information received from Governments (Toxics)*, Commission on Human Rights, Doc. E/CN.4/2004/46/Add.1 (advance edited version).

victims to abandon their farms and housing in order to farm legal crops in uncontaminated areas, therefore impacting the human right to housing.⁸

Oil Transport

11. In October of 2002, a Dutch company spilled crude oil into the Batan River in Nigeria. According to a report received by the Special Rapporteur, the oil was being transported in a faulty ship, and neither the Netherlands nor the Royal Dutch Shell company have compensated the community or adequately cleaned up the spill. This has significantly affected the human rights of inhabitants along the river, especially the right to water. The river—the community's sole source of drinking water—has been rendered unfit for human consumption. The rights to food and work have also been impacted as the fish in the surrounding areas have become toxic and many fisherpeople have been left without a means of support.⁹

Corporate Accountability

12. The overwhelming majority of the toxics trade is conducted by transnational corporations. Developing nations are especially vulnerable to these powerful international entities, some of which are “richer and politically more powerful than nation-States.”¹⁰ In fact, “of the 100 largest economies in the world, 51 are now global corporations; only 49 are countries.”¹¹

13. Often suffering from weak regulatory capacities and government corruption—and desperately in need of foreign exchange to pay down mounting debts—developing nations, particularly in Africa, are essentially powerless to resist these hazardous shipments. The erosion of trade barriers has also made the export of hazardous wastes to less industrialized countries a “simple and lucrative business for waste entrepreneurs.”¹²

14. The 3,700 *maquiladoras* in the export-processing zones along the U.S.-Mexico border provide an example of how transnational corporations can take advantage of weak regulatory powers. *Maquiladoras* are manufacturing plants established by transnational corporations in Mexico. Every year tons of spent lead acid batteries and banned pesticides are illegally moved across the border to be processed in these facilities. Without proper protective equipment, workers are exposed to dangerous lead levels, causing headaches, stomach cramps, dizziness and kidney pains.¹³ Waste generated in the “finishing” process is supposed to be repatriated to

⁸ Earthjustice Legal Defense Fund, *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World*, submitted to U.N. Commission on Human Rights, Doc. E/CN.4/2002/NGO/36.

⁹ *Observations and information received from Governments (Toxics)*, *supra* note 7, ¶ 46.

¹⁰ Cyril Uchenna Gwam, *Adverse Effects of the Illicit Movement and Dumping of Hazardous, Toxic, and Dangerous Wastes and Products on the Enjoyment of Human Rights*, 14 FLA. J. INT'L L. 427, 469 (2002).

¹¹ *Id.* (citations omitted).

¹² JENNIFER CLAPP, *TOXIC EXPORTS: THE TRANSFER OF HAZARDOUS WASTES FROM RICH TO POOR COUNTRIES* 11 (2001).

¹³ Carmen G. Gonzalez, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 Denv. U. L. Rev. 979, 991 (2001).

the country from where the raw materials were imported, but statistics suggest that only a percentage of this waste is actually repatriated.¹⁴

15. Greater efforts must be made on the international level to regulate transnational corporations directly. The Norms on corporate responsibility, adopted by the Human Rights Sub-Commission in August 2003, may be a good place to start.¹⁵ However, more stringent oversight with *real consequences* for violators is necessary.

Pollutant Release and Transfer Registers (PRTRs)

16. The tracking of toxic substances and wastes is critical. Programs called Pollutant Release and Transfer Registers (“PRTRs”) were created by the Organization for Economic Cooperation and Development (OECD).¹⁶ PRTRs—which operate in Japan, Canada, Mexico, Australia, Norway, U.S. and U.K.—essentially require reports on the amount and site of specific chemicals released.¹⁷ PRTR systems are advantageous because availability of such data enables governments to design and implement efficient pollution prevention and control mechanisms.¹⁸

17. Most developing countries do not have enough self-generated information to make enforceable pesticide laws and thus rely heavily on information provided by the U.S. and Europe. If the U.S. does not register a pesticide for export with the Environmental Protection Agency, no laws banning or regulating the pesticide exist. These unregistered and highly toxic pesticides—which constitute a trade of about six tons per day—arrive in developing countries who are then responsible for unknown risks.¹⁹

Recommendations

18. HRA recommends that the Commission urge governments to:

- Investigate working conditions affected by the toxics trade and improve worker training, safety and education;
- Enact legislation establishing e-waste recycling programs and addressing the illicit transfer of toxic waste from developed to developing countries;

¹⁴ *Mission to the U.S.A. (Toxics)*, U.N. Commission on Human Rights, Doc. E/CN.4/2003/56/Add.1.

¹⁵ *Norms on the responsibilities of transnational corporations and other business enterprises*, U.N. Sub-Commission on the Promotion and Protection of Human Rights, Doc. E/CN.4/Sub.2/2003/12/Rev.2.

¹⁶ OECD, *Work on Pollutant Release and Transfer Registers*, available at <www.oecd.org/ehs/prtr/>.

¹⁷ U.S. EPA, *International TRI*, available at <www.epa.gov/tri/prtrs.htm>.

¹⁸ *Id.*

¹⁹ Michael Holly, *The EPA’s Pesticide Export Policy: Why the United States Should Restrict the Export of Unregistered Pesticides to Developing Countries*, 9 N.Y.U. ENVTL L. J. 340, 358 (2001).

- Heed the Commission's call to refrain from exporting toxic and dangerous substances that are banned in the exporting country;
- Regulate transnational corporations so they are responsible for the adverse effects of illicit toxic transport on human rights;
- Ensure that the reduction of trade barriers will not be construed as allowing the illicit transfer of toxic wastes; and
- Institute tracking systems.

19. HRA recommends that the Commission renew the mandate on the Illicit Movement and Dumping of Toxic Waste. The mandate should include the effects of toxics on human rights including the rights to life, health, water, food, housing and work, and clarify the human rights obligations of multinational corporations engaged in illicit behaviour.
