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**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Adverse effects of the illicit movement and dumping of toxic and dangerous  
products and wastes on the enjoyment of human rights**

**Report submitted by the Special Rapporteur, Fatma-Zohra Ouhachi-Vesely**

**Addendum**

**Observations and information received from Governments**

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\* The document is circulated in the language of submission only as it exceeds the page limitations currently imposed by the relevant General Assembly resolutions.

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## **Introduction**

1. The following report contains summaries of general observations and information received by the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights from Governments and other sources, submitted pursuant to resolution 2003/20. The report also contains a summary of new allegations transmitted to her according to her mandate, as well as replies to the allegations by affected Governments.
2. Furthermore the report contains summaries of allegations contained in reports submitted to the Commission on Human Rights at its fifty-seventh to fifty-ninth sessions by the Special Rapporteur, as well as any updates received by the Special Rapporteur on previously reported cases.

## **I. SUMMARY OF GENERAL OBSERVATIONS AND INFORMATION RECEIVED FROM GOVERNMENTS AND OTHER SOURCES**

### **A. Governments**

3. The Government of Guatemala obtained comprehensive information from member organizations of the State Inter-agency Forum and from civil society institutions in order to answer the request for information for the Special Rapporteur's report. The Guatemalan Constitution establishes norms concerning the ecological balance of the country and the fundamental rights of Guatemalans, creating a legal framework to prevent the movement and dumping of toxic and dangerous products and wastes. The framework is developed in other legal instruments such as the Criminal Code, the Municipal Code and the Health Code. However, despite the existing regulation and prohibition of the movement and dumping of toxic products and wastes, illicit instances of their use and transport exist. Almost all of Guatemala's rivers and lakes are polluted by solid and liquid toxic wastes, in breach of the relevant constitutional and legal provisions. This situation restricts or prevents the enjoyment of numerous human rights, including the right to life itself. It is noted that a number of the pesticides and fertilizers imported into countries like Guatemala have been banned in their countries of origin. The General Department for Health Regulation, Monitoring and Supervision within the Ministry of Public Health and Social Welfare carries out activities throughout the country to inform and educate the public in the handling and monitoring of the use of pesticides. Despite the advantages which may be offered by the Puebla Panama Plan (PPP), which is under consideration, the transit of large containers over the country's highways would cause serious environmental problems and increase the already existing pollution. There is not adequate machinery to ensure the participation of civil society in decision-making in these negotiations.
4. The Government of Tunisia has adopted strict laws and regulations on the import of, and illicit traffic in, wastes, and particularly hazardous waste, following its ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Ban Amendment to the Basel Convention, and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa. The law forbids the import of hazardous waste, and requires companies responsible for managing hazardous waste to be fully insured to cover any liability arising from

the production, transportation or management of such wastes. Breaches of the provisions pertaining to hazardous waste are punishable by imprisonment for up to five years and a fine of up to 500,000 Tunisian dinars (approximately US\$ 380,000).

5. The Government of Libyan Arab Jamahiriya informed the Special Rapporteur that it is one of the countries which is most opposed to transboundary movements of hazardous waste. It is among the very few countries which are not engaged in the trade of dangerous wastes between developed and developing countries. Libyan Arab Jamahiriya has signed most international agreements and instruments on the issue and feels committed to implementing them. Libyan Arab Jamahiriya considers as a human right the right to live in a healthy environment. It is asking that the international community cooperate and provide assistance to find solutions to the problem of stockpiling of hazardous waste and goods in countries which do not have the capacity to deal with it. Libyan Arab Jamahiriya is fully supportive of the African initiative to dispose of these hazardous wastes and materials which should be implemented in the coming years, thanks to the assistance to be provided by specialized international agencies. Finally, the Government of Libyan Arab Jamahiriya called on developed countries which produce hazardous waste to take necessary action to dispose of it in a manner consistent with international rules and not sell or dispose of it in poor countries, jeopardizing the health of the people and the environment.

6. The Government of Morocco informed the Special Rapporteur that although the Moroccan legislature has not taken up the subject of dangerous wastes and the effects of their illicit dumping on human health and safety in a separate piece of legislation, the practice is prohibited in a number of different legal provisions, including in the Criminal Code. Morocco has ratified a number of regional and international conventions on the issue of hazardous waste. In order to ensure better prevention against the risks engendered by illicit international trafficking in harmful substances and wastes, the Government considers it to be desirable for the competent United Nations agencies, and in particular the International Atomic Energy Agency and the World Health Organization, to strengthen further technical cooperation with developing countries.

7. The Government of Qatar forwarded to the Special Rapporteur the procedural manual for Qatar on the transboundary movement of dangerous wastes. The aim of the manual is to control the import, export, movement and disposal of hazardous waste in a way which ensures that the waste does not cause damage to the environment. The procedures cover the hazardous waste referred to in the Basel Convention. It is specified that the procedures must not be incompatible with any commitments set forth under health, environment and transport legislation.

## **B. Intergovernmental organizations**

8. The Secretariat for the Convention on Biological Diversity forwarded information regarding the Cartagena Protocol on Biosafety to the Convention on Biological Diversity. The Protocol addresses, inter alia, the issue of the transboundary movement of living modified organisms (LMOs) resulting from modern biotechnology which may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health. Exporters of LMOs are required to notify authorities of importing countries in advance of the first shipment of a given LMO, which is intended for introduction into the environment of the importing country. Importing countries have the obligation to acknowledge receipt of

notification and to communicate their decisions within the time frame specified in the Protocol. Each party is required to adopt appropriate measures aimed at preventing and punishing transboundary movements carried out in contravention of its domestic measures to implement the Protocol. The Protocol entered into force in September 2003.

9. The United Nations Economic Commission for Africa informed the Special Rapporteur that it had not undertaken any specific activities in response to the Commission on Human Rights resolution 2003/20. However, in the context of activities aimed at developing the nexus between environmental issues and sustainable development it has expounded policies and programmes which promote a greater understanding of the linkage between sound environmental management and the quality of life in Africa, including the right to a safe and toxic-free environment. It has in this connection promoted the sensible use of pesticides and fertilizers in agricultural development so as to minimize any negative impact on the environment and the subsequent effect on people. Some policy work is aimed at making policy makers aware of their role in monitoring the importation of pesticides and fertilizers so as to control the use of harmful products and limit the effects on the health of citizens.

10. The United Nations Economic and Social Commission for Asia and the Pacific referred the Special Rapporteur to a United Nations Economic and Social Commission for Asia and the Pacific/Asian Development Bank publication entitled "State of the Environment in Asia and the Pacific 2002". According to this report, the Asian and the Pacific Region is under considerable pressure as a favoured dumping ground for hazardous waste, particularly as domestic pressure has been exerted on industries operating in the industrial nations to dispose of their hazardous waste in a controlled and hence expensive manner. Between 1994 and 1997, the industrialized nations sent a total of 3.5 million tonnes of hazardous waste to countries in the Asian and Pacific Region. Despite international agreements, substantial quantities of polyvinyl chloride (PVC) are still exported to Asia, although various attempts by industry to use the islands of the Pacific as dump sites for hazardous waste have not been successful. The indiscriminate dumping of hazardous waste throughout the region has led to the contamination of surface and groundwater supplies, whilst open burning of waste contributes significantly to urban air pollution. The increase in potentially hazardous industrial, biomedical and nuclear wastes has not been accompanied by a commensurate expansion in the provision of waste treatment and management facilities. The uncontrolled dumping of biomedical waste has the potential for transporting pathogens (disease-producing organisms), whilst the indiscriminate disposal of oils, used batteries, discarded paints, spent chemicals and carcinogens, such as asbestos, can cause significant adverse impacts on human health and the environment.

11. The Transport Division of the United Nations Economic Commission for Europe (UNECE) informed the Special Rapporteur that it provides secretariat services for several Economic and Social Council (ECOSOC) and UNECE subsidiary bodies whose activities may be of relevance to her work. These bodies are:

- The ECOSOC Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals;
- The UNECE Working Party on the Transport of Dangerous Goods.

12. These bodies are not dealing with questions of illicit traffic, but they elaborate recommendations or international legal instruments intended to improve the safety and security of the transport of dangerous goods and hazardous wastes and to facilitate international trade in safe and transparent legal conditions.

### **C. Non-governmental organizations**

13. Throughout the year, the Special Rapporteur has received information from NGOs, much of which is reflected in her report to the Commission. The NGOs submitting information to the Special Rapporteur on a regular basis include Basel Action Network, Earth Justice, Environmental Justice Foundation, Greenpeace, Human Rights Advocates, Oxfam, and Centre Europe-Tiers-Monde. During field missions important contributions have also been received from local NGOs.

14. From the International Indian Treaty Council the Special Rapporteur received a copy of the declaration and action plan of the First Summit of American Indigenous Women. The plan of action includes a call on States to realize effective actions to combat poverty and environmental pollution; to forbid the entrance of chemicals in the countries, especially of those forbidden due to their high toxicity and to forbid the use of genetically modified products, all with the full and effective participation of indigenous women.

## **II. NEW CASES SUBMITTED TO THE ATTENTION OF THE SPECIAL RAPPORTEUR**

15. **Case 2004/73 - France/Turkey:** The Special Rapporteur received information concerning the export from France of an abandoned ship, the *Sea Beirut*, containing asbestos for disposal in Aliaga, Turkey. Samples taken from the ship by the Turkish Ministry of the Environment in May 2002 allegedly confirmed the existence of asbestos on the ship. According to the information received, the *Sea Beirut* became a waste when its Liberian registered owner decided to dispose of the vessel by abandoning it in Dunkirk, France. France allegedly became the State of export when it sent the *Sea Beirut* for scrapping to Turkey. As an alleged State of export, it has been submitted to the Special Rapporteur that France should have followed the prior notification requirements of the Basel Convention and the applicable EU regulations. It has furthermore been submitted that the various relevant French authorities, except the Direction Régionale de l'Industrie, de la Recherche et de l'Environnement (DRIRE) Nord-Pas-de-Calais (the relevant French authority at the environmental level), were aware of the presence of asbestos in the ship, a fact which under European Union (EU) regulations and the Basel Convention requires all who have rights over the ship and the State of export, respectively, to inform the environmental authorities in France and Turkey of the existence of the hazardous material.

16. On 9 May 2002, Turkey refused to accept the hazardous ship on the basis of the Turkish law prohibiting hazardous waste imports. As Turkey had not been notified of the toxic properties of the import, Turkey also expressed its wish to have the *Sea Beirut* returned to France. On 7 July 2002, the Turkish Ministry of Foreign Affairs officially notified the French Government through the Embassy in Turkey about the send-back decision of the Turkish Ministry of the Environment. The French Government replied through its Embassy in Ankara that it does not accept responsibility for the ship. According to the most recent information

received, the case is still unsolved and the *Sea Beirut* remains in Turkey. At the request of the Turkish Government, the Secretariat of the Basel Convention has offered its assistance in solving the issue, but so far no agreement has been reached on the issue.

17. The Government of Turkey informed the Special Rapporteur that illegal trafficking of hazardous waste and dangerous goods is a major concern of the Turkish Government. Turkish environmental law has strict provisions on the discharge of hazardous waste into the environment and prohibits the import of any kind of waste to Turkey. The Turkish Government is deeply concerned with the adverse effects on the environment and on human health of hazardous materials and wastes that are illegally exported to Turkey in the form of ships to be dismantled. Ship dismantling is a major industry in Turkey, and it also serves to the preservation of natural resources through the recovery and reuse of certain metals used in shipbuilding. However, the Turkish Government is of the view that the entire dismantling issue needs to be reviewed. Since old ships which can no longer serve as seagoing vehicles but are ready for scrap contain certain dangerous materials, these dangerous materials also enter the country where the ship to be dismantled goes. In the view of the Turkish Government this undoubtedly constitutes a form of illegal movement of hazardous and dangerous wastes.

18. The Turkish Government, together with relevant civil society stakeholder groups have launched a series of projects for the rehabilitation and amelioration of the infrastructure at the ship dismantling yards in Aliaga, which includes implementing the necessary measures to improve the working conditions and safety of the workers. The measures are subject to inspections carried out together with the International Labour Organization (ILO) office in Turkey.

19. The Special Rapporteur has subsequently been informed that the Turkish Government in November 2003 notified the Secretariat of the Basel Convention that imports to Turkey of wastes containing asbestos have been prohibited. In this connection, those ships in which asbestos was used during construction will no longer be dismantled in Turkey.

20. No reply from the French Government concerning the *Sea Beirut* case has been forthcoming.

21. **Case 2004/74 - United States/United Kingdom/developing countries:** The Special Rapporteur received a communication concerning the decision by the United States Maritime Administration (MARAD) in November 2002 to reverse a moratorium on the export of obsolete, toxic naval vessels to developing countries for dismantling. According to the information received, the moratorium was initially introduced following concerns about serious implications on human health and the environment in ship scrapping nations in the developing world.

22. It has been alleged that a part of the 2003 Defence Authorizations Act calls for the exploration, through a pilot programme, of the feasibility of exporting obsolete naval vessels from the National Defence Reserve Fleet. If the pilot is seen as acceptable, the total number of ships that could be exported abroad by the United States would allegedly be around 300-400 in the next few years. The ships reportedly contain significant quantities of hazardous asbestos and polychlorinated biphenyls (PCBs). According to the information received, officials from the United States Government have been looking to countries like China and Mexico to receive the obsolete vessels for dismantling.

23. The Special Rapporteur addressed a letter to the United States Government in August 2003, expressing her concern about the lifting of the moratorium.

24. A second letter was addressed to the United States Government in October 2003, following information alleging that MARAD had immediate plans to tow four obsolete naval vessels across the Atlantic Ocean from the James River in Virginia to the Able UK company in Teesside, England, for scrapping. The Special Rapporteur was informed that the first two ships contained over 68 tons of highly persistent and toxic PCBs as well as over 120 tons of asbestos-causing cancer. The towing of the toxic, obsolete vessels is considered to be particularly risky during hurricane season.

25. Allegedly, the four ships are part of a group of 13 toxic naval vessels destined to be towed from Virginia to the United Kingdom for scrapping. All 13 ships are apparently in serious states of deterioration with several of them already having leaked oil into the James River.

26. It has furthermore been alleged that the decision to send the obsolete vessels for disposal in the United Kingdom comes despite a warning from the United Kingdom Environment Agency to MARAD that allowing the vessels to sail to Britain “before all required regulatory approvals are in place ... may lead to the ships being repatriated to the United States”. Indeed, it is alleged that there is not even a dry-dock facility in place which is a requirement of the contract.

27. A letter was subsequently addressed to the Government of the United Kingdom in November 2003, requesting information concerning the granting of a licence to the company Able UK to dismantle 13 redundant United States naval auxiliary vessels at Able UK’s facility on Teesside, and the reasons for revoking the licence in October 2003, after two of the ships had already departed from the United States. From press reports and information from the web sites of relevant government agencies, the Special Rapporteur was able to ascertain that the United Kingdom Government now is of the opinion that dismantling of the vessels cannot be completed consistent with international rules and Community law and that the law requires the ships to be returned to the United States (statement by Environment Secretary Margaret Beckett of 6 November 2003). The Government of the United Kingdom subsequently informed the Special Rapporteur that following this decision, the United States authorities raised a number of safety and liability concerns about the proposal to return the ships to the United States with immediate effect. While the United Kingdom believes that in the circumstances it would have been preferable for the ships to return to the United States immediately, it acknowledges that it would not have been practicable given concerns about the prevailing weather conditions at this time of the year. The interests of human health and the environment are best protected through the United Kingdom’s temporary acceptance of the vessels, for secure storage pending a decision on their future.

28. According to the United Kingdom Government, the ships are not carrying any toxic cargo. There are small quantities of hazardous substances, integral to the structure of the ship that would have to be disposed of in appropriately licensed facilities. However, the vessels will expose neither the environment nor the public to any greater risk than other ships of their age and type.



29. The Environment Agency has modified the conditions of the waste management licence meaning that no dismantling, cutting or breaking of the United States vessels is permitted. As a precaution, the Environment Agency has required floating containment booms to be put in place, and conducts a regular regime of daily and weekly inspections to ensure they are kept safe. With regard to the nine other vessels in the contract, they remain in the United States pending resolution of United States legal action which prevents them from leaving the country before April 2004.

30. It is estimated that between now and 2015 some 2,000 EU-flagged single hull tankers will need to be recycled. It is preferable that recycling takes place in countries and facilities where there are proper controls protecting workers and the environment. Recycling of redundant ships in facilities that comply with the regulatory requirements for environmental protection, health and safety and the safe disposal of any hazardous waste arising should be supported.

31. No reply has been received from the Government of the United States.

32. **Case 2004/75 - Israel:** The Special Rapporteur received a communication which alleges that Israeli authorities have on at least three occasions in 2003 sprayed chemical materials on crops belonging to Bedouin residents of so-called unrecognized villages in the Negev. The information alleges that in at least one of these incidents, the villagers had not been informed of the plans to destroy the crops by spraying chemicals from the air, which resulted in local residents, including children and the elderly, being covered by the toxic spray. According to the information submitted to the Special Rapporteur, a policy of destroying Bedouin crops was begun on 14 February 2002, following a decision taken during a meeting of the Governmental Economical Committee of the Knesset.

33. The Special Rapporteur addressed a letter to the Government of Israel in August 2003 concerning these allegations. No reply has been forthcoming.

34. **Case 2004/76 - Mexico:** The Special Rapporteur received information concerning the alleged effects of the use of pesticides on lands and territories of the Yaqui nation, Mexico. According to the information received, the effects on the residents of Rio Yahui, Sonora, have included the following:

- Cancerous growths on the neck;
- Cancerous growths in the stomach;
- Birth defects of children born to women employed in agriculture;
- Hand sores; and
- Eye illness.

35. Some of the pesticides used in the area are “Amina”, “Bambel”, and “Veloz”, which are apparently trade names given in Mexico to these pesticides.

36. The Special Rapporteur addressed a letter to the Government of Mexico in August 2003, requesting information concerning these allegations. No reply has been forthcoming.

37. **Case 2004/77 - United Kingdom/Turkey:** The Special Rapporteur received a communication alleging a list of human rights concerns arising from the Baku-Tbilisi-Ceyhan (BTC) pipeline project. According to the information received, the Host Government Agreement (HGA) between the Turkish Government and the BP-led consortium states that the consortium is to be protected from, among other things, the consequences of any changes in national or international legislation that might hamper the construction and subsequent operation of the pipeline. It has been submitted to the Special Rapporteur that although Turkey remains legally bound by its commitments under international human rights treaties, the conditions of the HGA may make it much more difficult for Turkey to respect its human rights obligations as those develop over time.

38. More specifically, the alleged human rights concerns include the following elements:

(a) In its day-to-day operation the project is excluded from certain important regulations by the State, even when these would translate international standards into Turkish law;

(b) Turkey has undertaken to pay the consortium substantial compensation for any changes in law or other actions that will disturb the economic equilibrium of the project, even when such changes are a result of international human rights obligations. The effect of being faced with punitive costs for protecting the human rights of those affected by the pipeline is allegedly likely to have a chilling effect on Turkey's ability to improve its general human rights record;

(c) The HGA allows the State to intervene with the project only when there is an "imminent, material threat to public security, health, safety or the environment". This standard is less than the one afforded under the European Convention on Human Rights;

(d) The HGA allegedly freezes the regulatory framework from the effect date of the agreement, unless it can be shown that the threat to the environment is "imminent and material". This is said to imply that Turkey will be effectively unable to improve environmental standards in the pipeline zone for up to 60 years.

39. In its response to a letter from the Special Rapporteur requesting its comments on the allegations, the Government of Turkey informed the Special Rapporteur that transparency, including the free and open exchange of relevant information, is the hallmark of the BTC Project, including the HGA and other Project Agreements. The Turkish HGA has been made a public document and consequently is available to all interested parties. The Turkish Government furthermore rejects the allegation that the terms of the HGA may make it more difficult for the Government of Turkey to honour its human rights obligations under international law. Pursuant to the terms of the HGA, the Government of Turkey and the BTC Co. are committed to respecting the highest internationally-recognized human rights standards throughout the life of the Project, as those standards evolve over time. In addition, BTC Co. has made it clear that it will not seek compensation from the Government of Turkey, under the HGA's "economic equilibrium" clause, for damages incurred as a consequence of reasonable steps taken by the

Government to fulfil its international human rights obligations. The HGA therefore does not limit the ability of the Government of Turkey to recognize and implement its human rights commitments and in no manner “chills” its interest in undertaking this obligation.

40. A letter was addressed to the Government of the United Kingdom in August 2003 requesting its comments to the allegations received by the Special Rapporteur. No reply has been forthcoming.

41. **Case 2004/78 - Netherlands/Ethiopia:** The Special Rapporteur received a communication alleging industrial pollution caused by the sugar industry in the Wonji, Wonji/Shoa and Metahara areas in Ethiopia, which were established by the Dutch-owned company HVA International in 1954, 1960 and 1968 respectively. HVA International terminated its activities in the area in 1974-1975. According to the information received, the communities - which were reportedly poor and underdeveloped - were allegedly exposed to toxins emitted from the factories. The drinking water in the area was heavily polluted by the hazardous wastes generated from the discharge by the factory and by excess fluoride, and the air was polluted from the smoke and dust coming out of the factory. The affected communities are allegedly still suffering the consequences. It is furthermore alleged that two defluoridation plants were installed in the factory village where the Dutch families lived. In another report referred to the Special Rapporteur about defluoridation programmes of drinking water supplies, alleges that HVA International, who were running the three sugar factories in Wonji, Wonji/Shoa and Metehara, was withholding information since 1957 about the excess concentration of fluoride in the drinking water.

42. Letters were addressed to the Governments of the Netherlands and Ethiopia concerning these allegations. The Government of the Netherlands replied to the Special Rapporteur by forwarding copies of correspondence between HVA and an individual alleging violations in the nature described above. In the correspondence HVA states inter alia that the current company, HVA International NV, has no juridical link with the former HVA and its interests in Ethiopia and responds to the author out of a possible moral obligation, as it may be the only party that might give some answers to the questions raised. During the time of nationalization by the then Ethiopian Government in 1975/1976 the Ethiopian Government claimed a large amount as compensation for the fluoride problem and at the same time accepted responsibility for all future claims. When the effects of fluoride became known in the 1970s HVA instantly took measures by creating separate water distribution points where special bone-filters were used to produce low-fluoride water. Everybody, without exception, could collect water and information was widely spread around the estate. The whole fluoride matter was taken extremely seriously, as HVA had always taken great care in securing the health of all employees of these estates. Except for the consequences of fluoride, no other illnesses of a serious nature are known. Furthermore HVA disputes the allegation that white and black people were segregated. To minimize the dust problem proper roads were constructed using molasses. The air pollution from sugar factories is very limited compared to other industries like steel, chemicals, etc. Anti-pollution measures were taken as was common practice and valid for Western European plants in those days. Again no sign of serious illnesses as a result of pollution from smoke or dust have ever been reported. While HVA International NV is not aware of asbestos being used for houses, asbestos was applied for heat insulation in the factory. This never created problems as the asbestos stayed in place and could not spread dust particles. HVA International NV

concludes its correspondence with the author of the communication by advising individuals concerned by the fluoride problem to contact the Ethiopian Government which nationalized the whole Ethiopian Sugar Industry and all of HVA's assets in 1975.

43. No reply has been forthcoming from the Ethiopian Government.

44. **Case 2004/79 - India:** The Special Rapporteur received a communication alleging that significant amounts of highly toxic chemical stockpiles remain in several of the buildings of the now abandoned Union Carbide India Ltd. pesticides factory in the city of Bhopal, in Madhya Pradesh. It has been submitted to the Special Rapporteur that these stockpiles are inadequately contained; indeed, toxic material from one of the structures is reported to be effectively in the open. Local populations are vulnerable to exposure to all the chemicals allegedly found on the Union Carbide India Ltd. site through routes such as direct contact with contaminated soil or inhalation of contaminated dust. As some of the chemicals are highly persistent they may moreover be passed on in the milk of cattle that the locals graze on the site.

45. A letter was addressed to the Government of India in August 2003, requesting comments on these allegations. No reply has been forthcoming.

46. **Case 2004/80 - Netherlands/Nigeria:** Information received by the Special Rapporteur alleges that on 20 October 2002, Diebiri-Batan, an Ijaw community located along the Batan river in Delta State, Nigeria, was subject to a major oil spill from a delivery line operated by Royal Dutch Shell. The river, contaminated by the spill, serves as the only source of drinking water for the local people. The adjoining creeks, in which the local people carry out their fishing activities, were also severely polluted. Fishponds, fishing nets, traps and hooks were allegedly either destroyed or completely submerged by crude oil. On 26 October 2002, Royal Dutch Shell, accompanied by soldiers, repaired the faulty equipment and resumed the gas-flare operations on 7 November 2002. This was allegedly done despite the area not having been adequately cleaned up and the company having failed to provide relief materials, let alone compensate the people for the economic and health impacts of the spill. One month after the spill, fishermen reported that they were still unable to return to work due to the lack of compensation for damaged equipment from the spill. Though community members have repeatedly appealed to the company to take responsibility for their faulty equipment by conducting a full clean-up of the area and adequately compensating the community members, Shell reportedly refuses to provide compensation. The army and navy brought in by Shell reportedly harassed and brutalized community members, and there are reports of people disappearing.

47. Letters were addressed to the Governments of the Netherlands and Nigeria in August 2003, requesting comments on the allegations. The Government of the Netherlands subsequently forwarded the Special Rapporteur's letter to the Headquarters of Shell in The Hague. The reply from Shell Nigeria was forwarded to the Special Rapporteur in December 2003.

48. According to Shell, an investigation of the oil leak of 20 October 2002 found that it was caused by sabotage. According to Nigerian law, communities are not entitled to compensation for spills caused by sabotage. After receiving reports of the spillage on 20 October 2002, attempts were made to quickly contain its impact but Shell's efforts were obstructed, thus frustrating the efforts to limit the impact of the leak. Eventually, restraining booms were put in

place, but these were tampered with, causing the spill to extend beyond the initial containment area. Shell provided drinking water and medical care, as was required, throughout the period it took to complete the clean-up operations. Shell disputes the allegation of harassment by the armed forces brought in by Shell. A limited number of security personnel accompanied staff during the repair operations. To date, Shell is not aware of any reports, either directly to it or through the Nigerian security agencies, of acts of harassment or brutality by the security personnel that were on site at the time. Shell has held various meetings with a local NGO, which has been acting on behalf of the Batan community, and at no time was the issue of harassment or brutality mentioned. In conclusion, Shell expresses the opinion that the crux of the protest from the community members is that they believe they are entitled to compensation in spite of the fact that the spill was caused by sabotage.

49. **Case 2004/81 - United States/India:** The Special Rapporteur received a communication alleging that the City of New York has sold about 60,000 tons of toxic steel scrap left after the destruction of the World Trade Center towers, following the terrible act of violence inflicted on the United States on 11 September 2001, for disposal in Asian countries, including in India. According to the information received, the steel scrap left from the towers may possibly be contaminated with asbestos, PCBs, cadmium, mercury and dioxins, all of which are highly toxic. Allegedly, one ship carrying remnants landed in the South Indian port city of Chennai in early January 2002. Two other ships, *Shen Quan Hai* and *Pindos*, also reported to be carrying World Trade Center scrap, berthed and offloaded their cargo in Chennai. Other reports suggested that another shipment was making its way into Northern India through the western port city of Kandla. It is furthermore being alleged that the shipments of the steel scrap were not being properly tested, or labelled as potentially hazardous waste, and that the Indian port authorities have conducted no tests on the cargo, which has been imported as general steel scrap. The port workers have reportedly been unloading the cargoes without any type of protective clothing.

50. Letters were addressed to the Governments of the United States and India in August 2003, requesting their comments on the allegations received by the Special Rapporteur.

51. The Government of India informed the Special Rapporteur that the Ministry of Environment and Forests (MOEF) had investigated the issue of shipment of steel scrap from the debris of the World Trade Center in New York. The debris from the World Trade Center was separated into several categories by the New York Port Authority. It was subsequently processed to ensure that the scraps conform to the various standards prevailing in the United States, including environmental standards. While steel scrap is not a hazardous waste under Indian domestic law, nor under the Basel Convention, samples of scrap were analysed independently by two agencies. No dioxins, furans, PCBs or asbestos were detected, while mercury was below detectable levels. A chemical analysis confirmed that the scrap samples did not contain any hazardous constituents and that the imported consignment was non-alloy steel scrap.

52. No reply has been forthcoming from the United States.

53. **Case 2004/82 - United States/Indonesia:** The Special Rapporteur has received a communication alleging that the United States-based company, Newmont Mining Corporation, has dumped 2.8 million tons of toxic mine waste into the coastal waters of Buyat Bay of Indonesia since 1996. The method of waste disposal which the Newmont Mining Corporation is

allegedly using is effectively banned in the United States because of its toxicity and the extreme damage it does to the ecosystem. As a result, the people from the villages of Ratatotok and Buyat whose economy relies on the health of the Buyat Bay have reportedly found that their water is contaminated, their fisheries collapsing, and their children are contracting skin diseases. At Nusa Tenggara in Sumbabwa, Indonesia, Newmont Mining Corporation is furthermore alleged to be dumping 129,000 tons of mine waste a day in coastal waters. Local citizens say that agricultural land was taken from them without their agreement and that in some cases they were insufficiently compensated causing them to lose their source of livelihood.

54. Letters were addressed to the Governments of the United States and Indonesia in August 2003, requesting their comments on the allegations made to the Special Rapporteur. No replies have been forthcoming.

55. **Case 2004/83 - United States/India:** The Special Rapporteur has received a communication which alleges that the largest Coca-Cola plant in India (a subsidiary of the Coca-Cola Company), located in the Southern Indian State of Kerala, provides waste products from its operations to local farmers as fertilizer. Tests of the sludge produced from the plant have allegedly revealed that the material is not effective as a fertilizer and contains a number of toxic metals, including cadmium and lead. It is furthermore alleged that contamination of the soil from use of the sludge as a pesticide has spread to the water supply, with levels of lead in the nearby well above those set by the World Health Organization. According to the report, using the sludge as fertilizer has devastating consequences for those living near the areas where it has been dumped and for the thousands who depend on crops produced in the fields. Lead is particularly dangerous to children and the results of exposure can be fatal. Even at low levels it can cause mental retardation and severe anaemia. Cadmium is a carcinogen and can accumulate in the kidneys, with repeated exposure possibly causing kidney failure. The Vice-President of Coca-Cola India allegedly denies that using the sludge as fertilizer poses any risk and says that local farmers have been grateful for the fertilizer because many cannot afford brand name products. Coca-Cola India apparently intends to continue supplying the sludge to farmers.

56. Letters were addressed to the Governments of the United States and India in September 2003.

57. The Government of India informed the Special Rapporteur that in response to media reports about the presence of dangerous levels of cadmium and lead in the sludge supplied by the bottling unit in Kerala, the issue was investigated by the Ministry of Environment and Forests, through the Kerala Pollution Control Board (KPCB). The investigation found that the bottling unit complies with the conditions of its authorization to operate issued under the Water Act and the Air Act; that no effluent is flowing out of the factory premises; that out of the 25 wells studied near the industry, deterioration of water quality was observed in 3 wells only; no heavy metals were found in the water of any of the wells; regular monitoring by KPCB up to January 2003 of the solid, liquid and gaseous wastes generated by the factory did not reveal the presence of any hazardous constituent in excess of the prescribed quantities. However, the level of cadmium in the sludge sample analysed in July 2003 was found to be higher than the permissible levels. In view of this, KPCB has classified the sludge generated by this unit as a hazardous waste and has instructed the unit not to let the sludge out of their premises and not to use it as manure even within the factory premises. The unit is complying with the directions of the KPCB.

58. No reply has been forthcoming from the United States.

59. **Case 2004/84 - South Africa/Papua New Guinea:** A communication received by the Special Rapporteur refers to alleged grievances suffered by the communities living around the Tolukuma Gold Mine in the Golaila District, Central Province, Papua New Guinea. The mine is owned by the South African company Durban Roodepoort Deep Ltd. Affected communities are the Yaloge, Fuyuge, Roro, Mekeo, and Kuni people. It is being alleged that over 50,000 tonnes of mine tailings are being discharged annually directly into the Auga River system. It is furthermore being alleged that in 2000, a helicopter on its way to the mine dropped 1,000 kilograms of cyanide in the Yaloge River Valley. Later that year, another helicopter allegedly dropped 4,000 litres of diesel fuel on the outskirts of the Tolukuma Gold Mine. The grievances of the local community primarily relate to the impacts from the discharge of mine tailings and include the following:

(a) Community members attribute the deaths of more than 30 people up until 2001 to regular exposure to the contaminated Auga River. They also want an investigation into 19 unexplained deaths during 2002;

(b) Community members want to identify the cause of disease and illness (especially yellow feet, swollen stomachs and open sores) prevalent in communities which live close to the Auga/Angabanda River system;

(c) They are afraid to use the Auga river water for drinking and washing, which is especially difficult in the dry season when other water sources dry up such as with the Yumu and Tuala villages;

(d) Community members believe that environmental degradation, including the loss of vegetation and fruit trees on the banks of the Auga River, and reductions in fish, prawn and eel populations are due to the disposing of mine tailings directly into the river system. They also have concerns over unacceptable levels of heavy metals, especially mercury, within the river system.

60. Durban Roodepoort Deep Ltd. allegedly did not respond to community grievances until November 2002 when it issued a media statement acknowledging that it is accountable to the Papua New Guinea Government, the local communities and its shareholders. The company said it was in “substantial” compliance with Papua New Guinea environmental legislation and permit requirements. Recently the company has made some effort to engage with local communities. While this has assisted the parties to discuss the grievances, they allegedly remain unresolved.

61. Letters were addressed to the Governments of South Africa and Papua New Guinea in October 2003, requesting comments on the allegations received by the Special Rapporteur. No replies have been forthcoming.

62. **Case 2004/85 - Canada:** The Special Rapporteur received a communication concerning plans by the company Bennett Environmental to construct an incinerator to treat hazardous waste and other solid materials in Belledune, Baie de Chaleurs in New Brunswick, Canada. The company allegedly projects that by 2006, 100,000 tons of contaminated soil, originating from the United States, will be incinerated at the plant. It is being alleged that the local

population has neither been adequately informed nor adequately consulted about the project. A mandatory 120-day period for public consultation on a project of this nature has allegedly not been respected. The information received by the Special Rapporteur furthermore alleges that the environmental implications of the construction of an incinerator in the region would be detrimental to fishing and agriculture, which is integral to the traditional way of life of the communities in the area. Fear has also been expressed about the public health impact of the incinerator, and the Special Rapporteur has been referred to reports from health workers which make links between the pollutants already present in the region and the alleged ill health of an “alarming” number of inhabitants. The Special Rapporteur is conscious of the fact that the allegations outlined above strongly resemble the allegations arising from another incinerator project by Bennett Environmental in Kirkland Lake, Ontario, which she referred to in her report from her mission to Canada from 17 to 30 October 2002 (E/CN.4/2003/56/Add.2). In her report, she emphasized the importance of meaningful public participation in environmental decisions at the provincial level (para. 121), and that marginalized communities are given the possibility to participate in a substantive and meaningful way in environmental decisions which may have implications for their health, their rights, including cultural rights, or their lifestyles (para. 123).

63. A letter was addressed to the Government of Canada in October 2003. No reply has been forthcoming.

64. **Case 2004/86 - Israel/Syrian Arab Republic:** In a communication received by the Special Rapporteur in October 2002 the Syrian Arab Republic referred to certain alleged breaches by Israel of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, which the Syrian Arab Republic stated had also been brought to the attention of the secretariat of the Basel Convention. The alleged actions were also stated to have been brought to the attention of the Mediterranean Action Plan, the International Maritime Organization and Interpol. More specifically, the Syrian Arab Republic stated that:

“Israel has committed violations [of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal] by dumping and leaking large quantities of hazardous wastes into the Mediterranean Sea, thereby damaging marine life in the Mediterranean, and particularly the coasts of Lebanon and Syria, as a result of the tides. Israel has also and continues to bury hazardous wastes in the occupied Arab territories in Palestine and the Golan.”

65. In its reply the Government of Israel strongly protested the attempt by the Government of the Syrian Arab Republic to politicize the Basel Convention as well as the Barcelona Process. It was emphasized to the Special Rapporteur that the accusations made by the Syrian Arab Republic are absolutely baseless. Israel is committed to both the Basel Convention and the Barcelona Process and has played an active role in meetings and in their implementation, which it promotes and applies through law and enforcement. Israel has a broad system of law and enforcement that enables the management in the field of hazardous substances. Legislation on the matter of hazardous wastes and the protection of the Mediterranean Sea is being enforced by the relevant authorities and applies to all Israeli citizens regardless of geographical location. Israel remains committed to regional cooperation in all that applies to the protection of the Mediterranean Sea and to the Basel Convention.



### III. SUMMARY AND UPDATES OF CASES CONTAINED IN THE PREVIOUS REPORTS OF THE LAST TRIENNium

66. **Case 2002/66 - Venezuela/various countries:** The Government of Venezuela submitted a number of cases dealt with by the Special Ombudsman's Office with National Jurisdiction for the Environment and for the purpose of increasing awareness of the environmental situation in Venezuela. The Special Ombudsman's Office was requested by the International Affairs Department to provide information on cases relating to: (a) the illegal traffic and dumping of toxic products and wastes; (b) fraudulent waste-recycling programmes; and (c) polluting industrial and technological activities of transnational industries which generated wastes from developed to developing countries.

67. The Government of Venezuela provided the Special Rapporteur with summaries of the cases, details on related information reported in the national newspapers, graphic representations of the geographical distribution of cases and copies of press clippings, covering the period May to mid-September 2001. The cases reported by the Government of Venezuela are summarized in the Special Rapporteur's report to the Commission in 2002 (E/CN.4/2002/61).

68. **Case 2003/67 - United States/Chile: Farmers pressured to use pesticides to increase exports:** A communication addressed to the Special Rapporteur indicated that, as Chile strived to increase its annual exports of fruit, the pressure to use more agricultural chemicals such as Dormex has increased the chances of skin disease, miscarriages, sterility and cancer in farm workers. Public health workers alleged that five workers a week went to the clinic in Los Loros (a tiny village in the Atacama Desert's Copiapo Valley), during the months of high pesticide use. Most of them suffer from severe skin problems such as burning sensations and cheeks swollen to the size of baseballs from overexposure to Dormex, a chemical used to speed the growth of grapes (the active ingredient of Dormex is registered for use in other countries such as the United States, Australia, New Zealand, and Israel). A 1998 study by the Rancagua Hospital in the central valley region, where 60 per cent of the nation's pesticides were used, showed that residents are 40 per cent more likely to have children born with defects than in other regions.

69. In 2000 more than 15,000 tons of pesticide were allegedly imported to Chile, almost twice the amount imported in 1990. It was alleged in the report to the Special Rapporteur that the few norms and regulations governing pesticide use varied from region to region. Safety precautions were often voluntary. The Government has allegedly claimed that the Agriculture and Livestock Service, the agency in charge of pesticide use, do not have the capacity to enforce adequately safety regulations that exist.

70. In December 2001, the Special Rapporteur addressed letters to the Governments of Chile and the United States, asking them to comment on the allegations regarding the extensive use of Dormex and other pesticides.

71. In its reply, the Chilean Government stressed its desire to cooperate with the Special Rapporteur on this matter. It stated that Chile complies with international standards in the area of pesticide regulation, and presented an overview of the standards, regulations and monitoring procedures in place to secure the proper use and handling of Dormex. The Government also noted that it is making efforts to find new technologies to reduce the use of pesticides which, even when legal, may represent a health risk if incorrectly applied. It furthermore emphasized

that any individual who believes that he or she has suffered harm or undue pressure has every right to seek redress through the Chilean courts. Those who were allegedly affected in the present case did not make use of either legal or administrative domestic remedies.

72. According to the United States Government, the active ingredient of Dormex (hydrogen cyanamide) is registered as a herbicide for use in the United States. The Environmental Protection Agency collects adverse information about all pesticides registered in the United States and the United States Government asked to be given more detailed information about the health problems experienced by the Chilean workers, and in particular, information about the conditions of its use.

73. **Case 2003/68 - United Kingdom/India: Illegal dumping of mercury and waste products by a multinational corporation:** In October 2001, the Special Rapporteur received a communication regarding allegedly illegal dumping of mercury and waste products in the local forests in Kodaikanal Dindigul District, Tamil Nadu, India. The dumping was supposed to have been carried out by a thermometer plant owned by the Hindustan Lever Ltd., the Indian subsidiary of the Anglo-Dutch multinational Unilever. Allegedly, a subsequent estimate based on plant records and investigations concluded that approximately 7.4 tons of contaminated waste material had been dumped without prerequisite precaution. Workers were said to not have been provided with the necessary safeguard measures and almost all suffered various ailments.

74. The Special Rapporteur addressed letters to the United Kingdom and Indian Governments, asking for their comments on the allegations. No reply from the Indian Government has been forthcoming.

75. In its reply, the British Government indicated that it expects British multinational companies to act in accordance with standards set out in the Organisation for Economic Cooperation and Development (OECD) Guidelines on Multinational Enterprises, although these guidelines are non-binding on companies. According to the Government, the Hindustan Lever Ltd. case has not been raised under the OECD mechanism through which signatories to the Guidelines can follow up complaints addressed to National Contact Points about companies' compliance with the Guidelines.

76. The Government also referred to a statement issued by Hindustan Lever Ltd. In the statement, the company referred to a Working Committee set up by the Tamil Nadu Pollution Control Board (TNPCB) to coordinate a study of the allegations that the factory had led to mercury pollution/contamination in and around the premises. Besides offices of the TNPCB, the Working Committee consisted of representatives of Greenpeace and a local non-governmental organization, as well as representatives of industry associations. According to the company, the study found that the factory had not caused any adverse environmental impact outside the factory premises. Comprehensive medical testing in accordance with established protocols confirmed that none of the company's employees suffered any adverse health effects resulting from mercury exposure. The company has prepared a detailed plan to remediate the site to the most stringent Netherlands standards, applied to land for residential use. The company asserts that allegations that some workmen of the factory died due to mercury-related ailment has remained totally unsubstantiated.

77. **Case 2003/69 - United States/Mexico: New River pollution:** The Special Rapporteur received lengthy information concerning the pollution of the New River in Mexico. Pollution is allegedly collected from three primary sources: Maquiladoras in Mexicali, agricultural runoff in Mexicali Valley and runoff in Imperial Valley. Waste eventually flows into the Salton Sea. Maquiladoras produce electronic materials and supplies, manufactured products, transportation equipment, petroleum products, plastics, metal-related products, and medical supplies. According to Mexican law, hazardous waste created at the maquiladoras by raw materials from the United States must be returned to that country.

78. Health risks of the river are acute since it allegedly carries 28 viruses, including typhoid, salmonella, and polio, in addition to some chemicals such as DDT and pesticides. Pesticides represent a threat to workers who use them and for the non-farming areas, through blowing winds, causing additional danger to humans and the environment.

79. The Special Rapporteur addressed letters to the Governments of the United States and Mexico, asking them to comment on the allegations.

80. The United States Government replied that the presence of DDT - which is no longer permitted for use in either the United States or Mexico - in the New River could be a result of its continued existence in the environment or possibly illegal use. Without more data, it was not possible to come to any conclusion. Concerning the drift of pesticides during application, which can occur with many products depending on the formulation, method of application and conditions during use, the Special Rapporteur was informed that the drift of pesticides during aerial application is the subject of a United States policy effort and she was referred to information to be found at the Environmental Protection Agency web site.

81. The Mexican Government replied that according to information from the Office of the Federal Procurator for Environmental Protection, the United States has over the past five years or more sought to clean up the Salton Sea by what would amount to a washing process. The product would be sent to Laguna Salada in Mexico. These attempts have been rejected by the Mexican Government because it has not been convincingly shown that Mexico has made any significant contribution to the pollution of the Salton Sea. In this regard it was pointed out that in bilateral meetings, the United States has not made available any information on pollutants detected in the New River between the border and the Salton Sea, or on the quantities thereof.

82. The Mexican Government informed the Special Rapporteur that DDT is no longer used in Mexico either for agricultural or for domestic purposes.

83. **Case 2003/70 - USA/Colombia: Crop dusting:** A communication received by the Special Rapporteur alleged that the fumigation of cocoa and poppy crops by the Governments of Colombia and the United States constitutes threats against the indigenous and peasant communities of the departments of Cauca and Narino in Southeastern Colombia. The fumigation takes place despite the fact that the communities and the local authorities of these regions reportedly have proposed "alternatives and peaceful solutions" to the drugs eradication measures.

84. The report received by the Special Rapporteur indicated that since December 2000, tons of agrochemical products have been dumped by air over more than 50,000 hectares affecting the local inhabitants, livestock, food crops, wildlife, water sources and the ecology of the area. The Colombian Ombudsman has repeatedly requested that the fumigation be halted. His press release of 12 July 2001 states “Persisting in the program of fumigating crops used for illicit purposes ... violates basic rights to life, integrity, health and food safety as well as the collective right to a healthy environment, ecological balance and to public health and safety and other rights of the Colombia people.”

85. The Special Rapporteur requested both the Colombian and the United States’ Governments to comment on the allegations.

86. In its reply, the United States Government informed the Special Rapporteur that the Department of State is investigating allegations about the aerial spraying of the herbicide glyphosate used to eradicate illicit narcotic crops in Colombia. By way of background, glyphosate is the active pesticide ingredient in herbicide products licensed for use in the United States by the United States Environmental Protection Agency. Products containing glyphosate are licensed for use in the United States and in most other countries, including Colombia, for numerous uses to kill unwanted vegetation. Applications may be made by aircraft, ground equipment, or handheld sprayers. The Environmental Protection Agency collects reports of adverse effects from the use of pesticides, including reports from public health agencies. Reports associated with the use of glyphosate in the United States are not consistent with those allegations concerning the use of glyphosate use in Colombia.

87. No reply has been forthcoming from the Colombian Government.

88. **Case 2003/71 - Canada, United States/China, India, Pakistan: Export of hazardous electronic waste from North America to Asia:** The Special Rapporteur received a comprehensive report from Basel Action Network, alleging that substantial amounts of hazardous electronic waste (E-waste) are exported from the United States to Asian countries such as China, India and Pakistan for recycling. More specifically, the report looks in detail at the issue of export of electronic waste, particularly from the United States, to China, Pakistan and India where they are processed in operations that are extremely harmful to human health and the environment. The report alleges that improper disposal of electronic waste that contains heavy metal and pollutants poses a significant threat to human health, leading to respiratory illness, skin infections, stomach disease and other conditions. Computer or television monitors contain cathode ray tubes, which typically contain enough lead to be classified as hazardous waste when being recycled or disposed of. A typical computer monitor may contain up to eight pounds of lead. The report submits that such exports of E-waste are contrary to the Basel Convention (to which the United States is not a party).

89. The Special Rapporteur later received an addendum to the Basel Action Network report, focusing on export of hazardous electronic waste from Canada. The report alleges that hazardous electronic waste originating from Canada is being exported to Asia. The report names several Canadian companies allegedly involved in the business of exporting hazardous electronic waste for recycling in a number of Asian countries. One of the countries, China, has banned the import of electronic waste and the report alleges that Canada’s refusal to honour that ban by furthering exports of E-waste into China is in contravention of the Basel Convention.

90. The report lists a number of ways in which Canada allegedly violates the Basel Convention, including by taking no precautions to ensure that the hazardous electronic waste exported from their territory is being handled in an environmentally sound manner. The report furthermore alleges that Canada's lack of monitoring and control of exports of hazardous electronic waste to a final destination which is outside the OECD is a violation of legally binding OECD Council Decision-Recommendation.

91. In mid-November 2002, the Special Rapporteur requested the Governments of China, India, Pakistan and the United States to comment on the allegations made by Basel Action Network, and whether any investigation of the report's allegations has been undertaken. At the time of finalizing her report (early December 2002), no replies had been received.

92. During her in situ mission to Canada in October 2002, the Special Rapporteur had an opportunity to raise the issue of the Basel Action Network report directly with the Canadian Government. The Canadian Government informed the Special Rapporteur that it is indeed meeting its international obligations in the field of hazardous waste, and that the Canadian definition of hazardous waste corresponds with the Basel Convention listing. It added, however, that Environment Canada is reviewing its definition of hazardous waste, including electronic scrap, as part of ongoing amendments to the Export and Import of Hazardous Wastes Regulations.

93. The Canadian Government furthermore informed the Special Rapporteur that Environment Canada has not issued any permit for the export of hazardous electronic scrap - as currently defined in Canada - to any developing country under the Export and Import of Hazardous Wastes Regulations. Canada also prohibits the export of hazardous wastes to countries that have notified Environment Canada that they themselves prohibit imports of such waste. As of November 2002, China had not notified Environment Canada of any ban on the import of electronic waste. In view of the allegations of electronic waste export to China, Environment Canada has requested information from the Chinese authorities as to whether China has a prohibition on import of electronic scrap.

94. **UPDATE:** Since the finalization of her report to the Commission in 2003, the Special Rapporteur received the following replies from the Governments of China, India and Pakistan.

95. The Government of China informed the Special Rapporteur that, following the report by Basel Action Network concerning the export of E-waste from the United States to countries in Asia, including China, officials were sent to investigate the issues referred to in the report. According to the Chinese Government, it was ascertained that the United States and other countries had indeed unlawfully exported electronic waste to China, causing environmental pollution. The relevant provincial government adopted comprehensive remedial measures, aimed at stamping out any activities causing environmental pollution through the breaking and stripping of obsolete technological equipment, invested funds in measures to bring under control and to restore environmentally polluted areas along sections of the Lianjiang river dyke, enhanced the management capacity of enterprises engaged in the processing of waste and prohibited the transfer to other areas of environmentally hazardous wastes by backyard workshops.

96. According to the Chinese Government, import of electronic scrap has been prohibited since 1 April 2000. The list of electronic scrap covered by the import prohibition was amended in August 2002 by a joint promulgation from the Chinese Ministry of Foreign Trade and Economic Cooperation, the Customs Administration and the State Environmental Protection Administration.

97. The Chinese Government expressed the hope that the United States and other developed countries will promptly put a halt to exports of E-waste to developing countries, including China, and will resolve the issue of electronic waste disposal at its source, thereby making their proper contribution to the protection of the world's environment.

98. The Government of India indicated that no substance classified as E-waste is being brought into India. However, certain second hand electronic goods and components imported into the country may also contain discarded material not fit for their original intended use. It is estimated that second hand computer components, spares and air conditioners worth US\$ 34,285 during the periods 2000-2002 and 2001-2002 have been cleared for import for reuse and not for reprocessing.

99. In view of the information contained in the report from Basel Action Network and others regarding import of E-waste into India, a site visit was undertaken in August 2002 by a team of officials from the Ministry of Environment and Forests, the Central Pollution Control Board and the Delhi Pollution Control Committee to assess the situation regarding E-waste reprocessing. The observations/findings of the team include the following:

- (a) There are shops trading in all kinds of scrap emanating from electric and electronic goods such as computers;
- (b) All the items appear to be locally produced. No imported scraps were observed;
- (c) The scraps are segregated physically and reusable materials are sold for local use. The visit team observed no reprocessing of any of these wastes;
- (d) The only activity that was observed was tripping of plastic/PVC coating of wires/cables, which is done mechanically. No smelting activity was observed;
- (e) Illegal and unauthorized smelting/reprocessing of indigenously generated copper cables/wires/scrap is going on in certain areas. Based on complaints received, closure of seven illegal units has been recommended recently by the Divisional Commissioner; and
- (f) Absolutely no trading/reprocessing of imported E-waste was observed.

100. In order to prevent illegal import/export of hazardous wastes certain legislative and administrative amendments have been made.

101. The Government of Pakistan indicated that the import of hazardous waste as defined and classified in the Basel Convention is banned in Pakistan.

102. **Case 2003/72 Peru: Mining project in Tambogrande:** The Special Rapporteur received reports pertaining to a planned mining project in the Northern Peruvian town of Tambogrande. According to the information received by the Special Rapporteur, a Canadian owned mining company, Manhattan Minerals, has been granted a concession to mine a deposit of valuable metals (gold, silver, copper and zinc) in Tambogrande. The proposed open-pit mine could displace an estimated 8,000 people from the area and, according to some reports, would pollute farmlands and water.

103. On 2 June 2002, activists and representatives of the town, including the mayor, organized a referendum on the proposed mining project. According to reports received by the Special Rapporteur, 70 per cent of the town's population of 36,000 people voted in the referendum, with 98 per cent of those voting saying "no" to the mining proposal. The Peruvian Government has reportedly not recognized the outcome, since it does not consider the referendum official.

104. In mid-November 2002, the Special Rapporteur addressed a letter to the Peruvian Government, asking it to comment on the allegation received, particularly relating to the issue of public participation raised by the unofficial referendum on the mining project. No reply had as yet been received in response to the Special Rapporteur's request.

#### IV. UPDATE ON PREVIOUSLY REPORTED CASES

105. The following update of previous cases was received by the Special Rapporteur during the period under consideration. For ease of reference, the cases carry the same numbering order in which they appeared in document E/CN.4/2001/55/Add.1.

106. **Case 2000/58 - USA/Paraguay:** At its fifty-seventh session, the Commission on Human Rights heard a statement by a priest representing the village affected by the dumping of toxic waste by Delta and Pine Paraguay, and by the Paraguay 2000 Association. The Special Rapporteur received a new communication from the Association inviting the United Nations to organize an investigation of the case in order to trigger a reaction from the Government. The Special Rapporteur has also received a message from an NGO requesting her to undertake an in situ mission to assess the situation and expedite long-overdue solutions.

107. **Case 2000/59 - Panama/USA:** On 2 April 2001, the Special Rapporteur had a meeting with the Director-General of International Organizations at the Ministry of External Relations of Panama, at his request. This was with a view to updating her on the case reflected in her report concerning the clearing by the United States of America of military waste (ordnance residues and toxic waste covering a wide area of Panamanian territory) from the Canal Zone. The Special Rapporteur was provided with documents and diskettes containing pictures of the affected sites, and was asked to use her good offices in finding appropriate solutions to the problem with the United States authorities.

108. **Cases 1999/45 and 1999/52 - United States/Costa Rica:** The Government of Costa Rica addressed a detailed report to the Special Rapporteur providing background information on the historical and legal contexts within which various kinds of pesticides were used in the banana plantations in Costa Rica. The report was in connection with the analysis contained in the Special Rapporteur's report to the fifty-seventh session of the Commission

E/CN.4/2001/55/Add.1. The Special Rapporteur looks forward to receiving updated information on the settlement of the Nemagon pesticide cases and the outcome of those that are still pending before the courts in the United States of America.

109. **Case 1997/20 - USA/Puerto Rico/Iraq/Yugoslavia:** Several inhabitants of the Lehigh Valley, Pennsylvania, United States of America, addressed a communication to the Secretary-General of the United Nations requesting a full investigation into the use by the United States of depleted uranium (DU) weapons in Vieques island, Puerto Rico, in Iraq (the Persian Gulf) and in the former Yugoslavia. They appealed to the international community for an immediate isolation and containment of DU weapons and waste, the reclassification of DU as a radioactive and hazardous substance, the clean-up of existing DU-contaminated areas, comprehensive efforts to prevent human exposure and medical care for those who had been exposed.

110. **Case 2001/64 - Canada/Honduras:** On 19 May 2001, a second communication was addressed to the Special Rapporteur by a resident of Dawson Creek, Canada. The author wrote out of concern about the environmental degradation and the contamination of soil and water by the mining companies in Honduran communities. This had caused further health risks to the local population and eviction from their lands. The writer requested that the human rights of the local population be given priority and that immediate measures be taken to bring to an end illegal mining procedures and techniques by the mining companies.

111. **Case 1999/41 - Netherlands/China/Haiti:** On 30 October 2001, the Special Rapporteur received a telephone message from the General Prosecutor of the Netherlands, informing her that an agreement had been reached with the families of the Haitian victims in their dispute with the Dutch Company Vos BV. The details of the agreement were not transmitted to the Special Rapporteur in time for inclusion in her report to the Commission in 2002. The case concerned the contamination of a paracetamol syrup by impure glycerine resulting in the death of at least 88 children in Haiti between 1997 and 1998.

112. In December 2001, the Special Rapporteur was informed by the Chief Public Prosecutor at The Hague about the conditions of the out-of-court settlement reached with the company Vos BV to avoid criminal proceedings for offending against the Dutch Environmentally Hazardous Substances Act. The company had been charged with having supplied the glycerine to a German buyer while it could or should have known that its actions could be hazardous to individuals and the environment. Under the terms of the settlement, Vos BV must pay 500,000 Netherlands guilders to the Kingdom of the Netherlands.

113. Vos BV adopted the position that agreeing to the conditions does not mean that it accepts criminal liability for the actions of which it was charged, nor that Vos BV accepts any civil liability under any law of damages of any kind relating to the case.

114. The Special Rapporteur was informed that the Public Prosecutions Department decided to offer the company an out-of-court settlement because the inquiry did not furnish any evidence that any natural persons would be identified within the company who were liable to prosecution, nor that the sale in question was part of a system of methodical malversations or dubious transactions.



115. The Special Rapporteur was furthermore informed that the interested parties (the Haitian victims and their next of kin) have been given the opportunity to appeal against the decisions taken in 2000 (reducing the suspicion) and 2001 (settling the case by means of a transaction) through the Dutch correspondent of their German lawyer. In neither situation was this opportunity made use of.

116. In February 2002, the Special Rapporteur asked for the Haitian Government's comments and observations on the amicable settlement of the case, and that the comments and observations of the representatives of the victims be submitted to her. The Haitian Government has not provided the Special Rapporteur with the requested information.

117. The Special Rapporteur has expressed her disappointment to the Commission on Human Rights that the out-of-court settlement of the case does not address the underlying problems of the case and that the compensation afforded the families of the victims was ridiculous. Furthermore, one does not know whether the compensation payments have been effectively directed at the families. According to the Special Rapporteur, this case illustrates the difficulties faced by victims in achieving their rights. She has raised the issue with the Permanent Representative of the Netherlands who has suggested another mission to his country to follow-up on the issue. Such mission has not taken place due to financial and time constraints.

118. **Case 1997/17 - United Kingdom/South Africa:** Reportedly, the British transnational corporation Thor Chemicals imported and stockpiled more than 3,000 tons of toxic waste in Durban, South Africa (E/CN.4/1998/10/Add.2, para. 18). Three Thor executives were charged with culpable homicide and 42 contraventions of safety laws after the death of a worker from suspected mercury poisoning. Following several reports of severe mercury-related poisoning of workers, Thor Chemicals announced that it would phase out all mercury-related operations at its Durban plant in South Africa by the end of 1996 (E/CN.4/1997/19, para. 64).

119. The Government of South Africa replied that the importation of spent mercury catalyst into South Africa by Thor Chemicals was known to and permitted by the South African Government and that there was no illicit dumping or trafficking. The imports were terminated in 1992. However, court proceedings against Thor Chemicals SA (Pty.) Ltd. took place between 1992 to 1995. All charges of homicide against three employees were dropped by the State Prosecutor, and Thor Chemicals was found guilty by the court of contravening the Machinery and Occupational Safety Act of 1983 (Act 6 of 1983) (E/CN.4/1998/10/Add.1).

120. According to the South African Government, the future treatment of the imported material was the subject of a Commission of Inquiry (the "Thor Chemical Commission") appointed by President Mandela on 24 March 1995. In the first phase of its report, the Thor Chemical Commission concluded that the only viable option was to treat the mercury waste by recycling it through incineration or roasting. According to the Thor Commission, only a small percentage of this waste had been imported, and it was almost impossible to identify the sources because of leakage (E/CN.4/1998/10/Add.2, para. 22). The Commission was still working on the second phase of its report and investigating the monitoring and control of mercury processing in order to recommend steps which would minimize risk, and protect workers and the environment. The Department of Environmental Affairs and Tourism constituted a multi-stakeholder Steering Committee to attend to the implementation of the recommendations of the first phase report (E/CN.4/2000/50, para. 91).

121. The United Kingdom Government replied that it was informed by Thor Chemicals (UK) Ltd. that, between 1987 and May 1992, 10,137 kg net (24,970 kg gross) of Thor mercury compound residues were exported to Thor Chemicals SA (Pty.) Ltd. for processing. Thor Chemicals (UK) Ltd. stated that shipments ceased after May 1992. The United Kingdom Government had no evidence to suggest that Thor Chemicals (UK) Ltd. did not comply with relevant United Kingdom legislation on the shipment of dangerous goods. Compliance of the working practices of Thor Chemicals SA (Pty.) Ltd. with health and safety legislation was a matter for the relevant authorities in South Africa. The United Kingdom did not believe that the allegations were within the mandate of the Special Rapporteur (E/CN.4/1998/10/Add.1).

122. During her field mission to the United Kingdom in May-June 2003, the Special Rapporteur was informed that compensation claims against the parent company of Thor Chemicals Ltd. were commenced in the English High Court on behalf of 20 workers affected by mercury poisoning. The claims alleged that the English parent company was liable because of its negligent design, transfer, set-up, operation, supervision and monitoring of an intrinsically hazardous process. Thor unsuccessfully applied to stay the action on *forum non conveniens* grounds and its appeal was struck out by the Court of Appeals. In 1997, the claim was settled for £1.3 million. A further 21 claims were commenced by workers from the same factory, and settled on the first day of trial.

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