



**Consejo Económico  
y Social**

Distr.  
GENERAL

E/CN.4/2003/56/Add.2  
14 de enero de 2003

ESPAÑOL  
Original: INGLÉS

---

COMISIÓN DE DERECHOS HUMANOS  
59º período de sesiones  
Tema 10 del programa provisional

**LOS DERECHOS ECONÓMICOS SOCIALES Y CULTURALES**  
**Efectos nocivos para el goce de los derechos humanos del traslado**  
**y vertimiento ilícitos de productos y desechos tóxicos y peligrosos**  
**Informe de la Sra. Fatma-Zohra Ouhachi-Vesely, presentado**  
**de conformidad con la resolución 2002/27 de la Comisión**  
**Adición**

**MISIÓN AL CANADÁ DE 17 A 30 DE OCTUBRE DE 2002\***

**Resumen**

Por invitación del Gobierno, la Relatora Especial realizó en octubre de 2002 una misión al Canadá. La finalidad principal de la misión consistía en conocer mejor la legislación, la política y la práctica del Canadá en lo referente al tráfico ilícito de productos y desechos tóxicos y peligrosos y el goce de los derechos humanos. Durante la misión, la Relatora Especial se reunió con numerosos agentes interesados, entre ellos organismos federales y provinciales, organizaciones no gubernamentales y representantes del sector privado.

---

\* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe completo, que figura anexo al resumen, se distribuye únicamente en el idioma en que fue presentado.

Al estudiar las leyes y reglamentos de interés para su mandato, se le plantearon una serie de cuestiones concretas en el curso de la misión, a saber, la exportación de desechos electrónicos peligrosos al Asia; un proyecto de incinerador en Ontario septentrional; la contaminación transfronteriza de los territorios de la Primera Nación; el desguace de buques; los efectos de la liberalización del comercio; los contaminantes orgánicos persistentes; los plaguicidas y su exportación; la participación del público y la transparencia en las decisiones ambientales y la responsabilidad social de las industrias.

Aun congratulándose de muchas de las medidas adoptadas por el Gobierno del Canadá en los sectores de interés para su mandato, especialmente en lo referente a los contaminantes orgánicos persistentes, y a la cooperación técnica en la participación del público, la Relatora Especial ha dirigido al Gobierno una serie de recomendaciones, exhortándolo (aunque no en orden de prioridad) a que:

- a) Ratifique el Convenio de Basilea y su enmienda sobre la prohibición;
- b) Adopte medidas concretas para conseguir que los exportadores canadienses respeten las condiciones que se impongan a la importación de productos químicos y plaguicidas sujeta al procedimiento del Convenio PIC, prestando especial atención a las dificultades planteadas a los países en desarrollo;
- c) Incorpore unos criterios en forma ecológicamente racional a los reglamentos federales sobre circulación de residuos radiactivos con la máxima urgencia;
- d) Investigue todas las reclamaciones formuladas en el informe por la Red de Acción de Basilea sobre la exportación no autorizada de residuos electrónicos peligrosos a países asiáticos;
- e) Prohíba la exportación de plaguicidas no registrados para su venta o aprovechamiento en el Canadá;
- f) Tenga presente las irregularidades en los procesos de consultas a nivel federal, en que se suelen aprobar muy en concreto importaciones de residuos peligrosos, nuevas sustancias y plaguicidas;
- g) Procuren que se consulten a fondo todos los aspectos de cada proyecto de un modo abierto y transparente;
- h) Procuren por todos los medios evitar el desarrollo o el emplazamiento de proyectos en comunidades ya situadas en desventaja, pues ello podría repercutir negativamente en el medio ambiente y en la salubridad de esas comunidades;
- i) Presten especial atención a las denuncias de amenazas a los modos de vida tradicionales y a los derechos de los grupos indígenas;

- j) Exploren la manera de apurar responsabilidades por violaciones de derechos humanos cometidas por las empresas que realizan actividades en el extranjero, y
- k) Sigam sometiendo a procedimiento penal, junto con acciones civiles o administrativas, todo lo relativo a la infracción de la ley en la esfera de los residuos tóxicos y peligrosos.

### Annex

## REPORT OF THE SPECIAL RAPPORTEUR ON TOXIC WASTES AND HAZARDOUS PRODUCTS, MS. FATMA OUHACHI-VESELY, ON HER MISSION TO CANADA, 17 TO 30 OCTOBER 2002

### CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction .....	1 - 5	5
I. LEGAL AND INSTITUTIONAL CONTEXT .....	6 - 16	5
A. Constitutional framework .....	7 - 10	6
B. Multilateral, bilateral and regional commitments .....	11 - 14	6
C. Institutions .....	15 - 16	7
II. LAW, POLICY AND PRACTICE .....	17 - 36	7
A. General .....	17 - 20	7
B. Hazardous waste management .....	21 - 36	8
III. PARTICULAR ISSUES BROUGHT TO THE ATTENTION OF THE SPECIAL RAPPORTEUR .....	37 - 108	11
A. Export of electronic waste to Asia .....	37 - 40	11
B. Planned Bennett incinerator in Kirkland Lake, Ontario .....	41 - 45	11
C. Akwesasne community .....	46 - 47	12
D. Ship-recycling .....	48 - 50	13
E. Trade liberalization .....	51 - 61	13
F. Persistent organic pollutants (POPs) .....	62 - 68	15
G. Pesticides .....	69 - 78	16
H. Export of pesticides not registered for use in Canada .....	79 - 86	17
I. Public participation and transparency .....	87 - 93	18
J. Corporate social responsibility .....	94 - 108	19
IV. CONCLUSIONS AND RECOMMENDATIONS .....	109 - 127	21

Appendix	Agencies and organizations with whose representatives the Special Rapporteur met during her mission .....	27
----------	--	----

### **Introduction**

1. In accordance with the mandate given to her by the Commission on Human Rights in resolution 1995/81 and subsequent resolutions, the Special Rapporteur undertook a mission to Canada from 17-30 October 2002. The mission came about as a result of an invitation extended by the Government of Canada, and follows previous missions to Africa in 1997, Central and South America in 1998, Europe in 1999 and the United States in 2001.

2. The purpose of the mission was, inter alia, to hold consultations with governmental, non-governmental and private sector representatives; to study the practice, the laws in force and to learn more about governmental policy and the impact of bilateral and multilateral trade agreements on the transboundary movement of toxic waste and hazardous materials; to exchange views with the authorities regarding specific allegations; to consider trends in the transboundary movement of toxic waste and hazardous materials; to learn about technical cooperation undertaken by Canada; and to sensitize the Canadian authorities to the importance of her mandate from a human rights perspective.

3. The Special Rapporteur is grateful to the Canadian Government and its agencies for their cooperation and for the excellent assistance they extended to her during her mission. She also thanks provincial authorities in Ontario and Quebec, as well as the non-governmental organizations and private sector representatives who made themselves available for extensive consultations and who supplied her with large amounts of information.

4. At the federal level, the Special Rapporteur met with representatives from the Department of Foreign Affairs and International Trade, Environment Canada, Health Canada, the Department of Justice, the Department of Indian and Northern Affairs, National Defence and the Canadian International Development Agency. She also met with the Commissioner of the Environment and Sustainable Development, with representatives of the Commission for Environmental Cooperation, a representative of the National Round Table on the Environment and the Economy and the Joint Public Advisory Committee for the Chile-Canada Agreement on Environmental Cooperation, and with past members of the Parliamentary Committee on Environment and Sustainable Development. At the provincial level, she met with representatives from the Ministry of the Environment, the Ministry of Natural Resources and the Ministry of International Relations in Quebec and the Ministry of Environment in Ontario. She met with non-governmental organizations, academics and Canadian indigenous groups. She held consultations with an industry association and a representative for the waste-disposal industry.

5. The Special Rapporteur held meetings in Ottawa, Quebec City, Montreal and Toronto. She went on a field trip to the Akwesasne territory to discuss environmental restoration and remediation programmes with the Haudenosaunee indigenous community. She also visited the treatment and disposal facility Stalex, located in the province of Quebec.

## **I. LEGAL AND INSTITUTIONAL CONTEXT**

6. The Canadian legal and institutional framework relating to transboundary movement of toxic and dangerous products and wastes is highly complex due to the federal structure of the

State. The primary responsibility for regulating the import and export of such substances rests with the federal Government, whereas the provinces have the main responsibility in regulating the generation, storage and disposal of the substances.

### **A. Constitutional framework**

7. Canada is a federation of 10 provinces and 3 territories. The powers attributed to the federal Government and the provinces are derived from the Constitution, which is not explicit on the division of powers in the areas related to toxic wastes, dangerous products and human rights. Jurisdiction over these issues is divided between the federal and provincial Governments, and derived from their respective listed powers.

8. Federal powers are derived from federal jurisdiction over areas of criminal law, indigenous affairs, fisheries, coastal waters, international waterways, federal companies operating under the jurisdiction of the federal Government, the Crown territories, communications between international and provincial trade (this covers movement of hazardous, inter-provincial or international trade), taxation (environmental and social taxes), and the federal authority to pass laws on “peace, order and good government”.

9. The provincial powers are derived, inter alia, from the provincial jurisdiction over issues relating to civil rights, property ownership, natural resources, provincial taxes, and property owned by the provinces. Jurisdiction over matters of a “local or private nature” is also a basis for provincial jurisdiction over the environment. Provinces can delegate environmental regulatory powers to municipalities which are often given authority over sewage, water and waste management.

10. In case of inconsistency between federal and provincial legislation, the former generally takes precedence over the latter to the extent of the inconsistency. Under the auspices of the Canadian Council of Ministers of the Environment, which has a series of task groups, including one on hazardous waste; federal-provincial work is ongoing to coordinate and harmonize environmental regulation.

### **B. Multilateral, bilateral and regional commitments**

11. The federal Government is responsible for negotiating and acceding to international agreements. It consults with the provinces and stakeholders whose representatives are often included in delegations when negotiating multilateral agreements.

12. Canada is party to most of the multilateral environmental agreements, notably the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and

Pesticides in International Trade. Canada has not ratified the Ban Amendment to the Basel Convention.<sup>1</sup>

13. Government officials with whom the Special Rapporteur met explained that Canada is dedicated to improving the effectiveness of multilateral environmental agreements, for example in supporting the development of guidance under the Basel Convention for addressing cases of illegal trafficking. Canada has promoted the need for compliance mechanisms in multilateral environmental agreements, and was the key proponent of provisions included in the Cartagena Protocol on Bio-safety and the Stockholm Convention which require the parties to periodically review the effectiveness of those agreements.

14. At the bilateral and regional levels, Canada is party to the North American Free Trade Agreement, and participates in cooperation on environmental issues in parallel with trade liberalization measures through the North American Agreement on Environmental Cooperation. Canada has signed a Free Trade Agreement with Chile, which includes the parallel Agreement on Environmental Cooperation. As an OECD member, Canada is participating in that organization's control system for transboundary movements of wastes destined for recovery operations. In 1986, Canada signed a bilateral agreement with the United States on transboundary movement of hazardous wastes. Approximately 98 per cent of Canada's transboundary movements are with the United States.

### C. Institutions

15. Institutional responsibility at the federal level is spread across a number of actors including: Environment Canada, responsible in the area of export and import of hazardous wastes; the Department of Foreign Affairs and International Trade, responsible for negotiating international agreements; Health Canada, responsible for regulating the use of pesticides; the Department of Justice; and the Canadian International Development Agency, responsible for some of Canada's technical cooperation programmes in the fields relevant to the mandate of the Special Rapporteur.

16. The Commissioner of the Environment and Sustainable Development, operating under the auspices of the Office of the Auditor-General of Canada, verifies how the federal Government applies environmental laws and standards. The Commissioner reports to the federal Parliament.

## II. LAW, POLICY AND PRACTICE

### A. General

17. The regulations on transboundary movements of hazardous substances and wastes are complex and depend upon the type of product involved.

18. At the federal level, the Canadian Environmental Protection Act of 1999 (hereafter: CEPA 1999) in sections 100 to 103 provides the authority to control the **export of substances** regulated under CEPA 1999 or another Act of Parliament. Substances subject to these sections fall into three categories:

- substances whose use is prohibited in Canada by or under an Act of Parliament;
- substances whose export is subject to an international agreement that requires the notification or consent of the receiving country; and
- substances whose use are restricted in Canada by or under an Act of Parliament.

19. Prohibited substances listed under CEPA 1999 can be exported only if they are to be destroyed. In addition, the Governor-in-Council may make regulations for all three categories of substances, including prohibitions on export; the type of information to be provided to the minister; the type of information to accompany an export; and conditions under which an export may be made. Details concerning these exports must be published in the CEPA Environmental Registry - a tool used to encourage and support public participation in environmental decision-making.

20. The export of substances under the Rotterdam Convention regulations, which will come into force on 1 December 2002, will allow Canada to implement its commitments relating to the Rotterdam Convention and require that Canadian exporters not export to other parties to the Convention, chemicals and pesticides subject to the PIC procedure, unless the importing party has provided its “prior informed consent” to the shipment.

## **B. Hazardous waste management**

21. The federal Government regulates the intraprovincial and international import and export of wastes, hazardous waste management on federal lands and in the establishment of the National Pollutant Release Inventory. The provinces are the primary regulators for treatment and disposal of hazardous wastes, intraprovincial movements, and for the licensing of waste treatment facilities, carriers, and generators.

22. CEPA 1999 regulations provide the Minister of the Environment with the authority to set conditions governing the **export and import of hazardous wastes for the purposes of disposal and recycling** and to require that notice be given to Canadian authorities before hazardous wastes are exported or imported into Canada.<sup>ii</sup> For the purpose of CEPA 1999, hazardous wastes are considered to be any dangerous goods, as defined under the Transportation of Dangerous Goods Regulations (made pursuant to section 27 of the Transportation of Dangerous Goods Act), or any substance specified under the Export and Import of Hazardous Wastes Regulations made under CEPA 1999.<sup>iii</sup> This list currently includes over 100 waste types.<sup>iv</sup>

23. The Export and Import of Hazardous Wastes Regulations (EIHWR), in place since 1992,<sup>v</sup> require that a **prior notification** be submitted when someone intends to export or import a hazardous waste and that the receiving jurisdiction (country or province) declare that it consents to the import of the shipment of hazardous wastes, that a waste manifest describing the waste accompany the shipment at all times, that the exporter/importer carry insurance to cover any damages to third parties for which the exporter or importer is responsible, and to cover environmental damage due to spills leaks or other incidents during export or import, and that Canadian exporters accept the return of wastes which are refused by the importer.

24. In the case of **hazardous waste imports**, consent must be obtained by the Canadian importer, through Environment Canada, from the receiving province. Although the federal Government is formally responsible for approving the waste import, it relies on provincial governments to review the substantive merits of proposed imports of hazardous wastes as to whether they will meet the Basel Convention standard of “environmentally sound management” as they have the authority to regulate the facilities and issue authorization for a recycling/treatment or disposal facility to operate.

25. Quebec appears to be the only one of the provinces to have adopted legally binding standards for land disposal of hazardous wastes, beyond the terms and conditions that might be imposed in relation to the approval of individual facilities. Ontario has indicated its intention to adopt such standards but has yet taken no action in that regard.<sup>vi</sup>

26. Consequently, most provincial decisions on acceptance of wastes would be based largely on whether the waste was a type that the facility is approved to receive. This means that what happens in the provincial approval processes have a substantial impact on Canada’s fulfilment of its obligations under the Basel Convention. In this context, it was brought to the attention of the Special Rapporteur that between 1997 and 1999, the province of Ontario waived its right of notice regarding hazardous waste imports, saying that the facility’s approval in combination with the enforcement of provincial facility standards were sufficient to ensure environmental protection. The federal Government allegedly undertook no substantive review of Ontario waste imports during that period.

27. Guidelines for certain aspects of hazardous waste management have been adopted by the Canadian Council of Ministers of the Environment, composed of federal, provincial and territorial environment ministers. However, these guidelines are not legally binding, and it is up to individual provincial governments to enforce them.

28. CEPA also requires that when the Minister of the Environment receives a notice of the proposed export or import of a hazardous waste, he or she is required to publish a notice in the *Canada Gazette*, or in another appropriate manner, the name or specification of the toxic substance or hazardous waste, the name of the exporter or importer, and the country of destination or origin.<sup>vii</sup> Often, the notices are published in the hazardous waste division of Environment Canada’s newsletter. There are no timelines regarding the publication of notices, which mean that the notice can appear after the waste movement has occurred. There are no processes for public comment or objections to waste movements built into the system.

29. The EIHWR prohibits the export of hazardous waste for disposal or recycling to countries south of 60 degrees South latitude.<sup>viii</sup> It also requires a certificate that no residue or waste can be re-exported to another country.

30. A control system aimed at **tracking** shipments from their sources until their destination impose an obligation to have a written manifest accompany the shipment. The exporter/carrier/importer completes the relevant sections of the manifest and sign, when taking possession of wastes. Copies of the manifest should be submitted to the appropriate authorities. The authorities match the manifests received, check for any discrepancies, and cross-reference

information against notifications. The manifest date is computerized for compliance promotion and reporting. However, a study by the Commission for Environmental Cooperation entitled "Tracking and enforcement of hazardous waste shipments in North America: A needs assessment"<sup>ix</sup> identified some problems in tracking transboundary movements of hazardous wastes, and concluded that at least within a North American context, the most critical limitation of existing tracking systems identified is their inability to track a single shipment "from cradle to grave" when "the cradle was in one country and the grave in another".<sup>x</sup>

31. In addition, regulations have been made under CEPA establishing requirements for PCB storage sites,<sup>xi</sup> the treatment and destruction of federally owned PCBs, and prohibiting the export of PCB wastes to any country other than the United States.

32. While Environment Canada monitors the transit of waste across international and provincial borders, the **treatment and disposal** are administered and enforced by the provinces, which are individually responsible for developing standards.

33. The Special Rapporteur had an opportunity to study the application of the regulations for treatment and disposal of hazardous wastes in the province of Quebec during a visit to the waste treatment and disposal facility Stalex. She noted that Stalex is subject to close scrutiny by the provincial government and by the Monitoring Committee of Stalex composed of representatives of the Minister of the Environment, of citizens from the local community, the Department of Public Health, and two representatives from the company. Inspections take place a number of times annually to ensure that the facility does not constitute a threat to public health and the environment. While workers appear to enjoy satisfactory working conditions, none of them are unionized.

34. The Special Rapporteur notes that under the current system of hazardous waste management, the federal Government has the power under the Import/Export regulations to say no to an import or export. However, it appears that in practice it relies to a very wide extent on the judgement of the State (or province in the case of imports) whether the wastes will be managed in an environmentally sound manner (ESM). In other words, there does not appear to be a review of the substantive merits of import or export proposals.

35. While the federal Minister of the Environment has the authority to say no to imports or exports under CEPA 1999, this authority can only be exercised on the basis of standards for ESM to be articulated through regulations.<sup>xii</sup> According to information received by government officials, such regulations are scheduled to be implemented in 2004. In other words, until 2004 when the ESM regulations are implemented outlining the standards according to which a substantive review of import and export notifications, the notification and permit process under CEPA 1999 appears to be essentially a formality, and the degree to which any substantive review will occur will be on the part of the receiving provinces. The Canadian Government submits that the information provided in the notification is reviewed by Environment Canada prior to issuance of a permit and, when necessary, additional information is requested.

36. Once substantive standards for ESM are articulated under CEPA, the federal Government will be able to say no to imports inconsistent with those standards.

### **III. PARTICULAR ISSUES BROUGHT TO THE ATTENTION OF THE SPECIAL RAPPORTEUR**

#### **A. Export of electronic waste to Asia**

37. Government officials declared that export of electronic waste, if hazardous, is strictly controlled and Canada does not export hazardous electronic scrap for recycling or disposal to developing countries.

38. However, a report compiled by the Basel Action Network and the Silicon Valley Toxics Coalition<sup>xiii</sup> alleges that hazardous electronic wastes originating from Canada are exported to Asia, and that these exports are resulting in grave environmental damage and seriously affect the health and lives of the people involved in the recycling of the hazardous material. The report argues that cathode-ray tubes (CRTs) and circuit boards fall within the definition of toxic waste in both the Basel Convention and the OECD Decision-Recommendation definitions of hazardous waste. The report names several Canadian companies involved in the export of hazardous electronic waste for recycling to different Asian countries, including China, which has banned the import of such waste. The report submits that export of the waste in question is in contravention of the Basel Convention and the OECD Council Decision-Recommendation.<sup>xiv</sup>

39. The Special Rapporteur discussed the content of the report with government officials who declared that Canada is meeting her international obligations and that the Canadian definition of hazardous waste corresponded with the Basel Convention listing. Officials added, however, that Environment Canada is in the process of reviewing its definition of hazardous waste, including electronic scrap, as part of ongoing amendments to the Export and Import of Hazardous Wastes Regulations. Environment Canada has issued no 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. The Government did not indicate whether any investigation would be made into the specific allegations made in the report.

40. Canada prohibits the export of hazardous wastes to countries that have notified Environment Canada that they themselves prohibit imports of such waste. While the Canadian Government had not previously been notified by China of its ban on import of electronic wastes, it has subsequently received information through the Secretariat of the Basel Convention that China has prohibited the import of electronic scrap. Environment Canada will be issuing a letter to the Canadian electronic and recycling industries informing them of China's prohibition on the import of electronic scrap.

#### **B. Planned Bennett incinerator in Kirkland Lake, Ontario**

41. The attention of the Special Rapporteur was alerted to a proposed hazardous waste treatment project in Kirkland Lake, Ontario. A private company, Bennett Environmental, had applied to the Ontario provincial government for a permit to build and operate an incinerator to treat hazardous waste and other solid materials. According to opponents of the proposed project, some 90 per cent of the waste to be incinerated at the Bennett incinerator would come from outside of Canada, notably from the United States and Mexico.

42. The Special Rapporteur met with the representatives of the First Nations in northern Ontario who expressed concern that their traditional hunting and gathering grounds - already heavily polluted due to bio-accumulation of persistent organic pollutants - will be further threatened by the proposed Bennett incinerator project. It was alleged that the northern Ontario region was being targeted by this and other similar projects because of its marginalized and/or indigenous communities. They also expressed the view that the Ontario environmental assessment procedure employed for the Bennett project had denied the First Nations and other local communities meaningful participation in the assessment process. The Government for its part indicated that area First Nations groups were part of the Government Review Team and that they provided a detailed submission to the ministry as part of the review process.

43. Several other NGOs expressed the opinion that the Bennett incinerator project, if approved, would violate Canada's obligations under the Basel Convention and the Stockholm Convention.

44. The Canadian Government emphasized in a communication to the Special Rapporteur that the Basel Convention obligations were met through strict regulations on the import and export of hazardous waste. Transboundary movements are permitted provided that they are destined to authorized facilities that will manage the hazardous waste in an environmentally sound manner. The Special Rapporteur refers to the analysis above in which she questions the ability to undertake substantive review of hazardous waste imports at the federal level in the absence of ESM regulations.

45. Subsequent to the Special Rapporteur's visit, the Ontario Ministry of the Environment issued a "Deficiency Statement", owing to deficiencies found in the environmental assessment during the Government and public review of the environmental assessment. Bennett chose to withdraw its environmental assessment to address the deficiencies. According to information received by the Government, it is likely that Bennett will resubmit its environmental assessment when it has addressed the deficiencies. The Special Rapporteur asks to be kept informed about any new developments on this issue.

### **C. Akwesasne community**

46. The Special Rapporteur visited the Akwesasne reservation straddling the border between Canada and the United States, in order to see first hand the effects of cross-border industrial pollution on indigenous peoples. The Special Rapporteur was briefed about the impact of the pollution coming from a range of industrial sites on both sides of the border on the traditional way of life of the Haudenosaunee tribe. She was impressed to learn of the wide range of initiatives the community has taken towards environmental restoration. The representatives of the community outlined how it is actively involved in designing and implementing a range of programmes and activities aimed at addressing both the environmental devastation and the problems encountered by the community as a result thereof.

47. The Special Rapporteur was briefed about the difficulties encountered by the community in its attempts to seek compensation by legal means for the damage caused by the industrial cross-border pollution. The representatives of the community recounted the difficulties they had faced in sustaining their claims in the absence of access to the information they needed as well as the difficulties in obtaining the financial means necessary to engage in a long legal process. In one

particular case, in which the community sought compensation for fluoride pollution of their territory, the community had to accept an out of court settlement after having exhausted their financial resources. However, the settlement was not sufficient to cover the debts incurred by the case, and it took the community 14 years to pay off the debts relating to the case.

#### **D. Ship-recycling**

48. The Special Rapporteur was briefed about the Canadian perspective on the issue of recycling of ships. She was informed that the export of ships for recycling is not yet regulated in Canada, except the export of ships for disposal at sea, which is prohibited. Most of Canadian ships are sold for reuse, rather than recycling. The federal Government's ships are not exported for recycling but either sold for reuse, cleaned up and disposed of at sea in Canadian waters under permit, or dismantled and recycled domestically. All exports of war ships are prohibited.

49. Canada is aware of the extremely poor conditions prevailing at ship-recycling yards overseas. Canada monitors the work ongoing in ILO work to improve working conditions by educating workers and ship-recycling firms.

50. Ship-recycling is being addressed by the International Maritime Organization (IMO), the Basel Convention, and the International Labour Office (ILO). Canada monitors and actively participates in ongoing work on the issue of ship-recycling in these international forums and supports coordination of the work.

#### **E. Trade liberalization**

51. Regional trade liberalization agreements are having an increasing impact on the areas relevant to the mandate of the Special Rapporteur.

52. Both NAFTA and the Canada-Chile Free Trade Agreement are therefore to be lauded for attempting to facilitate cooperation on environmental issues in parallel with trade liberalization measures through the North American Agreement on Environmental Cooperation (NAAEC) and the Canada-Chile Agreement on Environmental Cooperation (CCAEC). NAFTA furthermore accepts limited exceptions to its rules based on the Basel Convention and bilateral agreements.<sup>xv</sup>

53. NAAEC established the Commission for Environmental Cooperation (CEC), whose objective is to foster environmental cooperation, improvement of environmental standards and ensure that environmental laws are enforced. The Special Rapporteur welcomes the work of the CEC and the fact that the Commission strives to be transparent and to solicit meaningful public input to the work.

54. CCAEC was established to provide a forum for Canada and Chile to cooperate on environmental issues. A Joint Public Advisory Committee serves as the bridge for public input to the work of the Commission. The Special Rapporteur notes with approval that one of the fundamental aspects of CCAEC is the promotion of transparency and public participation in environmental management.

55. Despite the valuable initiatives to foster environmental cooperation in parallel with trade liberalization measures, there remains a danger that the drive to reduce barriers to trade in goods might lead to a pressure on countries to relax their export and import regulations on toxic and dangerous products and wastes.

56. In this context the Special Rapporteur notes the findings of an NGO study from April 2001<sup>xvi</sup> on the impact of NAFTA and trade liberalization on the generation, management and shipments of industrial hazardous wastes. The study found that there had been a dramatic growth in United States waste exports to Ontario and Quebec between 1993 and 1999 and, in the context of weakened regulatory environment, a significant increase in disposal in those provinces. The study indicated that differences in regulatory requirements related to hazardous waste disposal, specifically the existence of less stringent standards in Ontario and Quebec, had been the key factor in the increase in American hazardous waste exports to Canada.

57. The Special Rapporteur welcomes an initiative by the CEC which has recently begun a project to develop a cooperative approach to sound management of toxic waste throughout North America. A task force of federal regulators from all three NAFTA countries will work on recommendations for harmonizing their countries' policies, rules, and enforcement. A key focus area will be the transborder shipment, tracking, and disposal of hazardous waste.

58. The process established under NAAEC allows for persons or organizations in any of the NAFTA countries to assert that one of the countries is failing in implementing and/or enforcing its environmental law. The process is designed to put all factual information relating to an allegation in the public domain. While the Special Rapporteur welcomes this so-called "bringing the fact to light" process, she notes that at least two of the three NAFTA countries must agree to the publication of a report.

59. While NAFTA expressly allows its State parties to adopt and enforce measures aimed at protecting the environment,<sup>xvii</sup> the investor-to-State dispute mechanism found in chapter 11 of the agreement allow any foreign investor from one of the three NAFTA countries to file a claim directly against any of the other two Governments in the agreements (i.e. these rights are not available for domestic investors). The claim can be brought, inter alia, if a government regulation impacts on the investment in a way that is "tantamount to expropriation".<sup>xviii</sup> The process for making the claim is still a largely confidential arbitration process, although some efforts at opening up the process to more public scrutiny are under way.

60. Concerns were expressed by NGOs that the chapter 11 procedure may impact on the NAFTA countries' ability and/or willingness to restrict the import or export of substances believed to be harmful to human health and the environment. Decisions like the one handed down by a NAFTA dispute panel in October 2002, which awarded damages of over Can\$ 6 million (plus interest) to be paid to the American investor S.D. Myers, may arguably act as a disincentive for countries to pass restrictive environmental legislation. The damage award resulted from a temporary Canadian government ban on the export of hazardous PCB wastes. Some NGOs consider that the ruling in the S.D. Myers case contravenes the Basel Convention's provision that countries only export such wastes if the State of export does not have the ability to deal with the waste in question.

61. The Special Rapporteur has been informed that Canada questions the decision upon which the award ruling is based and has asked the Federal Court to review the earlier decision. Canada is seeking the review, *inter alia*, because it considers certain aspects of the decision to be contrary to Canadian public policy.

#### **F. Persistent organic pollutants (POPs)**

62. In the 1970s and 1980s, the Canadian Government, through the Department of Indian and Northern Affairs, became aware of the presence of certain contaminants in the Canadian Arctic region at levels not easily explained. The Special Rapporteur was informed that initial studies on some northern Aboriginal peoples showed that contamination levels were up to 10 times higher than in other regions. Due to problems relating to the bio-accumulation of persistent organic pollutants (POPs), northern Aboriginal people who rely on traditional diets are likely to be more exposed to several toxic substances than the majority of people elsewhere.

63. The Special Rapporteur was informed that many of the contaminants found were never manufactured or used in Arctic regions, but have come from atmospheric transport from other regions of the world.

64. In 1991, Canada launched the Northern Contaminants Programme, which aims to reduce and, wherever possible, eliminate contaminants in traditionally harvested foods, while providing information that assists individuals and communities to make informed decisions about their food use.

65. Due to the particular concerns arising from the presence of contaminants in Canada's Arctic region, the Canadian Government is a strong supporter of the Stockholm Convention and the Special Rapporteur notes with approval that Canada was the first country to sign and ratify the Convention upon completion of the negotiations.

66. The Special Rapporteur was informed that Canada is in the process of preparing for multi-stakeholder consultations on development of the national implementation plan required by the Stockholm Convention. While assuring the Special Rapporteur that development of the implementation plan is of high priority, the Canadian Government was not able to specify the exact date for completion of the plan.

67. In conjunction with the negotiation of the Stockholm Convention, the Canadian Government has created a Can\$ 20 million Canada POPs Fund. The fund is designed to help developing countries and countries in transition to increase their own capacities to address issues related to the reduction and elimination of POPs. It is available for a variety of projects, tailored to the needs of specific countries, such as developing POP inventories, establishing the regulatory mechanisms and building the institutional framework needed to control POP releases, and finding alternative chemicals or strategies to avoid the use of POPs.

68. Through the technical cooperation programmes under the auspices of the Canadian International Development Agency, Canada is also involved in tackling the issue of stockpiles of obsolete POPs in Africa.

## G. Pesticides

69. The Pest Control Products Act (PCPA)<sup>xix</sup> and regulations provide the legislative mandate to regulate pest control products in Canada. Any pest control product imported into, sold or used in Canada must first be registered under the PCPA.

70. The Pest Management Regulatory Agency (PMRA) of Health Canada is responsible for administering the PCPA, registering pest control products, and re-evaluating registered products. Companies that wish to have the right to sell a pest control product in Canada must submit detailed information and data to be evaluated by the PMRA. Companies must provide all the scientific studies necessary for determining that the product is acceptable in terms of safety, merit and value. Any aspect of the pesticide, including all uses, downstream effects and disposal may be taken into account during the pre-market assessment. The evaluation results either in the product being granted registration and allowed for sale and use in Canada, or in the product being refused registration.

71. Registered products may be used only for the specific purposes listed on the approved product label. Failure to follow the directions on a pesticide label is an offence under PCPA which is enforced by the PMRA. It is also an offence to sell a registered product if its composition does not conform to the approved specifications.

72. In the area of manufacture, federal regulation is focused primarily on how the manufacturing process may affect the product. PCPA prohibits the manufacture of a pest control product in a way that endangers health or the environment. Provincial/territorial environmental legislation requires environmental assessment before industrial sites, including pesticide manufacturing and formulating plants, can be constructed, and provides for the monitoring of effluents and disposal of wasters from these sites.

73. In 1999, the Commissioner of the Environment and Sustainable Development noted the lack of pesticide sales data in Canada.<sup>xx</sup> All provincial and territorial governments currently collect some pesticide sales information. Several jurisdictions collect actual use information on a limited basis, such as for aerial applications, applications to forests or water, or applications on government lands. However, there is still no comprehensive data on pesticide use and sales in Canada currently available.

74. A bill to enact a new Pest Control Products Act 2002<sup>xxi</sup> (PCPA 2002) is currently before the Canadian Parliament. The proposed PCPA 2002 aims to strengthen health and environmental protection; make the registration system more transparent; and strengthen post-registration control of pesticides.

75. A provision in the proposed PCPA 2002 would require registrants to provide, as a condition of registration, information on the sales of their registered pest control products. The new Act would also permit the Government to disclose publicly the quantities of pest control products sold. PCPA 2002 would furthermore provide the authority for the Government to make regulations establishing a pesticide use inventory if this is determined to be cost-effective in the future.

76. In addition, the crops section of Statistics Canada conducts an annual survey of manufacturers to estimate pesticide shipments and gathers information on pesticide expenditures through the collection of taxation data. These activities report on broad categories of agricultural pesticides only, and information is not routinely collected on individual products or active ingredients.

77. The Special Rapporteur had the opportunity to meet with the pesticide industry association, CropLife Canada. While the Special Rapporteur is of the opinion that self-regulation cannot entirely take the place of legally binding regulation in an area like that of pesticides control with potentially hazardous implications, she was interested to learn of the extensive, so-called stewardship programme which the industry has established on a self-regulatory basis. This tries to ensure an environmentally safe handling of pesticides, from the industry's research and development of products through to obsolete product management. She also noted with interest the technical cooperation programmes which CropLife Canada, through the international industry body CropLife International, has in 82 developing countries, aimed at building local capacity in crop protection stewardship programmes.

78. During her meeting with CropLife Canada, the Special Rapporteur had an opportunity to discuss the issue of testing pesticides on human volunteers. She has been informed that the Environmental Protection Agency in the United States has reversed its long-standing ban on accepting industry test data derived from the experimental dosing of human subjects with pesticides. She was pleased to be assured that the CropLife Canada would not advocate for a similar policy reversal in Canada.

#### **H. Export of pesticides not registered for use in Canada**

79. The Special Rapporteur was alerted to the possibility that pesticides severely controlled or banned for use in Canada are currently or could be produced in order to be exported to countries which do not have the capacities to deal appropriately with such dangerous products.

80. The Canadian officials with whom the Special Rapporteur met did not have an immediate answer to the question but provided her with a wide range of information on the existing legislation regarding the export of pesticides not registered for use in Canada. As it appears in the information submitted subsequently by the Government, unregistered pesticides may be manufactured in Canada.

81. Any pesticide for which registration is cancelled or its uses severely restricted (or for which an application to register is rejected) becomes subject to certain provisions for prior informed consent under the Rotterdam Convention if it is going to be exported. This includes notifying the secretariat of the Rotterdam Convention, which makes the substance a candidate for inclusion in its Annex III (the PIC list). The exporting party must furthermore provide an export notification detailing hazards and risks to human health or the environment to any parties importing the substance (i.e., non-Annex III substances).

82. Domestically, these provisions will be enforced through the Export of Substances under the Rotterdam Convention Regulations, under CEPA 1999, which came into force on 1 December 2002. The regulations establish a permit system for the export of industrial chemicals and pesticides listed on the Export Control List. The PCPA 2002 would strengthen authority to control exports, but it is not expected that the above approach will change.

83. Unregistered pesticides can be manufactured in Canada. The proposed new PCPA 2002 would strengthen authority to control manufacture, if necessary.

84. The Importation for Manufacturing and Export Program of the PMRA concerns the registration of pest control products imported solely for the purpose of manufacturing and export. The finished products are not to be used in Canada.

85. For chemical pesticides, it is necessary that the product imported into Canada be approved for sale or be registered in the United States or in a European Union or an OECD country. Also, pest control products for which registration has been previously suspended, cancelled or voluntarily withdrawn in Canada because of health and safety or environmental impact concerns, and pest control products that have been previously assessed for registration and found to be unacceptable are not eligible for the Importation for Manufacturing and Export Program.

86. Of the 17 substances registered through the Importation for Manufacturing and Export Program only for export from Canada, none are subject to international treaties, nor are they banned for use in Canada.

### **I. Public participation and transparency**

87. The Special Rapporteur was impressed by the regulations in place to facilitate public participation and transparency in decisions involving the environment. Environment Canada has since 1996 had a policy framework for what they call meaningful participation in decisions related to the development and amendment of policies, legislation, programmes and services.<sup>v</sup> The policy was designed to respond to the growing public demand for effective consultations.

88. The following aspects are included in Environment Canada's approach to consultations:

- Consultations are to be designed as an integral part of the decision-making process. The process will be transparent and consultations will take place while options are still open;
- Information, knowledge and positions will be shared openly and in a timely fashion; and
- Consultations will be tailored to reflect the particular circumstances and variables of the decisions at hand.

89. Importantly, the policy framework emphasizes that there must be a budget corresponding to the nature and scope of the consultation process. The funding goes to cover travel and accommodation expenses of people invited to participate in public consultations, under certain circumstances. In some cases funding can also be provided for capacity support, for example to do research to prepare consolidated submissions.

90. The Special Rapporteur had the opportunity to consult with the Canadian Environmental Network (CEN) which, as a network of non-governmental organizations concerned with the environment, facilitates consultations between environment groups and government agencies in multi-stakeholder consultations. The core funding of the CEN activities comes from Environment Canada, but the CEN's consultation, facilitation, and networking services are now being used by other government department and agencies. Still, additional financial resources are needed to allow a significant participation and a meaningful contribution from about the 650 ecological groups which are members of the network.

91. While the Special Rapporteur notes the comprehensive consultation processes around federal environmental policies, there nevertheless appear to be some gaps at the federal level where specific approvals occur. As noted earlier, there are no public participation provisions around hazardous waste import approvals, new substances evaluations, and pesticide approvals.

92. Another interesting instrument fostering participation is the environmental petitions process under the Auditor-General Act,<sup>w</sup> which provides parliamentarians and Canadians with a vehicle for pursuing environmental concerns that involve the federal Government. The process can be employed in relation to both national, regional and local issues. With a petition, which can be just a letter, it is possible to raise questions and concerns and to get answers and action from federal departments and agencies.

93. Through the petitions process, federal departments and agencies may be asked to explain federal policy, investigate an environmental infraction, or examine their enforcement of federal environmental legislation. Environmental petitions and the responses provided by federal ministers are part of the public record and can be accessed on the Internet. The Commissioner for the Environment and Sustainable Development monitors the responses and is required to report annually on petitions to the House of Commons.

## **J. Corporate social responsibility**

94. The private sector plays an important role in many of the phenomena of concern to the mandate of the Special Rapporteur. It is rare that Governments are directly or solely responsible for illicit transboundary movements of toxic wastes and hazardous products. The individual cases brought to the attention of the Special Rapporteur most often concern human rights violations as a result of activities by privately owned, transnational companies, acting with or without the complicity of one or more Government. In the absence of legally binding international rules holding private actors accountable for human rights violations, the Special Rapporteur is interested in exploring the extent to which States are trying to foster corporate social responsibility.

95. The Canadian Government stressed that neither it nor Canadian courts have jurisdiction over the actions of Canadian companies operating abroad. However, Canada has undertaken various initiatives in order to promote corporate social responsibility (CSR) at the national and international level.

96. At the (domestic) regulatory level, minimum performance standards have been put in place in such areas as environmental protection, human rights, health and safety, and labour relations.

97. At the voluntary level, educational training and professional networks are supported. Information gathering initiatives are in place to build the knowledge base on sustainable development and CSR and voluntary programmes such as the Voluntary Challenge Registry and the Accelerated Reduction/Elimination of Toxics Program are supported.

98. Environment Canada has developed the Corporate Environmental Innovation Agenda to stimulate market demand for proactive sustainability management by the private sector.

99. In 1995, the Office of the Auditor-General Act was amended to create the post of the Commissioner of the Environment and Sustainable Development and to require federal departments to produce sustainable-development strategies every three years and to table these in Parliament.

100. Recent changes to the Canada Business Corporations Act now enhance the ability of shareholders to communicate among themselves and influence decision-making (including with respect to areas that involve corporate responsibility).

101. At the international level, Canada has signed the revised OECD Guidelines for Multinational Enterprises, setting out non-binding recommendations from Governments to multinational enterprises for responsible business conduct in areas such as the environment, labour, anti-corruption and bribery and human rights.

102. Canada was one of the main sponsors of the first hemispheric conference on CSR in the Americas, which took place in 2002. The conference was aimed at creating a space for dialogue and the exchange of best practices on the positive contributions that corporations make in the communities in which they operate.

103. The promotion of CSR is now one of the roles and responsibilities of the Trade Commissioner and the Department of Foreign Affairs and International Trade (DFAIT). Officials are developing a comprehensive CSR training course and tailored CSR resource material. These additional resources will enhance the capacity of Missions and Trade Commissioners to promote CSR to the Canadian business community and interested stakeholders.

104. The Human Security Program of DFAIT is one of Canada's proactive mechanisms for addressing the human dimensions of globalization. The Program invests strategically in initiatives that strengthen the ability of the global community to respond to threats to human security and support peaceful governance. Corporate social responsibility is an important component of the governance and accountability theme of the human security agenda.

105. Export Development Canada (EDC) works with Canadian companies to encourage best corporate social responsibility practices. This includes a direct dialogue with exporters and the NGO community, as well as business-integrity workshops that EDC has sponsored in Canada. These workshops inform Canadian companies about EDC's Code of Conduct, Canada's anti-bribery and corruption laws, Canada's anti-terrorism laws, EDC's legislative requirement for the environmental review of projects, EDC's consideration of social impacts in its assessment of projects, and the EDC Disclosure Policy. It should be noted, however, that a report from the Auditor-General, released in May 2001, was very critical of the EDC's environmental practices.<sup>x</sup>

106. The Canadian International Development Agency (CIDA) works to advance CSR through various programmes, including developing voluntary guidelines for behaviour in overseas operations.

107. The Special Rapporteur was also informed about a wide range of CSR initiatives in the private sector. This includes the formation of the Canadian Business for Social Responsibility organization, which provides information on best CSR practices, conducts research and educational workshops, monitors emerging issues and trends, and develops practical business tools, technical assistance and consulting services for its members. It has developed a set of guidelines that outline what a company can do to become more socially and environmentally responsible.

108. The Global Reporting Initiative (GRI) is an international multi-stakeholder coalition aimed at developing a globally applicable framework for sustainability reporting to encourage greater consistency and higher quality in corporate sustainability reporting. Canadian companies are increasingly reporting on corporate sustainability performance.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

109. The mission to Canada allowed the Special Rapporteur to learn more about the policy, legislation and practice of that country on the issues falling within the scope of her mandate. The mission also gave her the opportunity to discuss the many relevant issues openly with government officials and representatives of NGOs and civil society.

110. The Special Rapporteur notes **that many aspects of federal and provincial environmental legislation are very developed, and that the corresponding institutional frameworks are comprehensive. On other issues, for example, criteria for ESM of hazardous wastes and an implementation plan for POPs, work is ongoing.** This demonstrates the importance attached to the issues by the Canadian Government.

111. Bilateral and regional frameworks are playing an increasing role in the regulation of the issues relevant to the mandate of the Special Rapporteur. **This is a positive trend which should be encouraged while paying attention to the threats accompanying cooperation between regions and countries which have different levels of development. In that regard, technical cooperation and assistance are vital.**

112. The Special Rapporteur notes with interest that enforcement of laws relating to export of toxic and dangerous products and waste may involve prosecution through criminal law. The Special Rapporteur also notes allegations by indigenous groups of difficulties in receiving compensation for damage suffered as a result of phenomena of concern to her mandate.

113. In light of the issues raised in this report, the Special Rapporteur presents the following comments and recommendations:

#### **Ratification of international instruments**

114. Canada has ratified the main international instruments related to toxic wastes and dangerous products with the exception of the Ban Amendment to the Basel Convention. Canada has informed the Special Rapporteur that it believes that the text of the amendment could be improved to promote environmentally sound recycling in all countries, and that it will not consider ratification of the amendment prior to further clarification of the implications of the amendment. **The Special Rapporteur has noted the concerns of Canada in respect of the Ban Amendment. However, she believes that ratification of the Ban Amendment would have a positive impact on Canada's policies in the area of hazardous waste export and urges Canada to ratify it.**

115. The Special Rapporteur welcomes the recent adoption of the Export of Substances under the Rotterdam Convention Regulations, as a sign of Canada's commitment to implementing the provisions of the Rotterdam Convention. As underlined by the Government, the main purpose of the regulations is to require that Canadian exporters not export to parties to the Convention chemicals and pesticides subject to the PIC procedure, unless the importing party has provided its "prior informed consent" to the shipment. **The Special Rapporteur expresses the hope that concrete measures will be undertaken to ensure that Canadian exporters respect any conditions imposed on the importation of these substances, paying particular attention to difficulties encountered by developing countries.**

#### **Hazardous waste management**

116. **The Special Rapporteur welcomes the ongoing consultations on the ESM criteria and recommends that incorporation of ESM into federal regulations be completed as soon as possible.**

#### **Capacity-building and technical cooperation**

117. **The Special Rapporteur welcomes Canada's active contribution to technical cooperation and capacity-building in the area of hazardous waste management and POPs. The Canadian Government has created a Can\$ 20 million Canada POPs Fund designed to help**

developing countries and countries in transition increase their own capacities to address issues related to the reduction and elimination of POPs. **The Special Rapporteur welcomes Canada's commitment to the Stockholm Convention and congratulates Canada on the establishment of the Canada POPs Fund. She further notes with satisfaction that Canada is also involved in tackling the issue of stockpiles of obsolete POPs in Africa through the technical cooperation programmes under the auspices of the Canadian International Development Agency.**

#### **Export of electronic waste**

118. The Special Rapporteur takes note of the allegations made by the Basel Action Network of grave human rights implications arising from the export of hazardous electronic wastes from Canada to developing countries. **She welcomes Canada's ongoing efforts of reviewing its definitions of hazardous waste and its attempt to seek clarifications from China with regards to export of hazardous electronic waste to that country. The Special Rapporteur hopes that the Canadian Government will address all of the specific allegations in the Basel Action Network report. She calls on the Canadian Government to investigate the claim that certain Canadian companies have been exporting waste for disposal or recycling which, according to the Canadian Government's own analysis, would qualify as hazardous under both the Basel Convention and Canadian law (i.e. electronic scrap containing mercury switches, regulated batteries or PCB-capacitors).** The export of such material should be subject to procedures outlined in the Export and Import of Hazardous Wastes Regulations and it should thus give rise to concern that Environment Canada reportedly has not issued any permit for export of such materials to any developing country. **The Special Rapporteur also calls on the Canadian Government to investigate the claim that hazardous waste is being exported to countries without the technology to dispose of recycled waste in an environmentally sound manner.**

#### **Pesticides**

119. **The Special Rapporteur recommends that the export of pesticides unregistered for sale or use within Canada be prohibited. Until such export is prohibited, the competent Canadian authorities should ensure that the attention of the Government in the importing country is drawn to the export before the shipment leaves Canada.**

#### **Public participation**

120. The Special Rapporteur welcomes the adoption of comprehensive policy frameworks for consultations in environmental decision processes as well as the establishment of the Environmental Petitions Process. The process of consultation in environmental decisions functions by and large satisfactorily at the federal level, although concerns were expressed by NGOs that the Government does not always take into account the input provided in the consultation process. She agrees with the sentiment expressed to her that the input prepared by the public and by non-governmental organizations provide a service to the Government which enhances the end result. Notwithstanding the above, **the Special Rapporteur would like to draw the attention of the Canadian Government to the gaps in the consultation processes at**

**the federal level, where specific approvals occur. She notes that there are no participation provisions around hazardous waste import approvals, new substances evaluations, and pesticide approvals.**

121. **The Special Rapporteur emphasizes the importance of meaningful public participation in environmental decisions at the provincial level.** Following a constructive dialogue with representatives from the Ontario Ministry of the Environment about the extent of public participation and consultation in the provincial environmental assessment process, she notes that while there are significant obligations of public consultation built into the process, there are very few specifications of how such a consultation process must be conducted. This leaves wide discretionary powers for the Ministry of the Environment to decide whether the requirements of the Environmental Assessment Act that public consultation be undertaken have indeed been honoured. She also notes that the decision to hold public hearings on a particular proposal is at the Minister's discretion. She furthermore notes that intervenor funding to interest groups for preparation of a hearing was terminated some time ago.

122. **The Special Rapporteur urges both provincial and federal agencies involved in environmental assessment processes, to ensure that full consultation on all aspects of a project be conducted in an open and transparent manner.** She would also like to refer to the question of resources available to local communities to prepare meaningful substantive input into what is often a highly technical and complicated process.

#### **Targeting of marginalized communities**

123. The Special Rapporteur heard various allegations that indigenous and/or marginalized communities are targeted for projects like that of the Bennett incinerator. Allegations of this nature have been made to the Special Rapporteur during missions to other countries. **She wishes to emphasize that Governments make all possible effort to avoid developing or locating controversial projects like polluting industries in communities where this could lead to adverse impacts on the environment and on the health of the communities. At a minimum, Governments should ensure 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.**

124. **The Special Rapporteur recommends that particular attention is paid to allegations relating to threats to the traditional lifestyles and rights of indigenous groups.** She invites the Special Rapporteur on indigenous peoples to monitor the specific issues raised in this report related to his mandate.

#### **Trade liberalization**

125. **The Special Rapporteur impresses on the Government the importance of trade liberalization agreements being construed in a way which complies with the Basel Convention and other international instruments.**

### **Corporate social responsibility**

126. The Special Rapporteur welcomes the various Canadian corporate social responsibility (CSR) initiatives taking place in both the public and the private sector. However, she remains convinced that self-regulation and voluntary codes of conduct - however laudable - can only complement legally binding norms for holding transnational companies responsible for human rights violations committed in their spheres of influence. **While recognizing the jurisdictional and procedural issues arising from trying to establish accountability for actions, including actions falling within the mandate of the Special Rapporteur, committed abroad by a transnational company which would be criminalized if committed in the companies' countries of origin, the Special Rapporteur nevertheless calls on the Canadian and other Governments to explore ways of establishing extraterritorial jurisdiction over human rights violations, committed by companies operating abroad.** The concept of extraterritorial jurisdiction for human rights violations is not unknown in both international and many national laws, and **the Special Rapporteur recommends that the establishment of accountability be explored.**

127. **The Government is encouraged to continue its increased reliance on criminal prosecution together with civil or administrative actions in relation to breaches of the law in the area of toxic and dangerous products and wastes; and to improve the procedural rights of the victims.**

### **Notes**

---

<sup>i</sup> The Amendment is not yet in force.

<sup>ii</sup> CEPA 1999, sects. 185-192.

<sup>iii</sup> Schedule 3 of the Export and Import of Hazardous Waste regulations.

<sup>iv</sup> CEPA 1999, Schedule II, Part III.

<sup>v</sup> SOR/92-637. EIHWR has since been amended to reflect changes made to the Annexes in the Basel Convention and the OECD Council Decision C (2001) 107.

<sup>vi</sup> All provinces have applied standards to the land filling of hazardous wastes, based on 1991 National Guidelines on the Land filling of Hazardous Wastes developed by the Canadian Council of Ministers of the Environment. Such guidelines are non-binding and unenforceable. Work is ongoing to revise these guidelines. Once adopted, the new land filling standard would be applied by all relevant Canadian jurisdictions.

<sup>vii</sup> CEPA 1999, sect. 187.

<sup>viii</sup> EIWHR sect. 6 (d) (export for disposal) and sect. 11 (d) (export for recycling).

<sup>ix</sup> Report of the Law and Enforcement Cooperation Program of the Commission for Environmental Cooperation, 1999. Available on [www.cec.org](http://www.cec.org).

<sup>x</sup> Ibid., executive summary, p. ix, sect. 2.

<sup>xi</sup> Storage of PCB materials Regulations (SOR/92-507, 27 August 1992).

<sup>xii</sup> CEPA 1999, sect. 185 (2).

<sup>xiii</sup> “Exporting harm: The high-tech trashing of Asia - the Canadian story”, Basel Action Network, 22 October 2002. Hereafter: the Basel Action Network report.

<sup>xiv</sup> Decision-Recommendation C(86)64/Final and Council Decision C(92)39/Final, as amended by C(2001)107/Final.

<sup>xv</sup> Article 104 of NAFTA.

<sup>xvi</sup> “The generation and management of hazardous wastes and transboundary hazardous waste shipments between Mexico, Canada and the United States, 1990-2000”, Texas Centre for Policy Studies, April 2001.

<sup>xvii</sup> Article 1114 of NAFTA.

<sup>xviii</sup> Chapter 11, 10.

<sup>xix</sup> R.S. 1985, C.P-9.

<sup>xx</sup> See 1999 report of the Commissioner of the Environment and Sustainable Development, available at <http://www.oag-bvg.gc.ca/domino/reports>.

<sup>xxi</sup> Bill C-8.

<sup>v</sup> “The Green Lane: Our commitment to effective consultations”, Environment Canada, 27 May 1996.

<sup>w</sup> 1976-1977, C.34, s.1.

<sup>x</sup> See [http://www.oag-bvg.gc.ca/domino/reports.nsf/html/01edc\\_e.html](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/01edc_e.html).

## **Appendix**

### **AGENCIES AND ORGANIZATIONS WITH WHOSE REPRESENTATIVES THE SPECIAL RAPPORTEUR MET DURING HER MISSION**

#### **Federal Government of Canada**

##### *Department of Foreign Affairs and International Trade*

Investment Trade Policy Division (EBI)

Aboriginal and Circumpolar Affairs Division (AGA)

Human Rights, Humanitarian Affairs, and International Women's Equality  
Division (AGH)

Mexico Division (NMX)

Environment and Sustainable Development Division (ESR)

Oceans and Environmental Law Division

##### *Environment Canada*

Legal Services

Heavy Metals, Transboundary Air Issues

International Policy and Cooperation Branch

Marine Environment

Transboundary Movement Branch

Controls Development Section

Federal-Provincial Relations

Toxic Pollution Prevention Directorate

##### *Health Canada*

Pest Management Regulatory Agency

*Indian and Northern Affairs*

Northern Science and Contaminants Research Directorate

*National Defence*

Disposal, Sales, Artifacts and Loan

*Canadian International Development Agency (CIDA)*

Policy Branch

Africa and Middle East Branch

Environmental Policies and Multilateral Environmental Agreement Unit

Multilateral Branch

*Courtesy meetings with senior government officials*

Richard Balhorn, Director General, International Environmental Affairs Bureau, DFAIT

Brian Emmett, Vice-president, Policy Branch, CIDA

Barry Stemshorn, Assistant Deputy Minister, Environmental Protection Service,  
Environment Canada

The Honourable Gilles Parent, Ambassador to the Environment

**Provincial governments**

*Ontario*

Ministry of the Environment

*Quebec*

Ministère de l'Environnement

Ministère des Relations internationales

Ministère des Ressources naturelles

**Other government institutions**

- Members of the Parliamentary Committee on Environment and Sustainable Development
- Commissioner for the Environment and Sustainable Development

- NAFTA Commission on Environmental Cooperation
- Chair of the National Round Table on the Environment and the Economy (NRTEE) and Member of the Joint Public Advisory Committee (JPAC) of the Canada-Chile Agreement on Environmental Cooperation (CCAEC)

**Civil society**

- Canadian Environmental Law Association
- Canadian Environmental Network
- Akwesasne Task Force on the Environment
- Haudenosaunee Environmental Task Force
- Timiskaming First Nation
- Temagami First Nation
- Wabun Tribal Council
- Beavakans First Nation
- Algonguin National Secretariat
- Wahgoshig First Nation
- Assembly of First Nations
- North Watch
- Great Lakes United
- Citizens Network on Waste Management
- Pembina Institute for Appropriate Development
- Basel Action Network (based in the United States of America) (by telephone)
- The Inuit Circumpolar Conference (by telephone)

**Private sector**

- Visit to the waste treatment and disposal facility Stablex
- CropLife Cana