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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 Ms. Fatma-Zohra Ouhachi-Vesely, Special Rapporteur,
in accordance with Commission resolution 2002/27**

Executive summary

The present report is submitted pursuant to Commission resolution 2002/27. It comprises five sections relating to the activities of the Special Rapporteur; the observations, comments and information submitted by Governments and other sources; new cases; follow-up of cases included in previous reports; and conclusions and recommendations.

The Special Rapporteur reports on her attendance at the World Summit on Sustainable Development, as well as her participation in a hearing before the Inter-American Commission on Human Rights on environment and human rights. The Special Rapporteur also makes reference to her participation in the Sixth Conference of Parties to the Basel Convention.

Replies to a letter sent by the Special Rapporteur have been received from the Governments of Argentina, Qatar, the Syrian Arab Republic and Tunisia. Additional information from the Government of Venezuela, submitted too late for inclusion in the Special Rapporteur's report to the Commission in 2002, is included in the present report.

Substantive replies to a letter sent by the Special Rapporteur have been received from the Food and Agriculture Organization of the United Nations, the United Nations Population Fund, and the Secretariat for the Convention on Biological Diversity. Replies have also been received from various non-governmental organizations.

Another section contains summaries of communications concerning six new cases brought to the attention of the Special Rapporteur, involving 11 countries.

The Special Rapporteur provides follow-up information about the case concerning the contamination of a paracetamol syrup by impure glycerine resulting in the death of at least 88 children in Haiti between 1997 and 1998 (Case 1999/41).

In the final section, the Special Rapporteur refers to the conclusions and recommendations contained in her previous reports which remain valid.

The Special Rapporteur also draws the attention of the Commission on Human Rights to the conclusions and recommendations contained in the reports from her in situ missions to the United States and Canada (E/CN.4/2003/56/Add.1 and E/CN.4/2003/56/Add.2, respectively).

The Special Rapporteur highlights a new trend in the area falling within her mandate, which is the export of hazardous electronic waste from developed countries for recycling in developing countries in Asia. The Special Rapporteur shares the view that the gravity of the problem points to the need for the strict application of existing international instruments and for the elaboration if necessary of international standards to ensure that electronic wastes are recycled in a manner that is neither harmful to worker, nor destroys the environment.

The Special Rapporteur notes her continuing concern about the problems posed by pesticides and persistent organic pollutants (POPs). She welcomes the decision of Mexico to ban the use of DDT.

It is the intention of the Special Rapporteur to present to the next session of the Commission on Human Rights a substantive report accompanied by her observations, conclusions and recommendations concerning the last three years of her mandate.

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Introduction

1. In 1995, at its fifty-first session, the Commission on Human Rights adopted its first resolution specifically concerning the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. Ms. Fatma-Zohra Ksentini (at present Ms. Ouhachi-Vesely) (Algeria) was appointed Special Rapporteur pursuant to resolution 1995/81, which was approved by Economic and Social Council decision 1995/288. The Commission has since adopted a resolution each year on toxic wastes and human rights (1996/14, 1997/9, 1998/12, 1999/23, 2000/72, 2001/35 and 2002/27). The Special Rapporteur has submitted a preliminary report (E/CN.4/1996/17) and progress reports (E/CN.4/1997/19, E/CN.4/1998/10 and Add.1, E/CN.4/1999/46, E/CN.4/2000/50, E/CN.4/2001/55 and Add.1, and E/CN.4/2002/61). She has also conducted in situ visits to countries in Africa, Europe and North and South America: in 1997, she visited South Africa, Kenya and Ethiopia (E/CN.4/1998/10/Add.2); in 1998, Paraguay, Brazil, Costa Rica and Mexico (E/CN.4/1999/46/Add.1); in 1999, she visited the Netherlands and Germany (E/CN.4/2000/50/Add.1). She made no visit in 2000. In 2001, the Special Rapporteur visited the United States and in 2002 she visited Canada. The reports from these last two missions are contained in addenda to this report.

2. In its resolution 2000/72, the Commission invited the Special Rapporteur to include in her report (a) comprehensive information on persons killed, maimed or otherwise injured in developing countries as a result of the illicit dumping of toxic products; (b) the question of impunity of the perpetrators of these heinous crimes, including racially motivated discriminatory practices, and recommendations regarding measures to end impunity; (c) the question of rehabilitation and assistance to victims; and (d) the scope of national legislation in relation to the transboundary movement and dumping of toxic and dangerous products and wastes. In its resolution 2001/35, the Commission reiterated those requests and invited the Special Rapporteur to include in her report to the Commission at its fifty-eighth session comprehensive information on the question of fraudulent waste-recycling programmes, the transfer of polluting industries, industrial activities and technologies from the developed to developing countries, ambiguities in international instruments that allow illegal movement and dumping of toxic and dangerous products and wastes, and any gaps in the effectiveness of the international regulatory mechanisms. In its resolution 2002/27, those requests were reiterated by the Commission.

3. On 18 September 2002, a note verbale was addressed to all Governments, the relevant United Nations bodies, the specialized agencies and non-governmental organizations requesting information and inviting comments on the relevant provisions of resolution 2002/27. As of 21 November 2002, replies had been received from the Governments of Argentina, Qatar, the Syrian Arab Republic and Tunisia. Additional information from the Government of Venezuela was submitted too late for inclusion in the Special Rapporteur's report to the Commission in 2002, and will therefore be included in the present report.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. The Special Rapporteur attended the ninth meeting of special rapporteurs, which was held in Geneva in June 2002.

5. The Special Rapporteur attended the World Summit on Sustainable Development (WSSD), which took place in Johannesburg, South Africa, in September 2002. During the WSSD, the Special Rapporteur attended plenary sessions and held discussions with WSSD delegates on the issues relevant to her mandate. She also consulted with various non-governmental organizations on issues relevant to her mandate.

6. The Special Rapporteur participated in a one-day parallel event, organized by a coalition of over 20 human rights and environmental NGOs. The aim of the workshop was, inter alia, to explore the relationship between human rights and sustainable development and environmental protection. The Special Rapporteur was a panellist in a session entitled "Linking human rights and the environment in theory and practice". She was a participant in a later discussion on the issue of toxic wastes. The Special Rapporteur also participated as a panellist in another WSSD parallel event entitled "The human right to development and the environment: conflicting agendas or common cause", organized by a group of academic institutions and NGOs.

7. While attending the WSSD, the Special Rapporteur was interviewed by various media outlets on the issues falling within her mandate in the context of the Summit.

8. On 16 October 2002, the Special Rapporteur participated in a hearing on environment and human rights before the Inter-American Commission on Human Rights in Washington, DC. She gave a presentation to the Inter-American Commission on the scope of her mandate and her work as a special rapporteur of the Commission on Human Rights. The overall objective of the hearing was to sensitize the Inter-American Commission on the impact of environmental degradation on the enjoyment of human rights in the hemisphere, and to get the Inter-American Commission to consider the victims of environmental degradation as victims of human rights abuses. The hearing was the first occasion on which the links between human rights and the environment were addressed by the Inter-American Commission on Human Rights.

9. Her presence in Washington also gave the Special Rapporteur the opportunity to hold consultations with various Organization of American States (OAS) staff members and to exchange information and views on issues relating to her mandate.

10. From 17 to 30 October 2002, the Special Rapporteur undertook a mission to Canada. The report on the mission (E/CN.4/2003/56/Add.2) is submitted as an addendum to the present report. The Special Rapporteur also submits to the Commission the report on her mission to the United States of America (E/CN.4/2003/56/Add.1), which took place from 3 to 14 December 2001. That report had not been finalized before the fifty-eighth session of the Commission on Human Rights.

11. From 9 to 13 December 2002, the Special Rapporteur attended the Sixth Meeting of the Conference of Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (COP-6) in Geneva and held consultations with NGOs. The Special Rapporteur addressed the plenary of the Conference of Parties and held consultations with governmental and non-governmental delegations. She spoke at a side event organized by Earth Justice, outlining how her mandate supplements the provisions of the Basel Convention.

12. In reply to the Special Rapporteur's communication in 2001 to several Governments, expressing her interest in conducting field missions in their countries (E/CN.4/2002/61, para. 4), the Special Rapporteur has received positive indications from the Governments of Slovakia, Slovenia and the United Kingdom of Great Britain and Northern Ireland regarding the possibility of her conducting missions in their respective countries. She is still awaiting answers from the Governments of India and China. The Government of Australia maintained its position that a visit to that country was inappropriate. The Special Rapporteur is in the process of preparing her schedule for field missions to be undertaken in 2003.

II. OBSERVATIONS, COMMENTS AND INFORMATION SUBMITTED

A. Governments

1. Argentina

13. The Government of Argentina informed the Special Rapporteur that the Secretariat for Sustainable Development and Environmental Policy of the Ministry of Social Development and the Environment is the implementing authority for Act No. 23.922, ratifying the Basel Convention. As part of its duties the Secretariat has been keeping a register of Argentina's transboundary movements since 1995 and is permanently engaged in the area of customs intelligence in the prevention of illicit transit.

14. Since the start of its activities in the area of transboundary movements, no complaint of incidents involving the illegal movement of dangerous wastes has been recorded. However, the National Department for Environmental Management has collaborated in sending a mission to Paraguay on account of an instance of clandestine dumping of wastes in that country.

15. The National Department for Environmental Management is also the implementing authority for Act No. 24.051 on Dangerous Wastes. National legislation and the pertinent penal sanctions are therefore applied to those responsible nationally for illicit entry and dumping. Where an illicit transit operation is suspected, the mechanism for lodging a complaint contained in Act No. 23.922 should be applied and the Basel Convention Protocol on Liability invoked.

16. Lastly, Argentina recognizes that, despite the progress achieved by the Basel Convention as regards international machinery for monitoring the management of dangerous wastes, the countries of the region are still vulnerable. It is for these reasons that the ongoing work of training in monitoring and management to be carried out by the regional and subregional centres of the Basel Convention is regarded as important.

2. Qatar

17. Qatar has ratified the Basel Convention. The Government transmitted extracts from a draft guide concerning the transboundary movements of dangerous wastes of 1997, and extracts from the Environmental Protection Act of 2002.

3. Syrian Arab Republic

18. The Syrian Arab Republic ratified the Basel Convention by Decree No. 246 of 27 May 1991. At that time, it informed the Secretariat of the Basel Convention that the Syrian Arab Republic prohibits the importation of any type of hazardous wastes and regards the illicit trafficking therein as a criminal offence punishable by law. In addition, the Syrian Arab Republic played a major role at the Fourth Meeting of the Conference of Parties to the Basel Convention, held in Malaysia in 1998, in producing the decision prohibiting the movement of hazardous wastes from the industrialized States of the Organization for Economic Cooperation and Development (OECD) to developing countries.

19. In its submission to the Special Rapporteur, the Syrian Arab Republic made allegations involving another State concerning the dumping of hazardous wastes. Because of the deadline for submission of the Special Rapporteur's report, the concerned Government did not have an opportunity to respond to the allegations prior to the finalization of the report. A summary of the allegations with the response of the concerned Government will therefore be included in the report of the Special Rapporteur to the sixtieth session of the Commission on Human Rights.

4. Tunisia

20. Tunisia has ratified the Basel Convention and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.

21. Tunisia has adopted very strict laws and regulations concerning the import and illicit traffic of hazardous wastes. Law No. 96-41 of 10 June 1996 contains the following elements:

(a) A producer, distributor or transporter is under an obligation to recover any waste derived from material or products which they produce. The competent authorities may oblige them to eliminate such wastes and, if need be, to participate in schemes for the disposal of identical or similar wastes;

(b) It is prohibited to bury hazardous waste (defined as those products listed in a decree of 2000) and it may only be disposed or stored in specially designated facilities;

(c) The facilities and companies which produce, transport or generate hazardous wastes are obliged to guarantee full insurance coverage for any risk associated with the hazardous wastes;

(d) Any person who disposes of or orders the disposal of hazardous wastes in facilities which do not have the permission to dispose of such wastes is considered jointly responsible for any damage caused by such wastes;

(e) Import of hazardous wastes is strictly prohibited;

(f) Export or transit of hazardous wastes to States which have prohibited the import of such material is not allowed. Export to States which have not prohibited the import of hazardous wastes is not allowed in the absence of specific and written authorization;

(g) In the case of illicit trafficking in hazardous wastes, an unlimited, collective liability is incumbent on the producers and distributors of the wastes and, if those are not known, on its regulators for all damage caused by such wastes;

(h) Infringement of the provisions of this Act carries with it a penalty of prison for up to five years and fines of up to 500,000 dinars.

22. Tunisia was the first African and Arab country to ratify the Amendment to the Basel Convention.

23. Within the framework of the Basel Convention, Tunisia annually transmits to the Secretariat for the Convention information about the quantities of dangerous wastes generated, exported, imported and produced and about any accidents involving hazardous wastes affecting human health and the environment.

24. It must be noted that no cases of trafficking or illicit import of hazardous wastes have been registered in Tunisia.

25. Finally, an attempt to establish a recycling facility for imported hazardous wastes in Tunisia was aborted in 2001.

5. Venezuela

26. In February 2002, the Government of Venezuela transmitted additional information to the Special Rapporteur for inclusion in her report to the fifty-eighth session of the Commission on Human Rights. However, the information was received too late, and is therefore included in the present report.

27. The ongoing involvement by the Office of the Public Prosecutor in the legal protection of the environment has been boosted by the promulgation of the Environment Act in 1992, and the Code of Criminal Procedure and Constitution in 1999. The new Constitution establishes environmental rights, and has led to the establishment of the Department of the Environment as part of the administrative structure of the Office.

28. The Office of the Public Prosecutor has not only prosecuted environmental offences, but also acted as an environmental watchdog. As part of this work, the Office has been involved in various activities relating to the management of toxic or hazardous wastes, including preparation and participation in workshops on metals, health, toxic wastes and hazardous materials; contributed to discussions about draft legislation on dangerous substances, materials and wastes in the National Assembly; prepared and implemented projects to assess the management of hospital wastes, drinking water quality, treatment and disposal of solid wastes, oil spills,

management and monitoring of waste generated by the use of lubricating oils, air pollution from fixed and mobile sources, problems of pollution of major reservoirs and rivers, and operation of waste-water treatment plants.

B. Intergovernmental and non-governmental organizations

29. The Special Rapporteur continued her cooperation with the Secretariat for the Basel Convention, and participated in COP-6.

30. In response to a note verbale addressed to intergovernmental organizations, the Special Rapporteur received substantive replies from the Food and Agriculture Organization of the United Nations (FAO), the United Nations Population Fund (UNPFA) and the Secretariat for the Convention on Biological Diversity. UNAIDS and the United Nations Department of Peacekeeping Operations both informed the Special Rapporteur that while they welcomed the opportunity to provide input to the Special Rapporteur's report, they were not currently undertaking activities relevant to the subject matter of the report.

31. FAO informed the Special Rapporteur that it has the mandate to address matters relating to crop production and protection, pesticide management and the disposal and prevention of obsolete pesticide stockpiles. FAO hosts the joint secretariat for the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and collaborates closely with the Secretariat for the Basel Convention and the Stockholm Convention on Persistent Organic Pollutants (POPs) to ensure compliance and to avoid duplication of efforts.

32. FAO informed the Special Rapporteur that the organization works globally to raise awareness of the hazards associated with obsolete stockpiles of pesticides, a significant proportion of which have been illegally dumped or unethically supplied to developing countries. Its work ensures that the issue of stockpile prevention and disposal is placed on the political and development agenda so that countries can take the necessary action to address it.

33. It was submitted to the Special Rapporteur by FAO that the existence of obsolete pesticide stockpiles, as well as presenting severe health and environmental hazards, acts as a barrier to sustainable development, but is often overlooked by donors that wish to support constructive development. All FAO-led activities address the prevention of new stockpiles through better chemical management and the promotion of agricultural production that reduces reliance on external chemical input.

34. In this context, FAO informed the Special Rapporteur of its work with the African Stockpiles Programme (ASP), which is a multi-partner initiative designed to safely dispose of and prevent recurrence of pesticide POPs and obsolete pesticide stockpiles in all African countries. It has been developed in partnership with United Nations agencies, NGOs, financial institutions and the private sector. FAO has played a central role in the development of ASP and will continue to play a key role in its execution by hosting the Technical Support Unit for the programme.

35. UNFPA made a comprehensive submission to the Special Rapporteur, detailing its activities towards sustainable development, including technical assistance to enhance global understanding of the links between population, environment and development.
36. The International Conference on Population and Development (ICPD) forged goals for human rights and health, equality and environmental protection, and economic and social justice as the means of ensuring a better quality of life and sustainable future for all. ICPD accentuated the need to empower women as full partners in sustainable development.
37. Toxic chemicals and pesticides in air, water and earth are responsible for a variety of women's health risks, including reproductive health. Exposure to some agricultural and industrial chemicals and organic pollutants are associated with pregnancy failures and with infant and childhood developmental difficulties, illness and mortality.
38. UNFPA informed the Special Rapporteur about a range of country initiatives, constituting best practices. Some of the most important programme initiatives at the country level since the Rio Summit and the Cairo Conference that have a direct impact on the population involve strengthening the legal basis for sustainable development through the enactment of new laws and policies to protect the environment.
39. UNFPA furthermore reported that institutional capacity in developing countries to adequately link population, environment and development in policy and programme formulation is still fairly limited. However, progress has been made in some countries in articulating and implementing environmental policies that encompass the linkages. These policies relate to the quality of, and access to, safe water; curbing environmental pollution and hazardous wastes; and constraining the degradation of the agricultural land base.
40. Strengthening national capacities to plan, implement and monitor effective policies that mainstream gender and population concerns into environmental planning and management is critical to sustainable development. Efforts to this effect have been made in Azerbaijan, Bhutan, Ecuador, Nepal and Viet Nam.
41. The Secretariat of the Convention on Biological Diversity in its response referred to a number of provisions within the Convention as well as the reports of the meetings held under the Convention as being relevant to her report. The Secretariat highlighted article 7 (Identification and Monitoring) and article 14 (Impact Assessment and Minimizing Adverse Impacts) as being particularly relevant to the Special Rapporteur.
42. Article 7 calls on Parties to identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques. Article 14, paragraph 1, requires Parties to introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding such effects. These anticipatory procedures are likely to circumvent the impact of various activities on the natural resource base upon which the livelihood of local and indigenous communities depend thereby securing their human rights.

43. The Secretariat also drew the attention of the Special Rapporteur to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity. The objective of the Protocol is to contribute, in accordance with the precautionary approach, to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology. The Protocol makes provision for measures for dealing with both unintentional and illegal transboundary movements of LMOs. Procedural requirements regarding notification and information exchange have been established in respect of unintentional movements. As regards illegal transboundary movements, each Party is required to adopt appropriate domestic measures aimed at preventing and, if appropriate, penalizing transboundary movements. In such circumstances, the Party of origin is obliged, upon request by the affected Party, to dispose, at its own expense, the LMO in question by repatriation or destruction. These measures are calculated to discourage illicit traffic in LMOs.

44. Throughout the year, the Special Rapporteur has received communications from non-governmental organizations concerning issues relevant to her mandate. Other communications were received in reply to a specific request for information.

45. The Special Rapporteur received a comprehensive report from the organization Human Rights Advocates, entitled “Toxic Waste and the Fulfilment of Human Rights”.¹ The purpose of the report is to highlight recent movements of toxic wastes between countries with emphasis on the movement of toxics from developed to developing nations, particularly those toxics that are banned in the country of export. The report looks at exports of dangerous products and wastes from industrialized countries to the third world via “recycling” programmes which enable producers to circumvent the ban imposed by the Basel Convention, particularly in Asian nations that are frequently the recipients of materials for recycling.

46. The report from Human Rights Advocates contains a number of recommendations to the Special Rapporteur, including that she continue to promote the development of international human rights standards for disposal or recycling of electronic waste, ship-breaking, steel-recycling, and disposal of other toxic, or potentially toxic materials. The Special Rapporteur is also encouraged to coordinate with the Sub-Commission on the Promotion and Protection of Human Rights in its work regarding economic globalization and human rights, particularly as this relates to the regulation of the private sector. She should also promote policies that encourage the “polluter pays principle”, holding corporations responsible for the damage they cause.

47. The Special Rapporteur received information from the Center for Human Rights and Environment (CEDHA) in Argentina about a case involving two environmentalists from the State of Guerrero, Mexico, who because of their environmental advocacy allegedly have suffered

¹ Report submitted to the Special Rapporteur by the University of San Francisco School of Law International Human Rights Clinic on behalf of Human Rights Advocates, a non-governmental organization in special consultative status with the Economic and Social Council, November 2002.

severe human rights violations, including torture and arbitrary arrest, for over two years. The Special Rapporteur passed the information on to the Special Representative of the Secretary-General on human rights defenders.

48. CEDHA also presented the Special Rapporteur with a report listing a number of environmentalists in Latin America who have allegedly suffered human rights violations because of their activities. The Special Rapporteur also forwarded this report to the Special Representative on human rights defenders.

49. From the Danish Ecological Council the Special Rapporteur received various background materials about European chemical policies and regulations.

50. From the Environmental Justice Foundation the Special Rapporteur received a report entitled "Death in Small Doses - Cambodia's pesticide problems and solutions". The report documents how Cambodia faces human and environmental pesticide-related problems following the intensive use of many pesticides which do not meet international quality standards. In addition, unregulated imports have resulted in chemicals banned by the Cambodian Government being readily available on the domestic market. Farmers and their families are being poisoned and food, water supplies and ecosystems are being polluted: 88 per cent of 210 pesticide-using farmers interviewed for the report had experienced symptoms of poisoning.

51. The Special Rapporteur has forwarded the report to the United Nations Environmental Programme Chemicals' Unit and she is in the process of liaising with other relevant international agencies and secretariats with a view to determining how the instruments provided for in her mandate can best be employed to address the situation outlined in the report.

III. NEW CASES

Case 2003/67 - United States/Chile: Farmers pressured to use pesticides to increase exports

52. A communication addressed to the Special Rapporteur by a non-governmental organization indicated that, as Chile strived to increase its annual exports of fruit, the pressure to use more agricultural chemicals such as Dormex has increased, along with 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 Copiapo Valley of the Atacama Desert) during the months of high pesticide use. Most of them suffered 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 up 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.

53. In 2000, more than 15,000 tons of pesticides were allegedly imported into Chile, almost twice the amount imported in 1990. It was alleged in the report sent 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, does not have the capacity to enforce adequately the safety regulations that do exist.

54. 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.

55. In its reply, the Government of Chile 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 to the Special Rapporteur 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 that will make it possible 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.

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

Case 2003/68 - United Kingdom/India: Illegal dumping of mercury and waste products by a multinational corporation

57. In October 2001, the Special Rapporteur received a communication regarding allegedly illegal dumping of mercury and waste products in the forests in Kodaikanal Dindigul district, Tamil Nadu, India. The dumping was supposed to have been carried out by a thermometer plant owned by Hindustan Lever Ltd., the Indian subsidiary of the Anglo-Dutch multinational Unilever. Allegedly, an estimate based on plant records and investigations concluded that approximately 7.4 tons of contaminated waste material had been dumped without the necessary precautions having been taken. Workers were said to not have been provided with the required safeguard measures and almost all suffered various ailments.

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

59. In its reply to the Special Rapporteur, the United Kingdom Government informed her that it expects British multinational companies to act in accordance with standards set out in the OECD Guidelines for 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.

60. The Government also referred the Special Rapporteur to a statement issued by Hindustan Lever Ltd. in which 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 caused mercury pollution/contamination in and around the premises. In addition to TNPCB officers, 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 rehabilitate the site in accordance with the most stringent Dutch standards applied to land for residential use. The company asserts that allegations that some factory workers have died due to mercury-related ailment has remained totally unsubstantiated.

Case 2003/69 - United States/Mexico: New River pollution

61. 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.

62. The health risks posed by the polluted river are acute. Allegedly, traces of 28 viruses including typhoid, salmonella, and polio, have been found, in addition to chemicals such as DDT and other pesticides. Pesticides represent a threat to the workers who use them and for the non-farm areas through wind drift, causing additional danger to humans and the environment.

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

64. 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 presence 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 pesticide drift during aerial application is the subject of a United States policy effort and she was referred to information to be found at the EPA web site.

65. The Government of Mexico 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 of which 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.

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

Case 2003/70 - USA/Colombia: Crop dusting

67. A report 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 to the indigenous and peasant communities of the Departments of Cauca and Narino in south-eastern 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.

68. 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 programme 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.”

69. The Special Rapporteur requested both Governments to comment on the allegations.

70. In its reply, the United States Government informed the Special Rapporteur that the Department of State is investigating allegations concerning the aerial spraying of the herbicide glyphosate, used to eradicate illicit narcotic crops in Colombia. (Glyphosate is the active ingredient in herbicide products licensed for use in the United States by the EPA to kill unwanted vegetation.) Application may be made by aircraft, ground equipment, or handheld sprayers. EPA collects reports of adverse effects of 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 the allegations concerning its use in Colombia.

71. No reply has been forthcoming from the Government of Colombia.

Case 2003/71 - Canada/China/India/Pakistan/United States: Export of hazardous electronic waste from North America to Asia

72. The Special Rapporteur received a comprehensive report from Basel Action Network, alleging that substantial amounts of hazardous electronic wastes 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 it is 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 metals and pollutants poses a significant threat to human health, leading to respiratory illness, skin infections, stomach diseases 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 electronic waste are contrary to the Basel Convention (to which the United States is not a party).

73. The Special Rapporteur later received an addendum to the Basel Action Network report, alleging that hazardous electronic waste originating from Canada is being exported to Asia for recycling. The report names several Canadian companies allegedly involved in such operations. One of the receiving 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 electronic waste to China is in contravention of the Basel Convention.

74. 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 its 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-Recommendations.

75. 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 asked whether any investigation of the report's allegations had been undertaken. At the time of finalizing this report (early December 2002), no replies had been received.

76. 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 Government. The Government informed the Special Rapporteur that it is indeed meeting its international obligations in the field of hazardous wastes, 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.

77. The 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 the import of electronic scrap.

Case 2003/72 - Peru: Mining project in Tambogrande

78. 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 and, according to some reports, would pollute farmlands and water.

79. 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 Government of Peru has reportedly not recognized the outcome, since it does not consider the referendum official.

80. In mid-November 2002, the Special Rapporteur addressed a letter to the Government of Peru, asking it to comment on the allegations particularly that relating to the issue of public participation raised by the unofficial referendum on the mining project. At the time of finalizing this report (early December 2002), no reply had been received.

IV. FOLLOW-UP OF CASES

Case 1999/41 - Netherlands/China/Haiti

81. In her previous reports, the Special Rapporteur has analysed the case concerning the contamination of a paracetamol syrup by impure glycerine, resulting in the death of at least 88 children in Haiti between 1997 and 1998.

82. In her report to the Commission on Human Rights in 2002 (E/CN.4/2002/61, para. 38), the Special Rapporteur noted that the details of an agreement reached with the families of the Haitian victims in their dispute with the Dutch Company Vos BV had not been transmitted to her. Details of the agreement have still not been forthcoming.

83. In February 2002, the Special Rapporteur asked the Government of Haiti for its 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. As of November 2002, the Government has not provided the Special Rapporteur with the requested information.

84. 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 guilders to the Kingdom of the Netherlands.

85. 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.

86. 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 malversation or dubious transactions.

87. 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 and 2001 through the Dutch correspondent of their German lawyer. In neither situation was this opportunity made use of.

V. CONCLUSIONS AND RECOMMENDATIONS

88. **In her previous reports, referred to in paragraph 1, the Special Rapporteur has presented a series of analyses as well as conclusions and recommendations, which are still valid.**

89. **The Special Rapporteur draws the attention of the Human Right Commission to the conclusions and recommendations contained in the addenda to this report relating to the field missions conducted in the United States of America and Canada.**

90. **She would also like to underline a new trend concerning the export of hazardous electronic waste from developed countries to countries in Asia. As documented by many reports received from different sources, these wastes are being processed in operations that are extremely harmful to human health and the environment, with severe implications for human rights. Improper disposal of electronic waste that contains heavy metals and pollutants poses a significant threat to human health. The Special Rapporteur shares the view that the gravity of the problem points to the need for the strict application of existing international instruments and for the elaboration of international standards to ensure that electronic wastes are recycled in a manner that is neither harmful to worker, nor destroys the environment.**

91. **The problems posed by pesticides, particularly POPs, remain very serious and the majority of the incidents reported relate to this issue. The Special Rapporteur notes with satisfaction that DDT is banned from use in Mexico.**

92. **It is the intention of the Special Rapporteur to present to the next session of the Commission on Human Rights a substantive report accompanied by her observations, conclusions and recommendations concerning the last three years of her mandate.**
