Category: Obligation to Provide Access to Legal Remedies; Obligations Relating to Transboundary Environmental Harm

Sub-Category: Treaties and Instruments; International Cooperation

Name of Good Practice: Canada-U.S. Uniform **Transboundary Pollution Reciprocal Access Act (Model Law)**

Key Words: Access to Justice, International Cooperation, Regional, Transboundary

Implementing Actors: Civil Society Organisations: the U.S. National Conference of Commissioners on Uniform State Laws and the Canadian Uniform Law Conference; Sub-National Governments: Colorado, Connecticut, Michigan, Montana, New Jersey, Oregon, Wisconsin, Manitoba, Nova Scotia, Ontario, and Prince Edward Island.

Location: Canada and the United States

Description: In 1982, a liaison committee of the U.S. National Conference of Commissioners on Uniform State Laws and the Canadian Uniform Law Conference drafted a model law entitled the Uniform Transboundary Pollution Reciprocal Access Act. Its key provision states that “[a] person who suffers, or is threatened with, injury to his person or property in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this jurisdiction has the same rights to relief with respect to the injury or threatened injury, and may enforce those rights in this jurisdiction as if the injury or threatened injury occurred in this jurisdiction.” According to the commentary on the model law, the principle of reciprocity is “designed to ensure that the actual or potential victim of transfrontier pollution will have a remedy in the courts of the jurisdiction where the pollution originated, if a victim residing in that jurisdiction would have had a remedy for injury or threatened injury in the case of pollution caused locally. Whether or not particular pollution did originate in jurisdiction is a question of fact for the court to decide.” The drafters avoided including a definition of pollution in the model law because of their concern that it would “be exceptionally difficult to draft such a definition without it degenerating into an unmanageable ‘shopping list’ and difficult to harmonize such a list in practice with the definitions provided in the substantive law of a particular jurisdiction.” It was instead decided that what constitutes pollution under the model law “would be decided by reference to the law of the enacting [jurisdiction] as well as any applicable judicial decisions under the common law. It is contemplated that it would include but not be limited to discharges and emissions into land, air or water.”

Although neither the United States nor Canadian national governments have adopted the model law, seven U.S. states and four Canadian provinces have enacted it.

Further Information: The model law can be found on the Uniform Law Conference of Canada’s website: <http://ulcc.ca/en/home-en-gb-1/539-josetta-1-en-gb/uniform-actsa/transboundary-pollution-reciprocal-access-act/732-transboundary-pollution-reciprocal-access-act>.