

**ISSUE PAPER**  
**HUMAN RIGHTS**  
**AND THE ENVIRONMENT**



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**EARTHJUSTICE**

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## **INTRODUCTION**

At the beginning of this third millennium, there should be no doubt that human activities can cause serious environmental problems, or that those problems, in turn, often result in grave harm to human beings. Even today, environmental problems around the globe are interfering with the full enjoyment of a host of human rights. The cases studies presented in this report demonstrate that environmental damage is causing ongoing violations of the rights to life, health, culture, means of subsistence, free expression, and freedom from discrimination, to mention but a few. Put positively, a clean and healthy environment is essential to the realization of fundamental human rights.

The community of nations has not ignored this essential connection. In addition to the case studies included in this report are highlights from the recent work of international, regional and domestic bodies during 1999, 2000 and early 2001 in the area of human rights and the environment.<sup>1</sup> The work of these bodies shows repeated recognition of a rights-based approach to environmental protection. Such recognition demonstrates that a right to a clean and healthy environment, whether as a separate, codified right or as the result of repeated application of other human rights to environmental harms, has become an international legal norm.<sup>2</sup>

The relationship between environmental problems and human rights violations calls for a holistic treatment of these issues. International, governmental and non-governmental institutions dedicated to protecting human rights must explicitly recognize the connection and take steps to provide mechanisms to address the human rights implications of environmental problems. As a world leader in the protection of human rights, the UN Commission on Human Rights should take the lead in recognizing and guaranteeing the right to a clean and healthy environment.

### ***Brief Background***

In July 1994, Ms. Fatma Zohra Ksentini, Special Rapporteur on Human Rights and the Environment for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, issued her Final Report to the Sub-Commission.<sup>3</sup> The Final Report was the culmination of a study process initiated in 1989, when several nongovernmental organizations presented information to the Sub-Commission regarding the need for all human rights bodies at the United Nations to study the connections between human rights and the environment. In

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<sup>1</sup> For relevant developments preceding this period, please see previous reports prepared by Earthjustice Legal Defense Fund (known until 1997 as the Sierra Club Legal Defense Fund).

<sup>2</sup> International legal norms usually arise from the appearance of a particular rule or principle in sources such as customary law, treaties or general principles of law as recognized by civilized nations. *See* Statute of the International Court of Justice (ICJ Statute), June 26, 1945, 59 Stat. 1055, T.S. No. 993, 3 Bevens 1179, art. 38(1); Restatement (Third) of the Foreign Relations Law of the United States (Rest. 3d), § 102. Substantial weight is also accorded to the judgments and opinions of international, regional and domestic judicial and arbitral tribunals. *See* Rest. 3d., §103(2). Evidence of these various sources is found in the reports, resolutions, decisions, opinions, judgments, provisional verbatim records and related materials of numerous international, regional and domestic bodies. *See id.*, §103, cmt. a. If enough activity occurs around a certain rule or principle, then eventually that rule or principle becomes international law. *See id.*, §103(1).

<sup>3</sup> E/CN.4/Sub.2/1994/9.

response, the Sub-Commission asked Ms. Ksentini, then a member of the Sub-Commission, to prepare a note on methods by which a study on the relationship between human rights and the environment could be done.<sup>4</sup> At its next session, the Commission on Human Rights adopted a resolution (1990/41), which welcomed the Sub-Commission's decision to have Ms. Ksentini prepare a note on human rights and the environment.

Ms. Ksentini presented her note to the Sub-Commission in 1990, and the Sub-Commission responded by appointing her to be Special Rapporteur on Human Rights and the Environment and assigning her the task of preparing a comprehensive report on the linkage between human rights and the environment.<sup>5</sup> Again, the Commission endorsed the Sub-Commission's action and Ms. Ksentini commenced work as Special Rapporteur on Human Rights and the Environment.<sup>6</sup> Ms. Ksentini produced a Preliminary Report in 1991<sup>7</sup> and Progress Reports in 1992<sup>8</sup> and 1993.<sup>9</sup>

In her Final Report, Ms. Ksentini describes the legal foundations for environmental human rights and relates a range of examples of the interconnectedness of human rights and the environment. The Final Report also includes, as an annex, the 1994 Draft Declaration of Principles on Human Rights and the Environment, produced at a May 1994 Meeting of Experts on Human Rights and the Environment held at the United Nations in Geneva. The Draft Declaration of Principles expresses the environmental content of a broad spectrum of recognized human rights norms and maps out the content of the right to a secure, healthy and ecologically sound environment, including both substantive and procedural components.

In her conclusions, Ms. Ksentini noted that environmental damage has direct effects on the enjoyment of a series of human rights and that human rights violations in turn may damage the environment. Ms. Ksentini recommended that the human rights component of environmental rights immediately be incorporated into the work of various human rights bodies. She also recommended that the Centre for Human Rights (now the Office of the High Commissioner for Human Rights) establish a coordination center to deal with human rights and the environment, that the Commission on Human Rights appoint a thematic special rapporteur on human rights and the environment and that a seminar be held under the auspices of the Centre to formulate practical recommendations on how environmental rights can be incorporated into the activities of human rights bodies. Finally, Ms. Ksentini recommended that the Draft Declaration of Principles serve as the starting point for adoption of a set of legal norms consolidating the right to a satisfactory environment.

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<sup>4</sup> E/CN.4/Sub.2/1989/58, at 71 (Sub-Commission Dec. 1989/108).

<sup>5</sup> Sub-Commission Res. 1990/7.

<sup>6</sup> *See* Commission Res. 1991/44.

<sup>7</sup> E/CN.4/Sub.2/1991/8.

<sup>8</sup> E/CN.4/Sub.2/1992/7.

<sup>9</sup> E/CN.4/Sub.2/1993/7.

The Sub-Commission specifically welcomed Ms. Ksentini's conclusions and recommendations, as well as the Draft Declaration of Principles, and transmitted the Final Report to the Commission on Human Rights, with a recommendation that the Commission publish and disseminate the Final Report and appoint a Commission level special rapporteur on human rights and the environment, with a mandate to (a) monitor, receive communications, investigate and make recommendations on situations involving human rights and the environment; and (b) seek comments on the Draft Declaration of Principles.<sup>10</sup>

In that posture, the question of human rights and the environment came before the Commission at its fifty-first session in 1995. The Commission took note of Ms. Ksentini's Final Report, but rather than immediately following the Special Rapporteur's or the Sub-Commission's recommendations, the Commission issued a call for comments on issues raised in the Final Report and continued its consideration of human rights and the environment to the next session, in 1996.<sup>11</sup> On a related topic, the Commission in 1995 appointed a new special rapporteur, with a three year mandate to examine the human rights effects of illicit traffic and dumping of toxic and dangerous products and wastes.<sup>12</sup> Ms. Ksentini was appointed to this new position.

When the Commission met in 1996, the Centre for Human Rights had received comments from eight governments, eight United Nations departments and five nongovernmental organizations on issues raised in Ms. Ksentini's Final Report on human rights and the environment.<sup>13</sup> The Commission renewed its request for comments and again asked the Secretary General to prepare a report summarizing whatever comments were received.<sup>14</sup> The 1996 session of the Commission also received and considered the first report of the Special Rapporteur on Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, in which she explained her mandate and reported on her plans for carrying it out.<sup>15</sup>

In advance of its 1997 session, the Commission received comments on issues raised in Ms. Ksentini's final report from an additional five governments, three United Nations Departments, one regional organization and one nongovernmental organization.<sup>16</sup> At the 1997

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<sup>10</sup> Sub-Commission Res. 1994/27.

<sup>11</sup> Commission Res. 1995/14.

<sup>12</sup> *See* Commission Res. 1995/181.

<sup>13</sup> It appears that logistical difficulties within the Centre for Human Rights prevented the timely transmission of at least some of the Centre's letters requesting comments. The comments are summarized in E/CN.4/1996/23 & Add. 1 & Add. 2.

<sup>14</sup> Commission Res. 1996/13.

<sup>15</sup> E/CN.4/1996/17.

<sup>16</sup> E/CN.4/1997/18.

session, the Commission adopted a Decision (1997/102) on human rights and the environment, by which it deferred action on the issue until its fifty-fifth session and invited the Secretary General to bring the Commission's consideration of human rights and the environment to the attention of the General Assembly at its special session on Agenda 21, the Commission on Sustainable Development, the United Nations Environment Programme and other relevant bodies and organizations. The Commission further requested that the Secretary General prepare a report on the General Assembly special session and the listed international bodies and organizations.

The Commission also received the toxics rapporteur's progress report, in which she reported on various situations involving the human rights effects of toxics.<sup>17</sup> In light of its 1997 Decision to defer consideration, the Commission did not address the question of human rights and the environment as such at its 1998 session. The Commission did, however, receive written statements and hear oral interventions from governments, international organizations and nongovernmental organizations that evidenced the recurring overlap between human rights and the environment. The Commission also received a 1998 progress report from the Special Rapporteur on toxics and human rights, in which she addressed a range of cases and incidents involving the human rights impact of toxics.<sup>18</sup> The Commission adopted Resolution 1998/12, in which it renewed the mandate of the special rapporteur on human rights and toxics for a period of three years,

in order that she may continue to undertake, in consultation with the relevant United Nations bodies and organizations and the secretariats of relevant international conventions, a global, multidisciplinary and comprehensive study of existing problems of and solutions to illicit traffic in and dumping of toxic and dangerous products and wastes, in particular in developing countries . . . .

In advance of its fifty-fifth session, the Commission received a report on human rights and the environment from the Secretary-General, as the Commission had requested in 1997. The report includes a review of the General Assembly special session on Agenda 21 and it reports on comments received by the Secretary-General from the Food and Agriculture Organization.<sup>19</sup> The Secretary-General report did not make any recommendations regarding the Commission's continuing consideration of human rights and the environment. In another pre-session document, however, the Bureau of the Commission recommended that the mandate of the special rapporteur on toxics and human rights be converted to a mandate on human rights and the environment.<sup>20</sup>

A similar recommendation came in February 2000, from the Commission's inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, which recommended the conversion of the mandate of the

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<sup>17</sup> E/CN.4/1997.19.

<sup>18</sup> E/CN.4/1998/10.

<sup>19</sup> E/CN.4/1999/89.

<sup>20</sup> E/CN.4/1999/104, ¶ 20(b).

Special Rapporteur on the adverse effects of the illicit movement of toxic waste to that of human rights and the environment. The Working Group recommended further that “the Commission be prepared to consider a broadening of the mandate” in 2001, noting that “the subject matter of an extended mandate would, however, need to be more precisely defined than ‘human rights and the environment.’”<sup>21</sup>

The question of converting the Special Rapporteur’s mandate reflects the growing understanding that the full enjoyment of human rights requires addressing a broad range of environmental problems – including but not limited to problems related to toxic wastes – because such problems violate a host of fundamental human rights. This report presents a sampling – but only a sampling – of situations occurring in recent years that demonstrate the interdependence of human rights and the environment, as well as the urgency of establishing international mechanisms for preventing human rights violations arising out of environmental problems.

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<sup>21</sup> Report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, U.N. Comm’n on Hum. Rts., 56<sup>th</sup> Sess., U.N. Doc. E/CN.4/2000/112 (2000).

## DEVELOPMENTS

### I. INTERNATIONAL

The actions and statements from international bodies have helped shape a customary international legal right to a clean and healthy environment. Evidence of such actions and statements are found in international court decisions, new treaties and protocols, and resolutions and reports from commissions, committees, secretariats, specialized agencies and similar entities. A review of these materials over the past few years reveals that environmental harms adversely affect various individual and community rights such as the rights to life, health, sustenance and culture and that a rights-based approach to environmental protection (e.g. right to a clean and healthy environment, right to water, right to nature protection) provides an effective remedy.

#### A. International Court of Justice (ICJ)

##### ***Case Concerning the Gabčíkovo-Nagymaros Project (Hungary and Slovakia), No. 92, 25 September 1997***

This 1997 decision directed Hungary and Slovakia to negotiate in good faith an implementation plan for a 1977 treaty between Hungary and Czechoslovakia to construct and operate the Gabčíkovo-Nagymaros System of Locks with attention to energy production, flood protection, and environmental protection.<sup>22</sup> The Court acknowledged in its decision that protection of the environment is an essential interest of all states. In a separate opinion, Judge Weeramantry stated: “The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.”<sup>23</sup>

In December 1999, Hungary proposed a resolution in which it would renounce any right to the electric power produced at the Gabčíkovo dam on the Danube River in exchange for Slovakia’s agreement to allow Hungary’s water, currently used to generate electricity, to once again flow into northwestern Hungary. To date, no final agreement has been announced.<sup>24</sup>

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<sup>22</sup> *Summary of the Judgment of 25 September 1997* (visited October 2000) <<http://www.icj-cij.org/icjwww/idecisions/isummaries/ihssummary19970925.html>>.

<sup>23</sup> Gabčíkovo-Nagymaros Case (Hung. v. Slov.), 1997 I.C.J. 4 (Sept. 25) (separate opinion of Judge Weeramantry).

<sup>24</sup> *See Hungarian Danube Dam Proposal Arrives in Slovakia*, BBC Summary of World Broadcasts, Dec. 11, 1999.

## B. Treaties and Treaty Bodies

### 1. UN Framework Convention on Climate Change Sixth Conference of the Parties: Kyoto Protocol negotiations

From November 13-24, 2000, in the Hague, the Sixth Conference of the Parties (COP-6) of the UN Framework Convention on Climate Change (UNFCCC) met to negotiate several important, but controversial, parts of the Kyoto Protocol, (the Protocol),<sup>25</sup> designed to implement the UNFCCC.<sup>26</sup> Launched in December 1990 by UN General Assembly Resolution 45/212 and entered into force on March 21, 1994, the UNFCCC recognizes that the climate system should be protected “for the benefit of present and future generations of humankind” and that the industrialized countries “should take the lead in combating climate change and the adverse effects thereof.”<sup>27</sup> The Protocol implements this goal.

The Protocol addresses climate change by limiting greenhouse gas emissions from industrialized nations, setting varying emissions targets for individual countries. Averaged over the “commitment” period between 2008 and 2012, these targets will result in an aggregate 5% reduction of such emissions from 1990 levels for industrialized countries as a whole.<sup>28</sup> The issues debated at COP-6 included trading emissions, joint implementation, adaptation assistance to developing nations and the adoption of an effective compliance regime to ensure that signatories meet their obligations under the treaty. Each of the issues involves aspects of environmental human rights.

Climate change raises a number of human rights issues, particularly for people living in low-lying and small island countries that are especially vulnerable to rising sea levels, which could severely impact their rights to health, food and water. The text of the UNFCCC responds to those human rights issues by defining “adverse effects of climate change” to include not only effects on the physical environment but also effects “on the operation of socio-economic systems

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<sup>25</sup> Kyoto Protocol to the United Nations Framework on Climate Control, Mar. 16, 1998 – Mar. 15, 1999, 37 I.L.M. 22 (1998). *See also* (visited Feb. 14, 2001) <<http://www.unfccc.de/resource/docs/convkp/kpeng.html>>. No industrialized country has ratified the Protocol and most have increased rather than reduced their greenhouse gas emissions since signing. Andrew C. Revkin, *Treaty Talks Fail to Find Consensus in Global Warming*, N.Y. Times, Nov. 26, 2000, at 1 and 16; *Climate change talks suspended, negotiations to resume during 2001*, UN Press Release, Nov. 25, 2000, (visited Feb. 14, 2001) <<http://cop6.unfccc.int/pdf/pressreloutcome1.pdf>>.

The Protocol will enter into force when 55 nations have ratified it, provided that these ratifications include industrialized countries that account for at least 55% of total 1990 carbon dioxide emissions. As of November 28, 2000, 84 countries had signed the treaty, but only 30 had ratified it. *See* (visited Feb. 14, 2001) <<http://www.unfccc.de/resource/kpstats.pdf>>.

<sup>26</sup> United Nations Framework Convention on Climate Change, June 4, 1992, 31 I.L.M. 849 (1992). *See also* (visited Feb. 14, 2001) <<http://cop6.unfccc.int>>.

<sup>27</sup> *Id.* at art. 3(1).

<sup>28</sup> *Id.* at art. 2.

or on human health and welfare.”<sup>29</sup> As Robert Watson, Chair of the Intergovernmental Panel on Climate Change whose 1990 report inspired the UN General Assembly to launch the UNFCCC negotiations, noted at COP-6, the rise of global mean surface temperature at a rate higher than previously predicted has negative impacts on human health.

Dutch Environment Minister Jan Pronk, President of COP-6, opened the session by emphasizing that “[t]he effects of climate change are irreversible for ecosystems, agriculture, water supply and health.”<sup>30</sup> However, on November 25, the talks were suspended, primarily because the United States and the European Union failed to reach a compromise on a method for calculating credits toward emission targets for a reduction in greenhouse gases from carbon “sinks” such as forests. On December 18, the United States cancelled plans for a late December ministerial meeting in Oslo and does not expect further high-level negotiations in light of the change in administration. Nevertheless, Minister Pronk has proposed that COP-6 resume in May 2001.

*December 2001 Update: The Sixth Conference of the Parties resumed July 16-27, 2001, in Bonn, Germany with the United States in attendance.<sup>31</sup> The key decision at the second part of the COP-6 was the adoption of agreements forming the core elements of the Buenos Aires Plan of Action.<sup>32</sup> Among other things, these agreements include funding proposals and compliance proposals for the Kyoto Protocol and set forth a framework for implementation of and mechanisms for particular Kyoto Protocol provisions.<sup>33</sup>*

*The Seventh Conference of the Parties took place October 29-November 9, 2001 in Marrakech, Morocco.<sup>34</sup> The parties finalized the Kyoto Protocol, opening the way for widespread ratification.<sup>35</sup> However, the parties postponed enforcement discussions.*

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<sup>29</sup> *Id.* at art. 1(1).

<sup>30</sup> *Statement of Jan Pronk*, UN Press Release, Nov. 13, 2000, UNFCCC/COP6/2.

<sup>31</sup> *See Report of the Conference of the Parties on the Second Part of Its Sixth Session*, UN Doc. FCCC/CP/2001/5, September 25, 2001 at 12, *available at* <http://www.unfccc.int/resource/docs/cop6secpart/05.pdf>.

<sup>32</sup> *Id.* at 36.

<sup>33</sup> *Id.* at 37-49.

<sup>34</sup> *See* <http://www.unfccc.de/cop7/index.html>.

<sup>35</sup> *See Press Release*, Secretariat to the UN Framework Convention on Climate Change, Governments Ready to Ratify Kyoto Protocol (Nov. 10, 2001), <http://unfccc.int/press/prel2001/pressrel101101.pdf>. To date, 40 nations of the 55 needed for entry into force have ratified.

*In addition, the COP-7 drafted the Marrakech Ministerial Declaration for submission to the World Conference on Sustainable Development. The declaration emphasizes the socio-economic effects on humans of climate change and other environmental degradation.*<sup>36</sup>

## **2. Convention on Biological Diversity**

### **a. Cartagena Protocol on Biosafety to the Convention on Biological Diversity**

The Cartagena Protocol on Biosafety (the Protocol), signed in Montreal on January 30, 2000,<sup>37</sup> addresses risks that biotechnology poses to the environment and human health and is a strong expression of the international community's recognition of the connection between human rights and the environment. The Protocol applies to the "transboundary movement, transit, handling and use of all living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health."<sup>38</sup> The Protocol refers to the precautionary principle several times, including in relation to risk assessment.<sup>39</sup>

The preamble to the Convention on Biological Diversity expresses a strong connection between the environment and human rights by recognizing that biodiversity is a "common concern of humankind"; that many indigenous and local communities depend on biological resources; and that "conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population." The Protocol furthers this link by acknowledging that "modern biotechnology has great potential for human well-being if developed and used with adequate safety measures for the environment and human health."<sup>40</sup>

As of November 23, 2000, 23 countries had signed the Protocol, but only Bulgaria and Trinidad and Tobago had ratified it.<sup>41</sup>

*December 2001 Update: As of December 6, 2001, 107 countries have signed and 8 countries have ratified or acceded.*<sup>42</sup>

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<sup>36</sup> See Decision CP.7, UNFCCC Seventh Conference of the Parties *in* Marrakech Accords & Marrakech Ministerial Declaration (advanced unedited version) at 204-206, [http://www.unfccc.de/cop7/documents/accords\\_draft.pdf](http://www.unfccc.de/cop7/documents/accords_draft.pdf).

<sup>37</sup> Cartagena Protocol on Biosafety, Jan. 30, 2000, 39 I.L.M. 1027 (2000). See also (visited Feb. 12, 2001) <<http://www.biodiv.org/biosafe/protocol/Protocol.html>>.

<sup>38</sup> *Id.* at art. 4.

<sup>39</sup> See e.g., *id.* at pmb., para. 4, at arts. 1, 10(6) and 11 (8) and at Annex III.

<sup>40</sup> Protocol, at pmb., para. 6.

<sup>41</sup> See (visited Feb. 12, 2001) <<http://www.biodiv.org/biosafe/Protocol/signinglist.asp>>.

**b. Report of the Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity: Implementation of Article 8(j) on Indigenous Communities<sup>43</sup>**

Article 8(j) of the Convention on Biological Diversity (CBD) recognizes an implicit link between the cultural rights of indigenous peoples and the environment. The article requires contracting parties, as far as possible, to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices, and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”<sup>44</sup>

At the Fifth Meeting of the Conference of the Parties (COP-5), held in Nairobi in May 2000, state parties agreed on a work program to implement Article 8(j). Among other things, the work program calls upon parties to the Convention on Biological Diversity (CBD) to enhance and strengthen the capacity of and to develop effective mechanisms for participation by indigenous peoples and local communities in government decision-making relevant to the conservation and sustainable use of biological diversity. In particular, this part of the program emphasizes extending such participation to women. Given that conservation and sustainable use of biological diversity is an integral part of the environment and given that the participation of indigenous peoples ensures greater protection of their cultural rights as well as the rights of indigenous women, this portion of the COP-5’s work program demonstrates an additional link between the environment and human rights.

**3. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal Fifth Conference of the Parties: Protocol on Liability and Compensation for Damage Resulting from the Transboundary Movement of Hazardous Wastes and their Disposal**

In December 1999, the COP-5 adopted the Protocol on Liability and Compensation for Damage Resulting from the Transboundary Movement of Hazardous Wastes and their Disposal.<sup>45</sup> The Protocol makes the shipper of certain hazardous wastes strictly liable for accidents involving those hazardous wastes while in transit and requires prompt and adequate

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<sup>42</sup> See <http://www.biodiv.org/biosafety/signinglist.asp#nr>

<sup>43</sup> Annex to Decision V/16, UNEP/CBD/COP/5/23, June 22, 2000 at 143-46.

<sup>44</sup> Convention on Biological Diversity, June 4, 1992, (visited Mar. 28, 2001) <<http://www.biodiv.org/convention/articles.asp>>, art. 8(j).

<sup>45</sup> Protocol on Liability and Compensation for Damage Resulting from the Transboundary Movement of Hazardous Waste and their Disposal, Dec. 1999, 28 I.L.M. 657 (1989).

compensation to the harmed party for damage resulting from the transboundary movement of such hazardous wastes, including damage caused by illegal traffic in such materials.<sup>46</sup>

The Protocol recognizes a link between human rights and the environment because its imposition of a heightened level of liability and obligation to pay damages demonstrates recognition by nations that these environmentally harmful wastes present a serious threat to human life and health. In her 2000 report to the UN Commission on Human Rights, the Special Rapporteur on Toxic Waste welcomed the adoption of the Protocol and expressed hope “that the Special Fund set up under the aegis of the Basel Convention to settle damage covered by the Protocol will help resolve outstanding cases and others which may arise in the future.”<sup>47</sup>

#### **4. UN Preparatory Commission for the International Criminal Court: Rome Statute of the International Criminal Court**

The Rome Statute of the International Criminal Court (the Rome Statute)<sup>48</sup> was adopted in July 1998 to establish a permanent international criminal court (ICC) to deal with the most “serious crimes of concern to the international community.”<sup>49</sup> The Rome Statute’s preamble reaffirms the purposes and principles of the UN Charter, including the promotion of respect for human rights. The ICC will have jurisdiction over, *inter alia*, war crimes, which includes “intentionally launching an attack in the knowledge that such attack will cause . . . widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”<sup>50</sup>

As of December 31, 2000, 139 countries had signed and 27 had ratified the treaty, including, most recently, Belize, Canada, France, Italy, Sierra Leone, Spain and the United States. The Rome Statute will enter into force when 60 states have ratified it.<sup>51</sup>

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<sup>46</sup> *Id.* at art. 4.

<sup>47</sup> *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, Report by the Special Rapporteur on Toxic Waste, U.N. Hum. Rts. Comm., at 29, U.N. Doc. E/CN.4/2000/50 (2000).

<sup>48</sup> The Rome Statute of the International Criminal Court, July 17, 1998, 37 I.L.M. 999 (1998), U.N. Doc. A/CONF.183/9. *See also* (visited Mar. 28, 2001) <<http://www.un.org/law/icc>>.

<sup>49</sup> *Id.* pmb., para. 4.

<sup>50</sup> *Id.* at arts. 5, 8(2)(b)(iv).

<sup>51</sup> *Id.* at art. 126.

## C. UN General Assembly

### 1. 23<sup>rd</sup> Special Session: Beijing + 5

In June 2000, the UN General Assembly and the UN Secretariat's Division for the Advancement of Women convened a special session of the General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the Twenty-First Century" and known as "Beijing +5." Coordinated by an Ad Hoc Committee, the session reviewed the historic 1995 Beijing Declaration and Platform for Action, which recognized that continued environmental degradation, while affecting all human lives, often has a more direct impact on women, thus affecting their right to equal enjoyment of the range of human rights.<sup>52</sup>

At the session, the Ad Hoc Committee proposed to the General Assembly a resolution that confirmed the impact of environmental problems and solutions on women's rights. The opening section of the draft resolution included Women and the Environment as one of the 12 critical areas of concern from the Beijing Platform for Action. That area of concern, according to the draft resolution, acknowledges "the link between gender equality, poverty eradication, sustainable development and environmental protection" that some unspecified governments recognize.<sup>53</sup> However, "[t]here is still lack of public awareness about environmental risks faced by women and the benefits of gender equality for promoting environmental protection" and "[e]nvironmental policies and programmes lack a gender perspective and fail to take into account women's roles and contributions to environmental sustainability."<sup>54</sup> After identifying the above achievements and obstacles, the draft resolution then encouraged governments to "[c]onsider adopting national legislation, where appropriate, consistent with the Convention on Biological Diversity, to protect the knowledge, innovations and practices of women in indigenous and local communities" and also encouraged governments to "adapt environmental . . . policies and mechanisms, when necessary, to incorporate a gender perspective . . ."<sup>55</sup> On November 16, 2000, the General Assembly adopted these portions of the draft resolutions in their entirety.<sup>56</sup>

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<sup>52</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, A/CONF.177/20(1995) and A/CONF.177/20/Add.1 (1995).

<sup>53</sup> Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly, U.N. GAOR, Supp. No. 3 (A/S-23/10/Rev.1 at para. 30) (visited Feb. 15, 2001) <<http://www.un.org/womenwatch/daw/followup>>.

<sup>54</sup> *Id.* at para. 31.

<sup>55</sup> *Id.* at para. 71.

<sup>56</sup> See G.A. Res. A/Res/S-23/2 (visited Feb. 16, 2001) <<http://www.un.org/womenwatch/daw/followup/ress232e.pdf>>; G.A. Res. A/Res/S-23/3 (visited Feb. 16, 2001) <<http://www.un.org/womenwatch/daw/followup/ress233e.pdf>>.

## 2. Millennium Declaration

The General Assembly adopted the Millennium Declaration at the September 2000 Millennium Summit after reviewing the UN Secretary-General's Millennium Summit Report.<sup>57</sup> The Millennium Declaration considered respect for "all living species and natural resources" a "fundamental value" of the twenty-first century, referred to environmental protection as one of its key objectives for the twenty-first century and resolved, among other things, "to stop the unsustainable exploitation of water resources by developing water management strategies at the regional, national and local levels, which promote both equitable access and adequate supplies."<sup>58</sup> The General Assembly's focus on water allocation links the environment to human needs and incorporates the principles of a human right to water. Moreover, fostering respect for nature as a fundamental value implies recognition of and the need for a right to a clean and healthy environment.

### 3. Resolution 55/107 (December 2001 Update)

*On December 4, 2000, the General Assembly noted the adoption by the UN Commission on Human Rights on April 26, 2000 of Resolution 2000/62. The Assembly "affirm[ed] that a democratic and equitable international order requires, inter alia, the realization of . . . the entitlement of every person and all peoples to a healthy environment."<sup>59</sup>*

## D. UN Economic and Social Council Bodies

### 1. UN Committee on Economic, Social and Cultural Rights (CESCR)

#### a. General Comment 14 on the Right to the Highest Attainable Standard of Health

On November 8, 2000, the CESCR issued General Comment 14, entitled "Substantive Issues Arising In The Implementation Of The International Covenant On Economic, Social and Cultural Rights (Art. 12 of Covenant)."<sup>60</sup> The Comment states explicitly that the right to health includes a healthy environment:

4 . . . the reference in article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote

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<sup>57</sup> See Millennium Summit Report, I.E.2. *infra*.

<sup>58</sup> UN Doc. A/RES/55/2(September 18, 2000) (visited Feb. 17, 2000) <<http://www.un.org/documents/ga/res/55/a55r002.pdf>>.

<sup>59</sup> G.A. Res. 55/107, U.N. GAOR, 55<sup>th</sup> Sess., Supp. No. \_\_ at \_\_, U.N. Doc. A/Res/55/107, (2000) at ¶ 3(k), available at <http://www.un.org/documents/ga/res/55/a55r107.pdf>.

<sup>60</sup> U.N. CESCR, General Comment 14, U.N. Doc. E/C.12/2000/4 (2000).

conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

The Comment also discusses the remedies available for violations of the right to health, including violations of the environment aspect mentioned above:

59. Any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, consumer forums, patients' rights associations or similar institutions should address violations of the right to health.

### **b. General Comment 12 on the Right to Adequate Food**

On May 12, 1999, the CESCR issued General Comment 12.<sup>61</sup> Acknowledging first that “[t]he human right to adequate food is recognized in several instruments under international law,”<sup>62</sup> the CESCR noted that this right is “inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of human rights for all.”<sup>63</sup> The right to food also encompasses food free from adverse substances and contamination “through . . . bad environmental hygiene.”<sup>64</sup>

## **2. UN Committee on the Rights of the Child (CRC): Summaries of Concluding Observations**

Article 24 of the Convention on the Rights of the Child, which recognizes the “right of the child to the enjoyment of the highest attainable standard of health,” mandates that States Parties consider the “dangers and risks of environmental pollution” in implementing this right.<sup>65</sup> In its concluding observations on the reports of states parties, submitted pursuant to Article 44 of the Convention, the CRC has called for better compliance with Article 24(2)(c), which requires, requiring, in pertinent part, that state parties “shall take appropriate measures . . . to combat

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<sup>61</sup> U.N. CESCR, General Comment 12, U.N. Doc. E/C.12/1999/5, (1999). *See also* (visited Feb. 14, 2001) <<http://www.unhchr.ch/tbs/doc.nsf>>.

<sup>62</sup> *Id.* at para. 1.

<sup>63</sup> *Id.* at para. 5.

<sup>64</sup> *Id.* at para.10.

<sup>65</sup> G.A. Res. 44/25, U.N. GAOR, 44<sup>th</sup> Sess. Supp. No. 49, annex at 167, U.N. Doc. A/44/49 (1989). *See also* (visited Mar. 28, 2001) <<http://www.un.org/documents/ga/res/44/a44r025.htm>>.

disease and malnutrition . . . through the provision of . . . adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.” For example, in its *Concluding Observations on Jordan*, the CRC recommended that Jordan “take all appropriate measures, including through international cooperation, to prevent and combat the damaging effects of environmental pollution and contamination of water supplies on children and to strengthen procedures for inspection.”<sup>66</sup> Similarly, in its *Concluding Observations on South Africa*, the CRC expressed “concern . . . at the increase in environmental degradation, especially as regards air pollution” and “recommend[ed] that the State party increase its efforts to facilitate the implementation of sustainable development programmes to prevent environmental degradation, especially as regards air pollution.”<sup>67</sup>

### **3. UN Committee on the Elimination of Discrimination Against Women (CEDAW): Summaries of Concluding Observations**

In its concluding observations on the reports of State Parties submitted pursuant to Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women,<sup>68</sup> the CEDAW has noted the impact of the environment on women’s health. For example, in its *Concluding Observations on Romania*, CEDAW “express[ed] its concern about the situation of the environment, including industrial accidents, and their impact on women’s health.”<sup>69</sup>

### **4. UN Commission on Human Rights**

#### **a. 56<sup>th</sup> Session and 55<sup>th</sup> Session Resolutions**

During its 56<sup>th</sup> Session, from March 20 to April 28, 2000, and its 55<sup>th</sup> Session, from March 22 to April 30, 1999, the Commission passed several resolutions that acknowledged the human right to a clean and healthy environment. In Resolution 2000/62 entitled “Promotion of the Right to a Democratic and Equitable International Order,” the Commission expanded upon Resolution 1999/57 (Promotion of the Right to Democracy) by affirming that “a democratic and equitable international order requires, *inter alia*, the realization of . . . [t]he right to a healthy environment for everyone.”<sup>70</sup> In Resolutions 2000/72 and 1999/23, both entitled “Adverse

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<sup>66</sup> *Concluding Observations on Jordan*, U.N. CRC, U.N. Doc. CRC/C/15/Add.125 at para. 50 (2000).

<sup>67</sup> *Concluding Observations on South Africa*, U.N. CRC, U.N. Doc. CRC/C/15/Add.122 (2000) at para. 30. See also *Concluding Observations on Kyrgyzstan*, U.N. CRC, U.N. Doc. CRC/C/15/Add.127 (2000); *Concluding Observations on Armenia*, U.N. CRC, U.N. Doc. CRC/C/15/Add.119 (2000); *Concluding Observations on Grenada*, U.N. CRC, U.N. Doc. CRC/C/15/Add.121 (2000), (visited Feb. 13, 2001) <<http://www.unhcr.ch/html/menu2/6/crc.htm>>.

<sup>68</sup> GA Res. 34/180, UN GAOR, Supp. No. 46, at 193, U.N. Doc. A/34/180 (1981). See also (visited Mar. 28, 2001) <<http://www.un.org/documents/ga/res/34/a34res180.pdf>>.

<sup>69</sup> *Concluding Observations on Romania*, U.N. CEDAW, U.N. Doc. CEDAW/C/2000/II/Add.7 at para. 38 (2000), (visited Feb. 13, 2001) <<http://www.un.org/womenwatch/daw/cedaw/committee.htm>>.

<sup>70</sup> Res. 2000/62, U.N. Comm’n on Hum. Rts., 56<sup>th</sup> Sess., at para. 3(k).

Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights,” the Commission indicated its awareness “of the increasing rate of illicit movement and dumping by transnational corporations and other enterprises from industrialized countries of hazardous and other wastes in developing countries that do not have the national capacity to deal with them in an environmentally sound manner, which constitutes a serious threat to the human rights to life, good health and a sound environment for everyone,”<sup>71</sup> and reaffirmed “that illicit traffic and dumping of toxic and dangerous products and wastes constitute a serious threat to the human rights to life, health and a sound environment for every individual.”<sup>72</sup> It furthermore “categorically condemn[ed] the dumping of toxic and dangerous products and wastes in developing countries, which adversely affects the rights to life and health of individuals in those countries.”<sup>73</sup>

*December 2001 Update: The General Assembly noted and approved Resolution 2000/62 in General Assembly Resolution 55/107.*<sup>74</sup>

**b. 56th Session Report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights**

In its February 2000 report, the Working Group recommended the conversion of the mandate of the Special Rapporteur on the adverse effects of the illicit movement of toxic waste to that of human rights and the environment. The Working Group recommended further that “the Commission be prepared to consider a broadening of the mandate” in 2001, noting that “the subject matter of an extended mandate would, however, need to be more precisely defined than ‘human rights and the environment.’”<sup>75</sup>

**5. UN Sub-Commission on the Promotion and Protection of Human Rights**

**a. Sessional Working Group on the Working Methods and Activities of Transnational Corporations**

Established pursuant to Sub-Commission Resolution 1998/8<sup>76</sup> and Sub-Commission Decision 2000/101,<sup>77</sup> the Sessional Working Group on the Working Methods and Activities of

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<sup>71</sup> Res. 2000/72, U.N. Comm’n on Hum. Rts., 56<sup>th</sup> Sess., at pmb., para. 8; Res. 1999/23, U.N. Comm’n on Hum. Rts., 55<sup>th</sup> Sess., at pmb., para. 5.

<sup>72</sup> Res. 2000/72, *supra* note 46 at para. 4; Res. 1999/23, *supra* note 46 at para. 4.

<sup>73</sup> Res. 2000/72, *supra* note 46 at para. 3; Res. 1999/23, *supra* note 46 at para. 3.

<sup>74</sup> G.A. Res. 55/107, U.N. GAOR, 55<sup>th</sup> Sess., Supp. No. \_\_ at \_\_, U.N. Doc. A/Res/55/107, (2000) at ¶ 3(k), available at <http://www.un.org/documents/ga/res/55/a55r107.pdf>

<sup>75</sup> Report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, U.N. Comm’n on Hum. Rts., 56<sup>th</sup> Sess., U.N. Doc. E/CN.4/2000/112 (2000).

<sup>76</sup> U.N. Doc. E/CN.4/SUB.2/RES/1998/8 (1998).

Transnational Corporations has recognized the right to a clean and healthy environment and the need to safeguard it. The working group has decided to focus part of its 1999-2002 mandate on the “[i]dentification and examination of the effects of the activities of transnational corporations on the enjoyment of . . . the right to a healthy environment.”<sup>78</sup>

At its first session, the working group concluded that it should define the role of the United Nations in helping to make the activities of transnational corporations compatible with the right to a clean and healthy environment.<sup>79</sup> Such defining has not yet occurred.

At its second session, the working group recognized the right to a clean and healthy environment in two additional ways. First, the Chairman-Rapporteur commented that the “[t]he modalities and working methods of [transnational corporations . . . (TNCs)] ha[ve] a profound impact on the right to a healthy environment. The problems of pollution of the seas, depletion of the ozone layer, global warming and a rise in sea level were clear indication of various human rights violations particularly resulting from toxic wastes. TNCs were the major source of those toxic wastes. Further, TNCs were transferring those toxic wastes to regions such as Latin America and Africa where the environmental regulations were less stringent.”<sup>80</sup> Second, the working group considered a set of draft principles relating to human rights and the conduct of companies that included the following provisions:

#### L. Environmental protection and human rights

33. In decision-making processes, companies shall assess the impact of their activities on the environment or human health, including impacts from siting decisions; natural resource extraction activities; the production and sale of products or services; and the generation, storage, transport and disposal of hazardous and toxic substances. In making siting decisions -particularly concerning larger tracts of land - and decisions to depart from a community, companies shall similarly assess the foreseeable consequences of their activities with respect to displacing people from their habitats and shelter, upsetting food security, diminishing health care,

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<sup>77</sup> U.N. Doc. E/CN.4/SUB.2/DEC/2000/101 (2000).

<sup>78</sup> See *The Realization of Economic, Social and Cultural Rights: The Question of Transnational Corporations*, Report of the sessional working group on the working methods and activities of transnational corporations on its second session. U.N. Doc. E/CN.4/Sub.2/2000/12 (2000) at para 9 (Sub-Commission TNC Working Group Second Report); *The Realization of Economic, Social and Cultural Rights: The Question of Transnational Corporations*, Report of the sessional working group on the working methods and activities of transnational corporations on its first session. U.N. Doc. E/CN.4/Sub.2/1999/9 (1999) (Sub-Commission TNC Working Group First Report) at para. 9. The working group has interpreted the Sub-Commission’s request in its resolution, *supra* notes 50-51, to “identify and examine the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights” as including the right to a healthy environment.

<sup>79</sup> Sub-Commission TNC Working Group First Report at para. 9(5).

<sup>80</sup> Sub-Commission TNC Working Group Second Report at para. 14.

decreasing the availability of primary education, etc. Where possible, companies should generally communicate the results of such assessments to stakeholders, should develop and implement measures to prevent and/or mitigate impacts identified in any assessment, and should consider any reactions from stakeholders in endeavouring to prevent environmental and human rights consequences. Companies shall provide adequate reparation to those persons who have been adversely affected by restoring, replacing, or otherwise compensating for any damage done or property taken.

34. Companies shall be responsible for the environmental and human health impacts of all of their activities, including any products or service they introduce into commerce, including the packaging and transportation as well as the by-products of the manufacturing process. Upon the expiration of the useful life of their products or services, companies shall be responsible for collecting or arranging for the collection of the remains of the product or services for recycling, re-use and/or environmentally acceptable disposal.

35. Companies shall take appropriate measures in their operations to minimize the risks of accidents and damage to the environment by adopting best management practices and technologies. In particular, companies shall use best management practices and appropriate technologies to meet this objective and enable their component entities to be equipped to meet this objective through the sharing of technology, knowledge and assistance. In addition, they shall educate and train employees to ensure their compliance with this objective. Further, companies shall not relocate their operations from one country/location to another in order to evade more rigorous environmental standards at an existing place of business.<sup>81</sup>

Although the entire draft code does not state how it would be implemented and enforced or whether it should be voluntary or legally binding,<sup>82</sup> the working group has called for “more time [to] be allotted for the meetings of the working group to permit an in-depth debate on the issues.”<sup>83</sup>

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<sup>81</sup> *Principles Related to the Human Rights Conduct of Companies*, U.N. Doc. E/CN.4/Sub.2/2000/WG.2/WP.1 (2000) (Principles) at Annex 1.

<sup>82</sup> See Principles at paras. 22-25.

<sup>83</sup> See Sub-Commission TNC Working Group Second Report at para. 60.

## **b. Resolution on the Right to Drinking Water and Sanitation**

The UN Sub-Commission on the Promotion and Protection of Human Rights has itself recognized the fundamental connection between established economic and social rights and the right to a clean and healthy environment. In its August 2000 resolution on the Promotion of the Realization of the Right to Drinking Water and Sanitation, the Sub-Commission stated “that various obstacles linked to the realization of the right of everyone to drinking water supply and sanitation seriously impede the realization of economic, social and cultural rights, and that equality is an essential element for effective participation in the realization of the right to development and the right to a healthy environment.”<sup>84</sup>

## **6. UN Environmental Program (UNEP): Malmo Ministerial Declaration**

On May 31, 2000, environment ministers and delegation heads convened in Malmo, Sweden for the First Global Ministerial Environment Forum, as part of the Sixth Special Session of the Governing Council of UNEP. They met “to review important and emerging environmental issues and to chart the course for the future.”<sup>85</sup> Their Declaration emphasized the connection between environmental issues and poverty: “The root causes of global environmental degradation are embedded in social and economic problems such as pervasive poverty, unsustainable production and consumption patterns, inequity in distribution of wealth, and the debt burden.”<sup>86</sup> The Declaration calls for, among other things, special attention to “threats to cultural diversity and traditional knowledge, in particular of indigenous and local communities, which may be posed by globalization,”<sup>87</sup> as well as greater emphasis on the gender perspective in managing the environment and natural resources.<sup>88</sup>

## **7. UN High Commissioner for Refugees (UNHCR): Environmental Guidelines**

The UNHCR has acknowledged that “[w]hat is bad for the environment is ultimately bad for human welfare.”<sup>89</sup> In its April 2000 Environmental Newsletter, the UNHCR highlighted the implementation of its environmental guidelines, which were issued in June 1996 to identify and address the significant environmental impacts connected with many refugee situations. These impacts include deforestation, soil erosion, and depletion and pollution of water resources. Since 1996, UNHCR’s Engineering and Environmental Service Section has been involved in a variety of activities around the world. For example, UNHCR has encouraged refugees returning to

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<sup>84</sup> U.N. Doc. E/CN.4/SUB.2/RES/2000/8 (2000).

<sup>85</sup> See (visited March 28, 2001) <[http://www.unep.org/malmo/malmo\\_ministerial.htm](http://www.unep.org/malmo/malmo_ministerial.htm)>, pmb., para. 1.

<sup>86</sup> *Id.*, pmb., para. 6.

<sup>87</sup> *Id.* at para. 18.

<sup>88</sup> *Id.* at para. 19.

<sup>89</sup> UNHCR, *Refugees and the Environment* (visited Feb. 14, 2001) <<http://www.unhcr.ch/environ/refande.htm>>.

Afghanistan to use concrete instead of wooden roofing beams to help preserve forests, and has taught Sierra Leonean refugees in Liberia how to practice sustainable agriculture, how to mitigate erosion and how to improve sanitation to decrease water pollution. As Kosovar refugees leave camps in Albania, efforts are focusing on environmentally sound camp closure and rehabilitation of areas impacted by large numbers of refugees.<sup>90</sup>

## **E. UN Secretary-General**

### **1. The Global Compact**

Initiated by UN Secretary-General Kofi Annan at the Davos World Economic Forum in January 1999, the Global Compact calls upon the business community worldwide to work with the UN to implement universal values in the areas of human rights and environmental protection, among other things. The Compact sets forth nine principles derived from the Universal Declaration of Human Rights, the Rio Declaration of the 1992 UN Conference of Environment and Development, and the 1997 World Economic and Social Summit in Copenhagen. Introducing the initiative, the UN Secretary-General emphasized that he chose these nine areas because they represent core values and principles shared by people around the world.<sup>91</sup> His Global Compact asks world businesses to: “support and respect the protection of international human rights within their sphere of influence” (Principle 1), “make sure their own corporations are not complicit in human rights abuses” (Principle 2), “support a precautionary approach to environmental challenges” (Principle 7), “undertake initiatives to promote greater environmental responsibility” (Principle 8), and “encourage the development and diffusion of environmental friendly technologies” (Principle 9).

### **2. Millennium Summit Report**

At the UN Millennium Summit in September 2000, the Secretary-General asked the Summit to endorse the targets on water and sanitation set by the World Water Forum’s March 2000 Ministerial Conference,<sup>92</sup> implying a recognition of the human right to water. The Secretary General noted with dismay that “environmental issues were never seriously considered in the nearly 18 months during which the General Assembly debated which subjects to include in the Summit’s agenda,” demonstrating “how little priority is accorded to these extraordinarily serious challenges for all humankind.”<sup>93</sup> He later urged that “environmental issues . . . be

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<sup>90</sup> EESS Environmental Newsletter (UNHCR, Geneva, Switzerland), Vol. 5, Issue 1 - April 2000. *See also* (visited Feb. 14, 2001) <<http://www.unhcr.ch/environ/enviro.htm>>.

<sup>91</sup> *See generally* <<http://www.unglobalcompact.org/gc/unweb.nsf/content/thenine.htm>> (visited Feb. 17, 2001).

<sup>92</sup> *See We the Peoples: The Role of the United Nations in the 21<sup>st</sup> Century*, Report of the Secretary-General, U.N. Doc. A/54/2000 at paras. 274 – 282 (visited Feb. 17, 2001) <<http://www.un.org/millennium/sg/report/full.htm>>.

<sup>93</sup> *Id.* at para. 263.

fundamentally repositioned in the policy-making process” and that they “become better integrated into mainstream economic policy.”<sup>94</sup>

#### **F. UN Administrative Committee on Coordination: Sub-committee on Nutrition (ACC/SCN)**

In her address to the ACC/SCN’s Symposium on Substance and Politics of a Human Rights Approach to Food and Nutrition Program and Policies, the UN High Commissioner for Human Rights stated, “The realization of the right to adequate food is inseparable from social justice, requiring the adoption of appropriate economic, *environmental* and social policies, both at the national and international level, oriented towards the eradication of poverty and the satisfaction of basic needs.”<sup>95</sup>

#### **G. World Bank Inspection Panel**

The World Bank (Bank) created a three-member Inspection Panel (Panel) in 1993 to respond to private parties who believe a Bank-financed project could harm their interests. The Panel has reviewed several projects in the past two years that raise issues of human rights and the environment.<sup>96</sup>

##### **1. Review of the China Western Poverty Reduction Project (Tibet and Mongolia)**

On June 18, 1999, the International Campaign for Tibet, a US-based NGO, submitted a Request for Inspection to the Panel on the ground that the China Western Poverty Reduction Project’s failure to comply with Bank policies and procedures would cause potentially irreversible harm to the region’s Tibetan and Mongolian peoples. In 1997, China sought Bank funding for this project, which would have resettled 57,775 poor farmers who practice high-altitude rain-fed agriculture in eastern Qinghai province to a new irrigation project in the dryland area of the Haixi Tibetan and Mongolian Autonomous Prefecture in Dulan County. Critics feared that the project would have negative environmental and social impacts. Although the Bank’s Board of Executive Directors approved financing of the project on June 24, they agreed to withhold the funds (\$40 million) for the Qinghai portion until completion of the Panel’s report.

On April 28, 2000, the Panel issued a 214-page investigation report, which concluded that the assessments of the project’s social and environmental impacts violated the Bank’s operating directives for environmental impact assessments, indigenous peoples and involuntary resettlement, among other things. The violations included insufficient consultation with those to be resettled, inadequate consideration of alternatives for poverty reduction, regional impacts,

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<sup>94</sup> *Id.* at para. 303.

<sup>95</sup> UN Symposium, Substance and Politics of a Human Rights Approach to Food and Nutrition Policies and Programmes, ACC/SCN, Apr. 12, 1999 (emphasis added).

<sup>96</sup> Documents discussed in this section are available at <<http://wbln0018.worldbank.org/ipn/ipnweb.nsf>>.

alternatives to irrigated agriculture and relative costs, inadequate information on biodiversity and the conversion of critical natural habitats, and inadequate analysis of the impact on indigenous peoples. On July 7, 2000, China withdrew the project from consideration for funding by the Bank and decided to proceed with its own financing.

The Panel's report implies recognition of a right to a clean and healthy environment and indicates that human rights violations can result from environmental degradation occurs. The Panel found that the current assessment of the Qinghai Project failed to consider the impact of the project on the environment, indigenous peoples and the resettlement of human populations. The Panel then concluded that such failures amount to a violation of particular World Bank Operating Directives. The Panel's result recognizes that biodiversity, indigenous peoples and human populations being resettled each have a right to be protected. Thus, the Panel's decision safeguarded the right to a clean and healthy environment, the cultural, subsistence and land rights of indigenous peoples and the right of human populations to not be subject to involuntary resettlements. Moreover, Panel's determination of a need for more assessment of the project resulted from a concern that perhaps the project could cause environmental degradation. Again, the Panel understands that environmental degradation poses a serious threat not only to biodiversity but also, in this case, to certain cultural and subsistence rights of indigenous peoples and certain inhumane treatment of communities that results from involuntary resettlement.

## **2. Review of the Lake Victoria Environmental Management Project (Kenya)**

On April 10, 2000, the Bank's Board of Executive Directors approved a Panel Investigation of the water hyacinth management component of the Lake Victoria Environmental Management Project in Kenya. Several NGOs representing communities in the area submitted a Request for Inspection in which they claimed that "the proposed use of a mechanical method of shredding water hyacinth and letting it sink to the bottom of Lake Victoria will result in ecological decay and environmental degradation that, in turn, will adversely affect communities living on the shores at the Nyanza Gulf. These communities depend directly on the lake for their livelihoods, since the Nyanza Gulf is home to fresh water fish and the source of water for domestic use and these, and the ecosystem, will be endangered by the resulting pollution."<sup>97</sup> This claim is thus based on the fact that environmental degradation harms human rights to life, sustenance, and health and related rights and, moreover, implies an underlying right to a clean and healthy environment.

The claim further stated that the method was chosen in the absence of an environmental impact assessment or community consultation as required by the loan documents.<sup>98</sup>

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<sup>97</sup> *Kenya Lake Victoria Environmental Management Project: Inspection Panel Investigation to Begin*, World Bank Inspection Panel Press Release, May 8, 2000.

<sup>98</sup> *Id.*

*December 2001 Update: On December 28, 2000, the World Bank Inspection Panel (“Panel”) sent its investigation report to the World Bank Board of Executive Directors (“Board”).<sup>99</sup> In May 2001, the Board approved the recommendations made by World Bank Management (“Management”) in response to the findings made by the Panel in that investigation report.<sup>100</sup> The Panel had found that Management did not fully comply with the affected community consultation requirements and some of the supervision requirements but had complied with the environmental assessment, poverty alleviation, and economic evaluation requirements.<sup>101</sup> In response, “Bank Management accepted the Panel’s findings and recommended six actions: (i) continued monitoring; (ii) vigilant surveillance; (iii) heightened community participation; (iv) cross country participation in supervision missions; (v) renewed activity of the Panel of Scientists; and (vi) possible repeat of the pilot.”<sup>102</sup>*

### **3. Review of Mining Development and Environmental Control Technical Assistance Project (Ecuador)**

On May 15, 2000, the Bank’s Board of Executive Directors agreed to investigate the Mining Development and Environmental Control Technical Assistance Project in response to a request by Defense and Ecological Conservation of Intag, an Ecuadorian organization representing area residents, and the Association of the Coffee Growers of Rio Intag. The request was based on a concern that the “development of mining activities in the Intag area will prevent local communities from continuing their traditional agricultural and cattle breeding activities. They also claim that the project will have a destructive impact on critical natural habitats, threatening protected natural reserves and endangered species.”<sup>103</sup> The request demonstrates recognition of the impact of environmental harm from mining on the human rights to life, sustenance, health, culture and related rights.

*December 2001 Update: On April 28, 2000, the Panel sent its Report and Recommendations to the Board and a few weeks later the Board authorized the Panel to investigate whether Management was following Bank policies and procedures.<sup>104</sup> On February 23, 2001, the Panel*

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<sup>99</sup> See Panel Register, <http://wbln0018.worldbank.org/IPN/ipnweb.nsf/WRegister/1691D6EF9FA33EDB85256886007310F7>.

<sup>100</sup> See Press Release, World Bank Inspection Panel, Outcome of the Investigation into the Kenya Water Hyacinth Chopping Pilot of the Lake Victoria Environmental Management Project, <http://wbln0018.worldbank.org/IPN/ipnweb.nsf/WRelease/1024E977159B362E85256A4C0056DB4A>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Ecuador Investigation Authorized*, World Bank Inspection Panel Press Release, May 16, 2000.

submitted to the Board its finding that Management substantially complied with the environmental assessment but had violated the specific provisions concerning geographical scope, baseline data, and consultation during preparation; Management proposed specific actions to remedy this violation.<sup>105</sup> Moreover, the Panel found that Management had met most of the wildland and project supervision requirements.<sup>106</sup> Therefore, on May 7, 2001, the Board approved the response from Management that the Panel had summarized in its Inspection Report.<sup>107</sup>

#### 4. Review of the Yacyreta Hydroelectric Project (Paraguay)

In April 2000, the founders of Sobrevivencia, a Paraguayan NGO, received the internationally-recognized Goldman Environmental Prize for their work on behalf of the communities and ecosystems affected by the Yacyretá Hydroelectric Project. In October 1996, Sobrevivencia had filed a joint claim to the Inspection Panel and the Inter-American Development Bank's Investigation Mechanism. Filed on behalf of Sobrevivencia and anonymous affected fishers, artisans and brickmakers, the claim alleged various policy violations in the design and implementation of the Yacyretá Hydroelectric Project, which straddles the Rio Paraná between Argentina and Paraguay. The final reports issued in December 1996 demonstrated serious policy violations and recommended further implementation of the developed action plans. The Board has yet to take affirmative action on these recommendations.

A few months before the announcement of the Goldman Environmental Prize, the Bank released a report regarding the future development of the project, prepared by a panel of Bank-appointed experts. Although the report recommended raising the reservoir level behind the dam to its designed full supply, the Bank has publicly declared that it cannot support an increase without further studies of the social and environmental impacts and extensive consultation with the affected communities.<sup>108</sup> The Panel's demand for further study of the environmental impacts

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<sup>104</sup> See Panel Register, <http://wbln0018.worldbank.org/IPN/ipnweb.nsf/WRegister/53105233157CBDB58525688600721CD1>.

<sup>105</sup> Press Release, World Bank Inspection Panel, Outcome of the Inspection Panel's Investigation of the Ecuador Mining Development and Environmental Control Technical Assistance Project, <http://wbln0018.worldbank.org/ipn/ipnweb.nsf/WRelease/5019FCB4E0FCAE0385256A450054E433>.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> World Bank discusses report of Advisory Panel on Yacyreta Hydro-Electric, M2 Presswire, Jan. 17, 2000, available in LEXIS, NEWS database, CURNWS file; Goldman Environmental Prize, Oscar Rivas & Elias Diaz Peña, (visited March 29, 2001) <[www.goldmanprize.org/recipients/recipientProfile.cfm?recipientID=103](http://www.goldmanprize.org/recipients/recipientProfile.cfm?recipientID=103)>.

recognizes that such impact could harm the rights of communities and biodiversity. Such recognition once again confirms a link between human rights and the environment.

## H. Food and Agriculture Organization of the United Nations (FAO)

At its 30th Session, in November 1999, the FAO Conference approved the Strategic Framework for FAO 2000 - 2015.<sup>109</sup> The FAO Conference noted that the international summits of the past decade “drew attention . . . to the need for a concerted attack on poverty and environmental degradation,” but that a “clearer focus” was still needed on “the twin necessities of producing enough food for the people while protecting and sustaining the resources of the planet.”<sup>110</sup> In the Framework, the FAO commits itself to the following global goals:

- Access of all people at all times to sufficient nutritionally adequate and safe food, ensuring that the number of chronically undernourished people is reduced by half by no later than 2015.
- The continued contribution of sustainable agriculture and rural development, including fisheries and forestry, to economic and social progress and the well-being of all.
- The conservation, improvement and sustainable utilization of natural resources, including land, water, forest, fisheries and genetic resources for food and agriculture.<sup>111</sup>

These goals reflect an understanding of the link between the natural resources from the environment and the human rights to adequate and nutritious food, freedom from hunger, health, life, humane treatment and property.

*December 2001 Update: In preparation for the World Food Summit + 5 discussed during the 30<sup>th</sup> Session and rescheduled from November 2001 to June 2002, the FAO issued a press release on May 24, 2001 that refers to an academic paper submitted for the summit. Among other things, that paper recognizes that all humanity has a right to food in international human rights legislation.<sup>112</sup>*

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<sup>109</sup> FAO, *The Strategic Framework for FAO 2000-2015* (visited Feb. 14, 2001) <<http://www.fao.org/strategicframework>>.

<sup>110</sup> *Id.* at para.15.

<sup>111</sup> *Id.* at para. 20.

<sup>112</sup> See [http://www.fao.org/WAICENT/OIS/PRESS\\_NE/PRESSENG/2001/pren0134.htm](http://www.fao.org/WAICENT/OIS/PRESS_NE/PRESSENG/2001/pren0134.htm).

## **I. World Health Organization (WHO)**

### **1. Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes**

On June 17, 1999, health and environment ministers of European Member States of WHO adopted the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes at the Third Ministerial Conference on Environment and Health in London. Recognizing that “sustainable management of the hydrological cycle is essential for both meeting human needs and protecting the environment,” the Protocol aims “to promote at all appropriate levels, nationally as well as in transboundary and international contexts, the protection of human health and well-being, both individual and collective, within a framework of sustainable development, through improving water management, including the protection of water ecosystems, and through preventing, controlling and reducing water-related disease.”<sup>113</sup> The Protocol addresses adverse impacts to both human health and the environment and states that the precautionary principle, the polluter-pays principle and recognition of the needs of future generations shall guide implementation.<sup>114</sup> It also contains provisions for public participation and access to information as well as special consideration of people especially vulnerable to disease.

### **2. Department of Protection of the Human Environment**

Through its Department of Protection of the Human Environment, WHO assists “its Member States and their populations in achieving a sustainable basis for health for all by ensuring an environment that promotes health, and by making individuals and organizations aware of their responsibility for health and its environmental basis.”<sup>115</sup> The Department provides resources in some of the many areas in which health and environmental protection intersect, including air quality, chemical safety, climate, food safety, occupational health, radiation safety, water and sanitation, and children’s environmental health.

In July 1999, the Department established a Task Force on the Protection of Children’s Environmental Health, recognizing that “[t]he environment is . . . a key factor in determining the health of children: pollutants have an effect on their growth and development. Unsafe environments represent a very serious threat to the potential of developing countries. Healthy children are a key component of sustainable development and all efforts are necessary to create a safe environment for them.”<sup>116</sup>

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<sup>113</sup> MP.WAT/AC.1/1999/1, EHCO 02 02 05/8, (visited Feb. 14, 2001) <<http://www.who.dk/London99>>, art. 1.

<sup>114</sup> *Id.* at art. 5.

<sup>115</sup> *See* (visited March 28, 2001) <<http://who.int/peh>>.

<sup>116</sup> *See* (visited February 14, 2001) <<http://www.who.int/peh/child/index.html>>.

## **J. World Commission on Water for the 21st Century: Second World Water Forum and Ministerial Conference, The Hague, March 2000.**

Begun in 1998 to develop a vision for water management in the 21st century, the World Commission on Water is co-sponsored by several international organizations, including FAO, UNEP, UNDP, UNESCO, UNICEF, WHO, the World Bank and the OAS. The March 2000 Second World Water Forum and Ministerial Conference convened at the Hague repeatedly stressed that the right to water is a human right. The Forum's Thematic Session on Meeting Basic Needs concluded that "[c]lean and adequate water supplies should be considered fundamental to the successful exercise of human rights" while the Thematic Session on Valuing Water and the Regional Session on Africa both recognized clear and sufficient water as a basic human right.<sup>117</sup> Second, the Dossier on Water and International Law provided that the right of access to fresh water should be "part and parcel of the human rights system."<sup>118</sup> Third, the Dossier on the Global Water Contract focused on access to water as a fundamental human right: participants noted that "water management should take into consideration not only the satisfaction of human needs, but also, and this is most important, the maintenance and restoration of ecosystems which are intimately intermingled with the hydrological cycle. Ecosystems are the support systems of all forms of life including human life."<sup>119</sup> Finally, and perhaps most importantly, the conference participants emphasized the need for the involvement of international human rights bodies in protecting the right to water when they asked "why the UN Human Rights Commission was not present alongside so many UN agencies on the premise of this Second World Water Forum. Can we interpret that as a sign that this forum has a vested interest in not promoting the basic human right 'access to water'?"<sup>120</sup>

Separate from the Forum, the Ministerial Conference met simultaneously and declared on March 22, 2000 that "access to safe and sufficient water and sanitation are basic human needs."<sup>121</sup>

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<sup>117</sup> World Water Forum, *Ministerial Conference*, Part 2 at 50, 55 and 58 (visited Feb. 15, 2001) <[http://www.worldwaterforum.org/Report/final\\_report\\_part2.pdf](http://www.worldwaterforum.org/Report/final_report_part2.pdf)> (Final Report).

<sup>118</sup> World Water Forum, *Water and International Law* (visited Feb. 15, 2001) <[http://www.worldwaterforum.org/Dossiers/internationallaw\\_water.html](http://www.worldwaterforum.org/Dossiers/internationallaw_water.html)>.

<sup>119</sup> In addition, the Thematic Session on Protecting Ecosystems concluded that "water is not just a physical substance essential to human life, but is also the environment that supports all living creatures." See Final Report at 52; World Water Forum, *The Global Water Contract* (visited Feb. 15, 2001) <[http://www.worldwaterforum.org/Dossiers/water\\_global\\_contract.html](http://www.worldwaterforum.org/Dossiers/water_global_contract.html)>.

<sup>120</sup> *Id.*

<sup>121</sup> World Water Forum, *Ministerial Declaration of The Hague on Water Security in the 21<sup>st</sup> Century*, at 26 (visited Feb. 15, 2001) <<http://www.worldwaterforum.org/Ministerial/declaration.html>>.

## K. World Commission on Dams: Final Report

The World Commission on Dams (WCD) is an independent body sponsored by the World Bank to review the performance of large dams and make recommendations for future planning of water and energy projects. Composed of 12 commissioners, the WCD includes activists and industry representatives (usually CEOs).

On November 16, 2000, in London, the WCD released its final report entitled *Dams and Development: A New Framework for Decision-Making*.<sup>122</sup> The report begins by noting that large dams affect “the range of social, environmental and political choices on which the human aspiration to development and improved well-being depend.”<sup>123</sup> The WCD viewed “the controversy surrounding dams within a broader normative framework. This framework, within which the dams debate clearly resides, builds upon international recognition of human rights, the right to development and the right to a healthy environment.”<sup>124</sup>

Throughout the report, the WCD recognizes the strong connection between human rights and the environmental impact of dams. A first connection arises out of the impact of dams on sixty percent of the world’s rivers.<sup>125</sup> Because the river environment is the basis for river communities to meet certain needs, damage to and destruction of the river environment caused by dams violates rights to home, food, water, sustenance, life and health for the individuals living in these communities.<sup>126</sup> A second connection between human rights and the environmental impact of dams is found in the displacement of 40-80 million people because of dam construction.<sup>127</sup> A third connection is the serious environmental costs resulting from dams that poor people, indigenous communities and other vulnerable groups unequally shoulder.<sup>128</sup> Because of these impacts, the report recommends the development of alternatives to dams to meet water and electricity needs,<sup>129</sup> and that the people that bear the risks associated with dams be given a greater role in the decision-making process.<sup>130</sup>

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<sup>122</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making* (visited Feb. 15, 2001) <<http://www.damsreport.org/docs/report/wcdreport.pdf>>.

<sup>123</sup> *Id.* at xxvii.

<sup>124</sup> *Id.* at xxxiv.

<sup>125</sup> *Id.* at xxx.

<sup>126</sup> *See generally*, at 19, 20, 22, 24.

<sup>127</sup> *Id.* at xxx.

<sup>128</sup> *Id.* at xxxi, 200-202.

<sup>129</sup> *Id.* at xxxi-ii.

<sup>130</sup> *Id.* at xxx-xxxiii, 206-210.

Importantly, the WCD states that, in the future, not only dams but the entire development debate requires “a rights based approach where recognition of rights and assessment of risks provides the basis for negotiated decisions on dams and their alternatives.”<sup>131</sup> That rights-based approach, according to the WCD, should include a process to assess reparations and environmental restoration as well the development of plans for benefits sharing.<sup>132</sup>

#### **L. Organization of Economic Cooperation and Development (OECD): Guidelines for Multinational Enterprises**

The OECD Guidelines for Multinational Enterprises are non-binding recommendations on responsible business conduct.<sup>133</sup> First published in 1976, the Guidelines were most recently revised in June 2000. According to the preface to the Guidelines, the 33 governments that adhere to them seek “to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimize the difficulties to which their various operations may give rise.” To this end, the Guidelines advise enterprises to, among other things, “respect the human rights of those affected by their activities.”<sup>134</sup>

The June 2000 revision includes a separate section on the environment that encompasses human rights concerns by encouraging enterprises to inform and consult with communities affected by its environmental policies and to consider health and safety risks. The implementation of the Guidelines is dependent almost entirely on the will of the OECD member states. The UN High Commissioner for Human Rights has noted that “all sides, governments, business, trades unions and interested non-governmental organizations have stated that they will work to make the guidelines better known, to promote effective use of the guidelines and ensure their application in a consistent and fair manner. Again, the credibility of this exercise will turn on the way in which the institutional arrangements respond to the parties who bring situations before the various bodies.”<sup>135</sup>

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<sup>131</sup> *Id.* at 198.

<sup>132</sup> *Id.* at xxxiv-v.

<sup>133</sup> OECD, *Guidelines for Multinational Enterprises* (Guidelines) (visited Feb. 16, 2001) <<http://www.oecd.org/daf/investment/guidelines/mnetext.htm>>.

<sup>134</sup> *Guidelines*, Section II, General Policies.

<sup>135</sup> OHCHR, *Business and Human Rights: An Update*, (July 26, 2000) <<http://www.unhchr.ch/businesupdate.htm>>.

## II. REGIONAL

Like international bodies, developments from regional bodies during 1999 and 2000 have also helped shape a customary international legal right to a clean and healthy environment and, in the case of the Inter-American System, a treaty law right as well. These developments are found in places similar to those of international bodies.

### A. Inter-American System

#### 1. Inter-American Commission on Human Rights

##### a. Association of Lhaka Honhat Aboriginal Communities (Nuestra Tierra/Our Land) v. the State of Argentina, Precautionary Measures Request

The response from the Inter-American Commission for Human Rights (IACHR) to conduct a hearing to consider petitioner's request for precautionary measures in this matter may indicate an acknowledgement by the IACHR of the link between environmental harm and the violation of rights of indigenous peoples. Petitioner claimed that Argentina's plan to cut through the center of the protected land of the indigenous Wichi, Chorote, Chulupi, Toba, and Tapiete peoples to build a transnational road through Argentina linking Brazil to Chile would violate the right to life and the right to a clean and healthy environment.<sup>136</sup> On October 5, 2000, the IACHR met with the parties in response to petitioner's request for precautionary measures and encouraged the Argentine government to work with the indigenous peoples over the next 30 days to reach a friendly settlement before taking any further steps to build the road.<sup>137</sup> The friendly settlement stage of the case still continues.

##### b. Indigenous Communities Kuna de Madungandi and Embera de Bayano v. State of Panama, Case No. 12.354

The Indigenous Communities Kuna de Madungandi and Embera de Bayano filed a petition in 2000 before the IACHR against the State of Panama for violations arising from the flooding of their ancestral lands to construct the Bayano Hydroelectric Plant. After discussions between the Commission staff, including the country representative and the Special Rapporteur on Indigenous Rights, and the Petitioners' legal representatives, the petition was accepted and a case file was opened.<sup>138</sup> The Petitioners' claim asserts that the flooding of their lands and subsequent relocation onto inferior lands without just compensation, causing them to suffer the consequences of severe environmental degradation, constituted a violation of their rights to life,

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<sup>136</sup> See Petition of *Amici Curiae*, Center for International Environmental Law and Center for Human Rights and the Environment, (visited Feb. 16, 2001) <<http://www.cedha.org.ar/amici.htm>>.

<sup>137</sup> See generally *Human Rights Commission Halts Argentine Plan That Would Lead to Genocide of Indigenous Communities*, Center for International Environmental Law, Press Release, October 12, 2000, (visited October 2000) <<http://www.ciel.org/wichipressrelease2.html>>.

<sup>138</sup> Case No. 12.354.

health, security and cultural benefits as protected in the American Declaration and Convention for Human Rights. The special relationship between the indigenous peoples and their environments heightens the gravity of the harm to constitute fundamental human rights violations as protected by the Inter-American system. The petition is presently pending before the Commission.<sup>139</sup>

*December 2001 Update: In June 2001, the Commission went to the Kuna de Madungandi region of Panama to meet with the authorities of Kuna and Embera and to visit the community. In addition, the Commission “traveled through the area and obtained information pertaining to case No. 12.354 that is currently being processed.”<sup>140</sup>*

## **2. Inter-American Court of Human Rights**

### **The Mayagna (Sumo) Community of Awas Tingni v. Republic of Nicaragua, Case No. 11.555**

Among other things, this case concerns the human rights violations to the Awas Tingi indigenous community that will result from government-sponsored timber activity on its native land. In the mid-1990s, the Nicaraguan Ministry of Natural Resources granted a forestry concession to Sol del Caribe, S.A. (SOLCARSA), a subsidiary of the Korean conglomerate Kumkyung Co. Ltd., without consulting the Awas Tingi community even after agreeing to consult them on an earlier lumbering concession. The new concession allows for timber exploration and tree-cutting preparation on indigenous land, activities that the Awas Tingi claimed violated their rights to cultural integrity, religion, equal protection and participation in government.

In 1998, the IACHR found that the situation violated the human rights of the Awas Tingi. When Nicaragua did not take action to stop the violation, the IACHR took the case to the Inter-American Court on Human Rights (Court) after being unable to convince Nicaragua to follow the ruling. Several indigenous communities and other organizations submitted an *amicus curiae* brief in May 1999, arguing that “the intrinsic connections between land, environment, life, religion, identity, and culture, are so deeply rooted, that it is not possible to provide an effective and adequate protection of a single right, such as the right to property, without considering other rights such as the right to life, identity, culture and religion.”<sup>141</sup> The Court conducted a trial in November 2000 but has not yet issued a decision. This case marks the first time that the Court is considering the effect of environmental degradation on the human rights of indigenous peoples.

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<sup>139</sup> See “Kunas y Emberá demandan al Estado,” *La Prensa*, Panama, February 22, 2001.

<sup>140</sup> Press Release No. 10/01, Inter-American Commission on Human Rights, <http://www.cidh.oas.org/Comunicados/English/2001/Press10-01.htm>.

<sup>141</sup> See Petition of *Amici Curiae*, Center for International Environmental Law and International Human Rights Law Group, (visited Feb. 16, 2001) <<http://www.cedha.org.ar/curiae1.htm>>.

*December 2001 Update: On August 31, 2001, the Inter-American Court of Human Rights affirmed the earlier decision of the Commission and recognized the right of the Mayagna to their ancestral lands. This case was the Court's first addressing the rights of indigenous peoples, and the Court's favorable decision is a historic step for all indigenous peoples.*

*According to the Commission's press release,*

*The Commission asked the Court to establish a legal procedure for the prompt demarcation and official recognition of the property rights of the Awas Tingni Community. In this regard the Court stated that: "This situation [the lack of demarcation] has generated a persistent climate of uncertainty among the Awas Tingni Community. They do not know for sure where their communal property rights end in a geographic sense. Therefore they do not know to what extent they can use and freely enjoy their assets." The Court found that the members of the Awas Tingni Community are entitled to have the state delimit and issue titles to the Community's lands, and that the state must refrain from actions that would affect lands where members of the Community live and conduct their activities.<sup>142</sup>*

*The decision found that Nicaragua's lack of an effective judicial process to demarcate the Mayagna's land violated the right to judicial protection in Article 25 of the American Convention on Human Rights ("Convention"), and that Nicaragua's continuing failure to demarcate violated the right to property in Article 21 of the Convention.*

### **3. Organization of American States**

#### **a. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, San Salvador, Nov. 17, 1988, OAS T.S. 69**

Commonly known as the Protocol of San Salvador, this agreement finally entered into force on November 16, 1999, when Costa Rica deposited the eleventh ratification pursuant to Article 21. Article 11 of the Protocol provides, "(1) Everyone shall have the right to live in a healthy environment and to have access to basic public services. (2) The States Parties shall promote the protection, preservation, and improvement of the environment." Brazil, Colombia, Ecuador, El Salvador, Guatemala (the twelfth ratification), Mexico, Panama, Paraguay, Peru, Suriname, and Uruguay have also ratified the Protocol.

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<sup>142</sup> Press Release No. 23/01, Mayagna Awas Tingni Indigenous Community, Inter-American Commission on Human Rights, <http://www.cidh.oas.org/Comunicados/English/2001/Press23-01.htm>.

## **b. Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development**

On April 20, 2000, the Inter-American Council for Integral Development (CIDI) at the OAS adopted the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development (Inter American Strategy). The strategy states that “environmental issues are uniquely appropriate for engaging the public in decision-making for sustainable development in a positive and concrete manner.”<sup>143</sup> Thus, the strategy exemplifies a key aspect of the link between human rights and the environment: the use of existing civil and political rights to public information and public participation in order to enable greater citizen enforcement and accountability of domestic environmental laws and regulations.

Three implementing actions ensure the participation of civil society in the area of the environment. First, “[a]ccess to information should be assured by incorporating provisions into new and existing laws that grant public access to data, documents, and other information relevant or related to policy formulation and implementation, including information on the present quality of the environment [and] the environmental performance and conduct of regulated communities . . .”<sup>144</sup> Second, “[l]egislative and administrative bodies should ensure public access throughout the process of formulating and implementing policies, laws, and regulations, including . . . the process of assessing environmental impact, and the establishment of specific environmental performance standards.”<sup>145</sup> Third, “[a]ccess to information, process, and justice should be further ensured through clear guidelines . . . designed to mitigate, reduce, or avoid environmental damage, illness, and injuries, and to compensate victims where feasible.”<sup>146</sup>

The document recommends further that environmental agencies “establish clear and accessible formal joint management structures, such as co-management schemes, to facilitate working relationships with local communities and citizen groups, identify needs, and design and execute projects in particular when these require broad public consultation.”<sup>147</sup>

## **B. European System**

### **1. European Court of Human Rights: *Bladet Tromso and Stensaas v. Norway*, Judgment of May 20, 1999**

In May 1999, the Grand Chamber of the European Court of Human Rights found that Norwegian Ministry of Fisheries had violated the right to freedom of expression under Article 10

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<sup>143</sup> Inter-American Strategy, CIDI/RES. 98 (V-O/00), OEA/Ser.W/II.5 (Apr. 20, 2000) at 7.

<sup>144</sup> *Id.* at para. 2.1.1 on 22.

<sup>145</sup> *Id.* at para. 2.1.2 on 23.

<sup>146</sup> *Id.* at para. 2.1.4 on 23.

<sup>147</sup> *Id.* at para. 3.2.1 on 28.

of the European Convention on Human Rights when it tried to withhold from the Norwegian public a story about government employees skinning seals alive. An employee of the Norwegian Ministry of Fisheries had inspected a Norwegian government vessel, discovered that crew members had skinned seals alive in violation of Norwegian seal hunting regulations and reported the matter to the Ministry of Fisheries office. When the Ministry of Fisheries office decided not to inform the Norwegian public of the incident, the employee provided the story to the Norwegian press. Shortly thereafter, the crew members sued the Norwegian press for defamation and won.

The Norwegian press brought the matter to the European Court. The Court determined that public awareness and the possibility of an informed public debate resulting from the new story took priority over the protection of the reputation of the crew members who had skinned the seals and found a violation of the Article 10.<sup>148</sup>

The Court's decision embraces an important aspect of human rights and the environment: the right to public information to keep the public aware of when its government engages in environmentally harmful activities, such as skinning seals alive. Such awareness should trigger public demand for better enforcement of existing environmental laws, such as Norwegian seal hunting regulations in the instant case. Thus, a robust right to freedom of expression can lead to greater public information which, in turn, can foster enhanced protection of biodiversity.

## **2. European Union: Charter of Fundamental Rights of the European Union, CHARTER 4487/00 (September 28, 2000) (Charter)**

The Charter of Fundamental Rights of the European Union was accepted by the 15 European Union leaders in October 2000 and was signed and proclaimed by the Presidents of the European Parliament, Council and Commission on December 7, 2000. Although its legal status remains unclear, the Charter is seen as the basis for a future European constitution. It puts various provisions contained in the EU Treaty, the European Human Rights Convention, the European Social Charter, and other documents in one place for easier use by courts, scholars and the public and includes civil, political, economic and social rights. Significantly, it includes a provision on environmental protection. Article 37 states, "A higher level of protection and improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principles of sustainable development."<sup>149</sup>

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<sup>148</sup> European Court of Human Rights, *Judgements/Decisions* (visited Feb. 16, 2001) <<http://www.echr.coe.int/Eng/Judgments.htm>>.

<sup>149</sup> See "EU Leaders Accepted Final Draft of Rights Charter," Agence France Presse, October 14, 2000 <[http://www.europarl.eu.int/charter/activites/docs/pdf/convent50\\_en.pdf](http://www.europarl.eu.int/charter/activites/docs/pdf/convent50_en.pdf)>.

### 3. UN Economic Commission for Europe: Aarhus Convention on Information and Participation

In June 1998, Europe's environmental ministers met in Aarhus, Denmark, to negotiate the terms of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). Developed under the auspices of the United Nations Economic Commission for Europe, the Aarhus Convention codifies various environmental dimensions of the right to information, the right to participation and the right to equal access to judicial and administrative remedies because "adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself."<sup>150</sup>

Aiming to ensure the protection of each person's right to live in a safe and healthful environment,<sup>151</sup> the convention rests on three pillars. The first requires public authorities to make information on the environment available to the public upon request, generally within one month.<sup>152</sup> Second, authorities must provide for public participation when determining whether to permit certain proposed activities.<sup>153</sup> Finally, the convention guarantees access to justice in environmental matters to all persons in signatory states, regardless of nationality or domicile.<sup>154</sup> Each signatory must establish judicial or administrative proceedings that allow the public to challenge environmental decisions in a fair, equitable, timely and economically-feasible manner.<sup>155</sup>

As of January 2001, forty-two countries and the European Community have signed the Aarhus Convention and ten of those signatories have ratified it.<sup>156</sup> Six more ratifications are needed to bring the Aarhus Convention into force.<sup>157</sup>

*December 2001 Update: The Aarhus Convention entered into force on October 30, 2001, and the first meeting of the parties occurred in November 2001.*<sup>158</sup> Currently, the treaty has 40 signatories and 17 parties.<sup>159</sup>

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<sup>150</sup> U.N. Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (June 25, 1998) (Aarhus Convention), (visited Mar. 28, 2001) <<http://www.unece.org/env/pp/documents/cep43e.pdf>>.

<sup>151</sup> *Id.* at art. 1.

<sup>152</sup> *Id.* at arts. 4-5.

<sup>153</sup> *Id.* at arts. 6-8.

<sup>154</sup> *Id.* art. 9.

<sup>155</sup> *Id.* art. 9.

<sup>156</sup> See ESCOR, E-437 at 36 (visited March 2001) <<http://www.unece.org/leginstr/cover.htm>>.

<sup>157</sup> Aarhus Convention, art. 20.

<sup>158</sup> See <http://www.unece.org/env/pp/ctreaty.htm>.

### **C. East African Community: Treaty for the Establishment of the East African Community**

On January 15, 2001, the governments of Kenya, Tanzania and Uganda announced the re-establishment of the East African Community (EAC), having signed the Treaty for the Establishment of the EAC on November 30, 1999.<sup>160</sup> Reviving the EAC after 23 years of dormancy, the new treaty includes several environmental protection provisions that implicitly recognize a right to a clean and healthy environment. According to Article 111, “development activities may have negative impacts on the environment leading to the degradation of the environment and depletion of natural resources and . . . a clean and healthy environment is a prerequisite for sustainable development.” Concerned about safeguarding a clean environment, Articles 112 and 114 set forth goals for managing the environment and natural resources among these three countries. At the same time, Article 113 addresses the concern for a healthy environment by preventing illegal trade in and movement of toxic chemicals, substances and hazardous wastes between these three partners.

The treaty establishes an East African Court of Justice able to issue binding, enforceable judgments. The Court can hear claims from the East African Community Secretariat, the signatory states themselves, or legal or natural persons resident in any of the three signatory states. Such claims can allege that Kenya, Tanzania and/or Uganda has failed to meet, among other things, its obligations under the provisions discussed above (*i.e.* Articles 111 to 114) or that a Kenyan, Tanzanian or Ugandan law, regulation or other measures violates the treaty. Further, the EAC Council can add a separate human rights jurisdiction to the Court in the future that may be able to entertain claims that violations of a right to a clean and healthy environment has occurred.

### **D. North America: North American Commission on Environmental Cooperation**

The North American Agreement on Environmental Cooperation (NAAEC), known as the environmental side agreement to the North American Free Trade Agreement, established the North American Commission on Environmental Cooperation (NACEC) comprising a Council, Secretariat and Joint Public Advisory Committee.<sup>161</sup>

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<sup>159</sup> *Id.*

<sup>160</sup> Treaty for the Establishment of the East African Community, November 30, 1999, Ken.-Tanz.-Ugan, (visited March 5, 2001) <<http://www.newafrica.com/eac/treaty.htm>>.

<sup>161</sup> See NAAEC, Can.-Mex.-U.S., Signed at Mexico, Ottawa and Washington, D.C., Sept. 8 - 14, 1993; entered into force January 1, 1994, TIAS, US Treaties in Force at 374, at art. 8, (visited March 29, 2001) <[http://www.cec.org/pubs\\_info\\_resources/law\\_treat\\_agree/naaec/index.cfm](http://www.cec.org/pubs_info_resources/law_treat_agree/naaec/index.cfm)>.

With the approval of the Council, the Secretariat of the NACEC can develop a factual record in response to a citizen submission claiming that the government of Canada, Mexico or the United States has failed to “effectively enforce its environmental laws.”<sup>162</sup> As of January 2001, the NACEC had 10 citizen submissions under review and had dismissed or terminated 18 others. The NACEC has prepared only two factual records.<sup>163</sup>

Many of these submissions seek review of situations where the alleged failure to enforce environmental laws has directly affected human rights. For example, in October 2000, the NACEC asked Mexico to respond to allegations that the Molymex plant in the State of Sonora has been polluting the air with molybdenum trioxide, causing irreparable damage to human health and the environment.<sup>164</sup> In September 1999, the United States was asked to respond to claims that it has failed to meet its obligations under domestic and international law to control airborne emissions of dioxin and mercury from solid waste and medical incinerators in the Great Lakes region. A coalition of public interest groups has alleged that these emissions threaten both public health and the environment.<sup>165</sup>

Another recent case concerns allegations that Mexico has denied indigenous communities in the Sierra Tarahumara access to environmental justice by failing to effectively enforce environmental laws regarding citizen complaints, environmental crimes and forest resources in the State of Chihuahua. On May 16, 2000, the NACEC unanimously decided to instruct the Secretariat to prepare a factual record in a case alleging that a lead smelter in Tijuana has become a serious threat to the health of the neighboring community and the environment after its US owner abandoned it.<sup>166</sup>

*December 2001 Update:* In the Molymex action, Mexico responded in January 2001 to the submitter’s allegations that the Molymex plant in the State of Sonora has been polluting the air with molybdenum trioxide and, consequently, causing irreparable damage to human health and the environment.<sup>167</sup> Mexico argues that it has not failed to apply its environmental laws to this situation.<sup>168</sup>

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<sup>162</sup> *Id.* at arts. 14-15.

<sup>163</sup> See NACEC, *Citizen Submissions on Enforcement Matters: Submission Status* (visited Feb. 16, 2001) <<http://www.cec.org/citizen/status/index.cfm>>.

<sup>164</sup> See NACEC, *Citizen Submissions on Enforcement Matters: Registry and Public Files of Submission* (visited Feb. 16, 2001) <[http://www.cec.org/citizen/guides\\_registry/index.cfm](http://www.cec.org/citizen/guides_registry/index.cfm)>.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Response of Mexico, NACEC Doc. A14/SEM/00-005/08/RSP (Jan. 18, 2001), available at <http://www.cec.org/files/espanol/00-5-RSP-SO.pdf>.

<sup>168</sup> *Id.*

*The Great Lakes action has progressed as follows: the United States responded on December 3, 1999; the Secretariat requested additional information in March 2000; and the United States provided such information in two parts in July and November 2000.<sup>169</sup> Unfortunately, the Secretariat decided in October 2001 that a factual record is not warranted despite the lack of effective inspection and monitoring of dioxin and mercury emissions from solid waste and medical incinerators in the Great Lakes region.<sup>170</sup> The United States had argued that current environmental laws do not require either inspection and monitoring of these incinerator or notification to the local government without a request from such government, that petitioners' submission focused on the inadequacy of current laws rather than the failure of the United States to enforce the current laws, and that, regardless, the US Environmental Protection Agency has undertaken representative sampling of such emissions.<sup>171</sup> Therefore, concluded the Secretariat, the United States is not failing to enforce its environmental laws so no basis exists under the North American Agreement on Environmental Cooperation to permit the Secretariat to prepare a factual record.<sup>172</sup> Consequently, public health and the environment in the Great Lakes region remain in jeopardy because of continued toxic emissions.*

*In the Tarahumara matter, the Secretariat reviewed the submission and decided on November 6, 2001, that Mexico needs to respond within 30 or, if exceptional circumstances exist, 60 days to some but not all of the submitter's allegations.<sup>173</sup> Mexico has not yet responded.<sup>174</sup>*

*Finally, in the matter of the abandoned lead smelter in Tijuana, the Secretariat continues to prepare the factual record.<sup>175</sup>*

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<sup>169</sup> NACEC, Citizen Submissions on Enforcement Matters: Registry and Public Files of Submissions, Great Lakes, [http://www.cec.org/citizen/guides\\_registry/registryview.cfm?&varlan=english&submissionID=41](http://www.cec.org/citizen/guides_registry/registryview.cfm?&varlan=english&submissionID=41).

<sup>170</sup> Secretariat Determination under Article 15(1) that Development of a Factual Records is Not Warranted, NACEC Doc. A14/SEM/98-003/24/15(1) (Oct. 5, 2001), available at <http://www.cec.org/files/english/98-3-det-e3.pdf>.

<sup>171</sup> *Id.* at 7-8 and 17-19.

<sup>172</sup> *Id.* at 23.

<sup>173</sup> Determinación en conformidad con los artículos 14(1) y (2) del Acuerdo de Cooperación Ambiental de América del Norte, NACEC Doc. SEM00-006/09/14(1)(2) (Nov. 6, 2001), available at <http://www.cec.org/files/espanol/00-06-det-s.pdf>.

<sup>174</sup> *Id.*

<sup>175</sup> See NACEC Citizen Submission on Enforcement Matters: Registry of Public Files and Submissions, Metales y Derivados, [http://www.cec.org/citizen/guides\\_registry/registryview.cfm?varlan=english&submissionID=44](http://www.cec.org/citizen/guides_registry/registryview.cfm?varlan=english&submissionID=44)

### III. DOMESTIC

Whereas decisions of international and regional bodies serve as evidence of customary international law and treaty law, decisions of domestic bodies and actions of nations usually serve as evidence of the general principles of law recognized by civilized nations, a third prominent source of international law.<sup>176</sup> Such developments are most often found in national constitutions, statutes and regulations, the decisions of domestic courts and other materials comprising the domestic law of a state. During 1999 and 2000, domestic bodies of most civilized nations of the world recognized, interpreted or codified some aspect of the right to a clean and healthy environment to crystallize it into an international legal norm.

#### A. Constitutions<sup>177</sup>

Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right. Since Earthjustice's prior Issue Paper for the 55<sup>th</sup> Session of the U.N. Commission on Human Rights, 22 March – 30 April 1999, four countries have added such provisions<sup>178</sup> and three other countries have expanded their existing provisions to provide broader rights and duties.<sup>179</sup> Of the approximately 190 nations in the world,<sup>180</sup> there are now 109 national constitutions that mention the protection of the environment or natural resources.<sup>181</sup> One hundred of them recognize the right to a clean and healthy environment and/or the state's obligation to prevent environmental harm.<sup>182</sup> Of these, 53 constitutions explicitly recognize the

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<sup>176</sup> See I.C.J. Statute, art. 38.

<sup>177</sup> See *infra* Appendix 1. (providing a cumulative list of these countries and a brief description of the relevant provisions)

<sup>178</sup> Albania, Burundi, Latvia, Sudan.

<sup>179</sup> Cuba, Madagascar, Switzerland.

<sup>180</sup> In 2000, there were 189 members of the United Nations, and Switzerland retained its non-member status. See generally U.N. Member States home page (visited February 17, 2001) <<http://www.un.org/members/index.html>>.

<sup>181</sup> See *infra* Appendix 1.

<sup>182</sup> Andorra, Angola, Argentina, Armenia, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Cape Verde, Chad, Chechnya, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Czech Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea (draft), Ethiopia, Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Iran, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia Lithuania, Macedonia, Madagascar, Malawi, Mali, Malta, Mexico, Micronesia, Moldova, Mongolia, Mozambique, Namibia, Nepal, Netherlands, Nicaragua, Niger, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Sao Tome and Principe, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Suriname, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Turkey, Turkmenistan, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam, Yugoslavia, Zambia.

right to a clean and healthy environment,<sup>183</sup> and 92 constitutions make it the duty of the national government to prevent harm to the environment.<sup>184</sup> Fifty-four constitutions recognize a responsibility of citizens or residents to protect the environment,<sup>185</sup> while 14 prohibit the use of property in a manner that harms the environment or encourage land use planning to prevent such harm.<sup>186</sup> Nineteen constitutions explicitly make those who harm the environment liable for compensation and/or remediation of the harm, or establish a right to compensation for those suffering environmental injury.<sup>187</sup> Sixteen constitutions provide an explicit right to information concerning the health of the environment or activities that may affect the environment.<sup>188</sup>

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<sup>183</sup> Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, Colombia, Congo, Costa Rica, Croatia, Cuba, Czech Republic, Ecuador, El Salvador, Ethiopia, Finland, Georgia, Honduras, Hungary, Kyrgyzstan, Latvia, Macedonia, Mali, Moldova, Mongolia, Mozambique, Nicaragua, Niger, Norway, Paraguay, Philippines, Portugal, Russia, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Tajikistan, Togo, Turkey, Ukraine, Yugoslavia. In addition to these, the constitutions of Comoros and Guatemala recognize a right to health that is not explicitly tied to the state of the environment.

<sup>184</sup> Andorra, Angola, Argentina, Armenia, Bahrain, Belarus, Benin, Bolivia, Brazil, Bulgaria, Cambodia, Cameroon, Cape Verde, Chad, Chechnya, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Ecuador, El Salvador, Equatorial Guinea, Eritrea (draft), Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Iran, Kazakhstan, Kuwait, Laos, Latvia, Lithuania, Macedonia, Madagascar, Malawi, Mali, Malta, Mexico, Micronesia, Mongolia, Mozambique, Namibia, Nepal, Netherlands, Nicaragua, Niger, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Sao Tome and Principe, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Suriname, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Turkey, Turkmenistan, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam, Yugoslavia, Zambia.

<sup>185</sup> Algeria, Argentina, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, China, Colombia, Congo, Cuba, Czech Republic, Finland, Ghana, Guatemala, Guyana, Haiti, India, Kazakhstan, Kyrgyzstan, Laos, Lithuania, Macedonia, Madagascar, Mali, Moldova, Mongolia, Mozambique, Panama, Papua New Guinea, Poland, Russia, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, South Korea, Spain, Sri Lanka, Sudan, Tajikistan, Tanzania, Thailand, Turkey, Ukraine, Uruguay, Uzbekistan, Vanuatu, Vietnam, Yugoslavia.

<sup>186</sup> Albania, Armenia, Belarus, Burundi, Chile, Czech Republic, Moldova, Mongolia, Romania, Russia, Slovakia, Switzerland, Ukraine, Uzbekistan.

<sup>187</sup> Angola, Argentina, Azerbaijan, Belarus, Brazil, Chechnya, Chile, Congo, Costa Rica, Ecuador, Haiti, Kyrgyzstan, Moldova, Mongolia, Paraguay, Poland, Russia, Spain, Ukraine.

<sup>188</sup> Albania, Azerbaijan, Belarus, Colombia, Czech Republic, Ecuador, Eritrea (draft), Georgia, Kazakhstan, Latvia, Moldova, Norway, Russia, Slovakia, Ukraine, Yugoslavia.

## **B. Courts**

### **1. Constitutional Chamber of the Supreme Court of Costa Rica**

#### **Ruth Solano Vazquez, et al v. Ministry of the Environment and Energy (Res. No. 2000-08019)**

The Constitutional Court of Costa Rica has on numerous occasions held in favor of its citizens' constitutional right to a healthy and ecologically balanced environment. In a landmark decision in September, 2000, the Court annulled concessions granted to US oil companies to explore for and extract oil and gas from both onshore and offshore regions, and ordered the Government to pay costs and damages for failure to carry out a prior consultation process with local communities concerning these potentially environmentally harmful activities. The claims were based on international human rights and environmental agreements ratified by Costa Rica and granted a hierarchy above national legislation, as well as the ILO Covenant 169.<sup>189</sup>

### **2. Supreme Court of India**

#### **a. *M.C. Mehta v. Union of India and Others*, (JT 1997) (JT 1996(6) SC 129)**

In a series of judgments from 1996 to 2000, the Supreme Court of India has recognized and responded to the affect on human health and the environment of air, water and noise emissions from thousands of industries in Delhi. In April 1996, the Supreme Court of India ordered that 168 industries responding to a public notice should cease operations in Delhi by November and relocate to other industrial estates in the National Capital Region if the industry wanted to continue operating.<sup>190</sup> The Court further provided ten days notice and an opportunity to be heard to 762 other industries not responding to the public notice before the Court entered the same cease and relocate order against them.<sup>191</sup> The Court implicitly recognized the right of Delhi residents to a clean and healthy environment when it acknowledged that "Delhi is one of the most polluted cities in the world. The quality of ambient air is so hazardous that lung and respiratory diseases are on the increase. . . . There is total lack of open spaces and green areas. Once [a] beautiful city, Delhi now presents a chaotic picture."<sup>192</sup> In 1997, the Supreme Court issued a similar order when industries failed to comply with the 1996 order.<sup>193</sup>

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<sup>189</sup> See generally *Court Orders Halt to Oil Drilling*, The Tico Times, Costa Rica, September 14, 2000.

<sup>190</sup> *M.C. Mehta v. Union of India & Others*, JT 1996, reprinted in 1 *The Environmental Activists' Handbook* (Ritwick Dutta, et al. eds., 3d ed. 2000) 631.

<sup>191</sup> *M.C. Mehta v. Union of India & Others*, JT 1996, reprinted in 1 *The Environmental Activists' Handbook* 631.

<sup>192</sup> *M.C. Mehta v. Union of India & Others*, JT 1996 at para. 1, reprinted in 1 *The Environmental Activists' Handbook* at 631-32.

<sup>193</sup> See generally 1 *The Environmental Activists' Handbook* at 577.

In fact, reliable media reports indicate that, through September 2000, the Supreme Court had issued a total of six cease and relocate orders until September 2000 targeting non-complying and new industries.<sup>194</sup> Continually recognizing a link between human rights and the environment, the Supreme Court based these orders on the principle that health is of primary importance. Delhi has some of the most polluted air in the world and many residents suffer from constant hacking coughs. Experts say the water pollution is even worse.

In November 2000, news sources report that the Supreme Court threatened to hold the Delhi government in contempt for licensing 15,000 industrial units in residential areas in violation of the Court's earlier orders. In response, the Delhi government moved to closed down the polluting factories. Consequently, thousands of workers, fearing the loss of their jobs from the factory closures, have taken to the streets in protest. Police have responded with tear gas and mass arrests.

According to the Chief Secretary of Delhi in an October 1996 affidavit to the Supreme Court, the polluting industries could relocate the industries to 5,000 free acres in an outer part of Delhi as well as 2,500 acres in adjoining areas of the National Capital Region. Although that land remains vacant today, relocation has yet to occur.

**b. *Narmada Bachao Andolan v. Union of India and Others*, \_\_ S.C.J. \_\_ (SC 2000)**

India's Narmada Valley Development Project, one of the largest hydroelectric projects in the world, calls for the construction of more than 3000 dams, which will flood thousands of acres of forests and agricultural land. The flooding will displace an estimated 1.5 million people in three states and destroy areas of rich biodiversity.

In April 1994, various communities affected by one of the dams, the Sardar Sarovar dam on the Narmada River, filed a writ petition with the Supreme Court of India. They claimed, among other things, that the failure of India to properly study and understand the environmental impact of the continued construction of the Sardar Sarovar dam on the Narmada River violated both their rights to life and liberty under Article 21 of the Constitution of India and India's obligations to indigenous populations under ILO Convention (No. 107).<sup>195</sup> They also claimed that India's failure to properly plan for and mitigate such impact violated these same provisions as well.<sup>196</sup> Petitioners asked the Court to enjoin India from proceeding with the construction of the Sardar Sarovar dam until the Ministry of Environment and Forests completed its environmental impact assessment. In essence, the petitioners asked the Court to recognize that environmental degradation from development projects violates human rights.

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<sup>194</sup> See Celia W. Dugger, "A Cruel Choice in New Delhi: Jobs vs. a Safer Environment," *The New York Times*, November 24, 2000, at 1, (visited Feb. 16, 2001) <<http://archives.nytimes.com/archives>>; India Today, *Delhi: The Big Foul-Up*, (Dec. 4, 2000) <<http://www.india-today.com/itoday/20001204/states.shtml>>.

<sup>195</sup> See *Narmada Bachao Andolan v. Union of India & Others*, \_\_ S.C.R. \_\_ (Sup. Ct. (India) 2000), (visited Feb. 16, 2001) <<http://www.narmada.org/sardar-sarovar/sc.ruling/majority.judgement.doc>> at 21 and 26.

<sup>196</sup> *Id.*

On October 18, 2000, the Indian Supreme Court ruled, by two votes to one, that India could continue with the construction of the Sardar Sarovar dam to 90 meters and that any higher construction authorized by the Narmada Control Authority would require environmental clearance from an Environmental Sub-group of the Ministry of Environment and Forests.<sup>197</sup> The Court did not enjoin construction of the dam because it claimed to lack the authority to “transgress into the field of policy decision” (which is what the court labeled India’s determination to build the dam) and because “any challenge to such a policy decision [by the petitioners] must be before the execution of the project is undertaken.”<sup>198</sup>

At the same time, however, the Court recognized that petitioners’ rights to life and liberty were at stake.<sup>199</sup> The Court believed that directing the local governments to provide relief and rehabilitation pursuant to a lower tribunal award would protect petitioners’ right to life.<sup>200</sup> Thus, the Court recognized that environmental degradation harms human rights.

The minority judgment from Justice Bharuch understood that principle much better. Criticizing India’s 1987 decision granting an environmental clearance to the project, Justice Bharuch concluded that “[u]ntil environmental clearance to the Project is accorded by the Committee of Experts as aforesaid, further construction work on the dam shall cease.”<sup>201</sup>

Moreover, Justice Bharuch concurred with the majority that the dam construction threatened the rights to life and liberty. However, unlike the majority, Justice Bharuch took that observation one step further. He realized that “[a]n adverse impact on the environment can have disastrous consequences for this generation *and generations to come*.”<sup>202</sup> Adding that factor to the equation led Justice Bharuch to conclude that the environmental harms to human rights outweighed the need for the dam construction. He further alluded that the majority should have reasoned similarly to him because “[t]his Court has in its judgments on Article 21 of the constitution recognized [the impact on future generations].”

### 3. United States federal courts

Currently pending before the federal courts in California and New York are several different cases concerning human rights abuses in Africa and South America that allegedly have resulted from environmental degradation caused by European and US corporations operating on those continents. Although none of these cases has yet been decided on the merits, all have thus

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<sup>197</sup> *Id.* at 92-93.

<sup>198</sup> *Id.* at 85.

<sup>199</sup> *Id.* at 88.

<sup>200</sup> *Id.* at 88.

<sup>201</sup> See *Narmada Bachao Andolan v. Union of India & Others*, \_\_\_ S.C.R. \_\_\_ (Sup. Ct. (India) 2000) (Bharucha, J., separate opinion), (visited Feb. 16, 2001) <[http://www.narmada.org/sardar-sarovar/sc\\_ruling/Bharucha.doc](http://www.narmada.org/sardar-sarovar/sc_ruling/Bharucha.doc)> at 17.

<sup>202</sup> *Id.* at 14 (emphasis added).

far cleared some procedural hurdle that otherwise would have left the plaintiffs without an adequate forum in which to seek relief. These initial victories alone provide reason enough to mention briefly the facts and issues in each dispute.

**a. *Bowoto v. Chevron* (U.S. District Court for the Northern District of California, Case No. C-99-2506)**

In May 1999, several Nigerian citizens brought suit against the Chevron Corporation of California claiming that human rights abuses resulted from the response by Chevron and the Nigerian military to an effort of local residents to protect the environment and human health. The plaintiffs allege that Chevron provided helicopter, boat and personnel support and paid the Nigerian military to suppress violently the peaceful occupation of an offshore oilrig by local residents in May 1998. The attack killed two protestors and injured hundreds of others. The protestors were demanding that Chevron meet with community leaders to discuss the destruction of the Delta environment caused by oil exploitation activities. Plaintiffs seek damages and injunctive relief under the Alien Tort Claims Act, a federal statute giving US courts jurisdiction over torts “committed in violation of the law of nations or a treaty of the United States,”<sup>203</sup> and under California state law.

On June 16, 2000, Judge Charles Legge of the U.S. District Court for the Northern District of California denied Chevron’s motion to dismiss and *forum non conveniens* motion and ordered discovery to proceed.<sup>204</sup> Providing the reasons for his decision in two earlier bench rulings on April 7, 2000, and May 12, 2000, Judge Legge found that “there are at least two categories of allegations here that do fall within the norms of international law, and that is the torture and summary execution and the prolonged arbitrary detention”<sup>205</sup> and that California has an interest in “regulating the conduct of corporations that are headquartered here, even if the conduct of the corporations . . . is overseas.”<sup>206</sup> For now, plaintiffs can continue pleading their claims of human rights abuses that resulted from environmental protection demonstrations.

*December 2001 Update:* On June 16, 2000, Judge Legge filed a written order denying Chevron’s motion to dismiss for the reasons Judge Legge had given during his April and May 2000 bench rulings. Judge Legge also granted the plaintiffs’ request to file a newly amended complaint. The case is now in a pre-trial phase called discovery.<sup>207</sup>

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<sup>203</sup> 28 U.S.C. § 1350.

<sup>204</sup> *Bowoto v. Chevron*, No. C-99-2506 (N.D.Ca. June 16, 2000) (order denying defendant’s motion to dismiss; granting in part and denying in part plaintiffs’ motion to amend; and denying defendant’s countermotion for sanctions).

<sup>205</sup> Transcript of Proceedings at 9:12-15, *Bowoto v. Chevron*, No. C-99-2506 (N.D.Ca. May 12, 2000).

<sup>206</sup> Transcript of Proceedings at 12:17-19. *Bowoto v. Chevron*, No. C-99-2506 (N.D.Ca. April 7, 2000).

<sup>207</sup> Information on file with Earthjustice.

**b. *Aguinda v. Texaco, Inc.* (U.S. District Court for the Southern District of New York, Case No. 93 Civ. 7527(TSR); *Jota v. Texaco, Inc.* (U.S. District Court for the Southern District of New York, Case No. 94 Civ. 9266))**

In 1993, residents of Ecuador and residents of Peru each brought separate class action suits “for environmental and personal injuries that resulted from Texaco’s exploitation of the [Oriente] region’s oil.”<sup>208</sup> Plaintiffs “allege that Texaco was instrumental in the decisions of an Ecuadorian-based state-sponsored and state-regulated oil consortium to extract Ecuadorian oil in ways that contaminated Ecuadorian lands and rivers and caused injury to Ecuadorian inhabitants and their Peruvian neighbors.”<sup>209</sup>

Following a remand from a federal appeals court, the federal trial court remains faced with a renewed motion by Texaco to dismiss the case from the US court and transfer it to an Ecuadorian court. To assist the court in making a decision, the federal trial judge ordered in January 2000 that the parties make additional submissions “regarding whether the courts of Ecuador and/or Peru might reasonably be expected to exercise a modicum of independence and impartiality if these cases were dismissed in contemplation of being refilled in one or both of these forums.”<sup>210</sup> Although the parties made their submission in the early part of 2000, a decision from the federal trial court is still pending.

*December 2001 Update:* On May 30, 2001, the trial court granted Texaco’s motion to dismiss the case on grounds of *forum non conveniens* and found that concern about the inadequacy of the Ecuadorian courts was not warranted because such courts already had successfully prosecuted related tortious claims in this matter.<sup>211</sup> The plaintiffs recently appealed the trial court’s decision and argued, among other things, that the doctrine of *forum non conveniens* should not normally apply to a statute giving US courts jurisdiction over violations of international human rights law.<sup>212</sup>

**c. *Wiwa v. Royal Dutch Shell Petroleum Co.* (U.S. Court of Appeals for the Second Circuit, Case Nos. 99-7223[L], 99-7245[XAP])**

Four Nigerian émigrés, including three US residents, brought suit against Royal Dutch Petroleum Company of the Netherlands and Shell Transport and Trading Co., P.L.C. of the United Kingdom. The plaintiffs allege, *inter alia*, that Shell Nigeria, a company controlled and operated by the defendants, recruited the Nigerian police and military to attack local villages and suppress organized opposition to its environmentally destructive oil development activity in the

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<sup>208</sup> *Jota v. Texaco, Inc.*, 157 F.3d 153, 155 (2d Cir. 1998).

<sup>209</sup> *Aguinda v. Texaco, Jota v. Texaco*, 2000 WL 122143, \*1 (S.D.N.Y.)(Jan. 31, 2000).

<sup>210</sup> *Id.* at \*3.

<sup>211</sup> *Aguinda v. Ecuador and Jota v. Ecuador*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001).

<sup>212</sup> Information on file with Earthjustice.

Ogoni homeland. The complaint alleges that Shell encouraged Nigerian government officials to imprison, torture, or kill plaintiffs and their relatives in violation of the law of nations. In addition, Plaintiffs claim that Shell Nigeria forcibly took land for oil development without adequate compensation and polluted the region's air and water. The plaintiffs further allege that Shell gave the Nigerian military money, weapons and logistical support, including vehicles and ammunition, to use in village raids.

In September 2000, the US Court of Appeals for the Second Circuit allowed the case to continue by affirming the federal trial court's finding of personal jurisdiction over the defendants and by reversing the federal trial court's decision to transfer the case to the United Kingdom on the grounds of the U.S. doctrine of *forum non conveniens*.<sup>213</sup> In January 2001, defendants petitioned the US Supreme Court to review the appellate court's decision. The Supreme Court has not yet decided whether to hear the appeal.<sup>214</sup>

*December 2001 Update:* On March 26, 2001, the US Supreme Court decided not to hear Shell's appeal from the US Court of Appeals for the Second Circuit.<sup>215</sup> Shell wanted the Supreme Court to review and reverse the appellate court's decision that the case should not be transferred to the United Kingdom. Consequently, the case is now back before the trial court for further proceedings.

### C. Legislatures

#### United Kingdom Human Rights Act of 1998

In October 2000, the United Kingdom brought into force the UK Human Rights Act of 1998 (the Act) which should result in stronger human rights protections against environmental harms that may or do occur in the United Kingdom. The Act incorporates into UK law nearly all of the articles of the European Convention on Human Rights (Convention) together with a few articles of its First and Sixth Protocols.<sup>216</sup> Moreover, it requires both the legislation and the decisions of UK courts and tribunals to consider in their actions, whenever relevant and compatible, decisions of the European Court of Human Rights and the European Commission for Human Rights.<sup>217</sup>

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<sup>213</sup> *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000).

<sup>214</sup> *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000), *petition for cert. filed*, <<http://www.supremecourtus.gov/docket/00-1168.htm>>, (U.S. Jan. 19, 2001) (No. 00-1168).

<sup>215</sup> *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) *cert. denied*, \_\_\_ U.S. \_\_\_, 121 S. Ct. 1402 (2001), available at [www.supremecourtus.gov/docket/00-1168.htm](http://www.supremecourtus.gov/docket/00-1168.htm).

<sup>216</sup> See 1998 Chapter 42, Section 1, <<http://www.hmso.gov.uk/acts/act1998/80042--a.htm#2>>.

<sup>217</sup> *Id.*, Sections 2-3.

To date, the European Court has extended the Convention's rights to life, inviolability of the home and family, and freedom of information to domestic situations posing a risk to the environment and human health.<sup>218</sup> The incorporation of these decisions into UK law pursuant to the Act should motivate UK courts and future UK legislation to recognize the right to a clean and healthy environment and adopt a rights-based approach to environmental protection.

## **D. Governments**

### **1. 1. Guatemalan Office of the Human Rights Ombudsman**

On February 7, 2000, after a two year investigation, the Office of the Human Rights Ombudsman in Guatemala declared that the President of Guatemala, the Guatemalan National Council of Protected Areas, the Guatemalan National Commission of the Environment, the Guatemalan Center for Conservation Studies, the Guatemalan Ministry of Mines and the municipal government of El Peten, among others, contributed to the violation of fundamental human rights of the inhabitants of Guatemala by permitting petroleum extraction activity in the Maya Biosphere Reserve. The Maya Biosphere Reserve in the northern part of Guatemala consists of almost 8.3 million acres of forest, includes over 3,000 plant species and half of all the animal species in the country, and contains approximately 10,000 Mayan archaeological sites. In its decision, the Office of the Human Rights Ombudsmen concluded that "the disinterest and irresponsibility of authorities in charge of the National Environmental Policy, the protection, conservation, recuperation, monitoring [and] administration of the natural patrimony, protected areas, environment and ecosystems involved inside of the Maya Reserve . . . in the state of El Peten, affected by the petroleum extraction activities on the part of the company Basic Resources International Bahamas, constitutes a violation of human rights every time that it prohibits the enjoyment of the right to a clean environment, individual dignity, the preservation of the cultural and natural patrimony of the country, and social and economic development . . . to the detriment of the inhabitants of the Republic of Guatemala, and especially of the communities on the outskirts of the protected areas in question."<sup>219</sup>

### **2. United States**

#### **a. US Secretary of State Remarks at ASEAN Post-Ministerial Conference 10 + 1**

On July 27, 2000, at the Association of Southeast Asian Nations Post Ministerial Conference 10 + 1 in Singapore, former Secretary of State Madeleine Albright recognized a human right to a clean and healthy environment in her opening remarks. She stated:

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<sup>218</sup> See, e.g., *Guerra and Others v. Italy*, Eur. Ct. H.R. (Applic. No. 14967/89) (1998); *Lopez Ostra v. Spain*, Eur. Ct. H.R. (ser. A) (Applic. No. 16789/90) (1994). Please note that Earthjustice Legal Defense Fund presented summaries of these two cases in its *Issue Paper: Human Rights and the Environment*, Materials for the Fifty-Fifth Session of the United Nations Commission on Human Rights, Geneva, 22 March –30 April 1999, at 9-10.

<sup>219</sup> See *Procurador de Los Derechos Humanos (Resolution of the Human Rights Ombudsman)* at Por Tanto section (on file with Earthjustice).

The environment is another transnational problem that requires a transnational response. This challenged has recently been dramatized in Southeast Asia by pollution from uncontrolled forest, peat and coal seams. *There is no more basic a human right than the right to breathe.* But the haze has sometimes made exercising that right a dangerous problem.<sup>220</sup>

#### **b. US Initial Report to the UN Committee on the Elimination of Racial Discrimination**

Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination the Convention directs state parties to report to the UN Committee on the Elimination of Racial Discrimination (CERD) on the legislative, judicial, or other measures that they have adopted to give effect to the Convention's provisions.<sup>221</sup> In September 2000, nearly six years after its ratification of the Convention, the United States submitted its initial report to the CERD.<sup>222</sup>

The US Report includes a discussion on environmental justice<sup>223</sup> in a section addressing the implementation of Article 5 of the Convention, which calls for State Parties to "prohibit and eliminate racial discrimination in all its forms." The United States defines environmental justice as:

the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture or income with respect to the development, implementation, enforcement and compliance of environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic, or socio-economic groups, should bear a disproportionate share of negative environmental consequences resulting from industrial,

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<sup>220</sup> See State Department (visited February 22, 2001) <<http://secretary.state.gov/www/statements/1999/990727a.html>> (emphasis added).

<sup>221</sup> See International Convention on the Elimination of All Forms of Racial Discrimination, March 7, 1966, 660 U.N.T.S. 195, art. 9.

<sup>222</sup> *The Convention on the Elimination of All Forms of Racial Discrimination: Initial Report of the United States of American to the United Nations Committee on the Elimination of Racial Discrimination* (Initial Report), (visited March 29, 2001) <[http://www.state.gov/www/global/human\\_rights/cerd\\_report/cerd\\_index.html](http://www.state.gov/www/global/human_rights/cerd_report/cerd_index.html)>.

<sup>223</sup> As international law scholar Dinah Shelton has noted: "[T]he concept of environmental justice has come to play an important role in international environmental law and policy as a means of integrating human rights and environmental law, . . . On the most fundamental level, environmental justice can be seen as a term that encompasses the twin aims of environmental protection and international protection of human rights. " Dinah Shelton, Notre Dame Law School, "The Jurisprudence of International Human Rights Tribunals Concerning Environmental Matters" at 19 (2000) (unpublished manuscript, on file with Earthjustice).

municipal and commercial operations or the execution of federal, state, local and tribal programs and policies.<sup>224</sup>

The report indicates that the United States has addressed environmental justice issues through an executive order directing all federal agencies and departments to collect data on the subject and to take action to remedy disproportionate effects of government programs on the relevant population. In particular, the executive order directs the US Environmental Protection Agency to include environmental justice as part of its mission.

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<sup>224</sup> Initial Report at 84-85.

## CASE STUDIES

Around the globe in 1999, 2000 and the start of 2001, environmental harms from dams and other construction projects, resource exploitation, logging activities and accidents repeatedly have violated various rights of indigenous peoples, local communities and the general population of a given country while at the same time destroying precious ecosystems. Similarly, preparations for new activities abound that soon could give rise to such environmental harms. Efforts to protest these catastrophes or alert people to other environmental threats have been met with deprivations of civil liberties and due process.

Corporations, international institutions and national governments contribute to the environmental harms that usually trigger these human rights violations, yet the existing enforcement systems at the international, regional and domestic levels rarely hold any of these actors fully accountable for causing such harm. Consequently, there is a need for better enforcement of a right to a clean and healthy environment to prevent and/or redress these tragedies. When existing enforcement systems have succeeded, they almost always have employed a rights-based approach to environmental protection, thereby strengthening that principle as an international legal norm.

### **IV. Africa**

#### **A. Chad and Cameroon**

Environmental degradation and human rights abuses are among the considerable risks posed by the Chad-Cameroon Petroleum Development and Pipeline Project (the Project). Sponsored by US-based ExxonMobil and Chevron and Malaysia-based Petronas and with financial support from the Board of the World Bank Group, the Project includes the construction of a 600-mile (1,070 km) pipeline from oil fields in Chad, through the rainforests of Central Africa, to the Cameroon coastline.<sup>225</sup> Cameroon's fragile forest, considered one of the least disturbed tropical rainforests in the world, is home to the Bakola pygmies and a wide array of wildlife. Construction of and accidental oil spills from the Project will likely result in clear cutting of the forest and contamination of the ground water. Such results will probably destroy biodiversity, eradicate ecosystems and violate, among other rights, the rights to life, health and culture for local communities.

Both Chad and Cameroon, known for dismal human rights records, have already violated rights to free speech and assembly of the general population because of the project. In 1998, national security forces in Chad allegedly massacred one hundred unarmed civilians who were demonstrating against the project in the country's oil producing region. In addition, the foreign

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<sup>225</sup> See World Bank Press Release, June 6, 2000, (visited Feb. 16, 2001) <<http://wbln0018.worldbank.org/news/pressrelease.nsf>>.

companies involved in the project all have histories of using military repression as a defense to local disapproval.<sup>226</sup>

*December 2001 Update:* In March 2001, Dr. Ngarlejy Yorongar, acting for himself and on behalf of local communities living in the vicinity of three oil fields, requested that the World Bank Inspection Panel investigate the pipeline project.<sup>227</sup> The Panel registered the request in April 2001, and sent a Report and Recommendation to the Board in September 2001 requesting authorization to investigate.<sup>228</sup> The Board approved the Panel's report on October 1, 2001 and authorized an investigation which is currently underway.<sup>229</sup>

## B. Kenya

The Kenyan government's recent efforts to secure the Tinet forest for environmentally harmful logging activities has resulted in human rights abuses to the Ogiek people and the general Kenyan population. Reliant primarily on hunting and honey gathering, the Ogiek people are one of only two remaining indigenous communities in Kenya. Five thousand Ogiek live in the Tinet Forest, where they continue their ancestors' way of life.

However, for the past several years, the Kenyan government has attempted to evict the Ogiek from the Tinet forest, allegedly to allow for logging operations as well as tea and flower plantations which are currently destroying other parts of the forest. In May 1999, the Ogiek sued the government. They sought a declaration that the proposed eviction violates their rights to residence, equal protection and freedom from discrimination. In February 2000, Kenya's high court summarily dismissed the Ogiek's lawsuit on the grounds that the tribe was exploiting forest resources in contravention of federal conservation statutes. The court declared that the evictions were necessary to save the Kenyan people from environmental disaster. The potential

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<sup>226</sup> See Susanne Breitkopf Urgewald, *The Chad Cameroon Petroleum Development and Pipeline Project: Risky Business*, Sept. 2000 (visited Feb. 16, 2001) <<http://www.ciel.org/ifccasechadcameroon.html>>; *Intravenous Earth*, World Paper, July 2000 (visited Feb. 16, 2001) <<http://www.moles.org/ProjectUnderground/news/pipeline000804.html>>; *African Pipeline Would Threaten People and Rainforests*, Environmental Defense Newsletter, Nov. 1999 (visited Feb. 16, 2001) <[http://www.edf.org/pubs/Newsletter/1999/Nov/o\\_pipeln.html](http://www.edf.org/pubs/Newsletter/1999/Nov/o_pipeln.html)>.

<sup>227</sup> Press Release, World Bank Inspection Panel, World Bank Board approves the Inspection Panel's recommendation The Panel to investigate whether the Bank has observed its policies and procedures in the Chad Pipeline Project, <http://wbln0018.worldbank.org/IPN/ipnweb.nsf/WRelease/971286E39484903F85256AE0005FE0DF>

<sup>228</sup> See Panel Register, [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/Register8801/\\$FILE/Register8801.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/Register8801/$FILE/Register8801.pdf).

<sup>229</sup> *Id.*

environmental harm to the Tinent forest is resulting in violations of the human rights of both the Ogiek and the rest of the Kenyan population.<sup>230</sup>

*December 2001 Update:* In July 2001, the chief administrator of the Rift Valley Province ordered the eviction of the Ogiek people.<sup>231</sup> However, the Ogiek resisted.<sup>232</sup> Then, in October 2001, the Kenyan environmental minister approved opening the forest to logging activities.<sup>233</sup> On October 4, 2001, the Ogiek filed a lawsuit to enjoin the approval. The Kenyan government has not yet responded.<sup>234</sup>

### C. Namibia

The environmentally damaging plan of the governments of Namibia and Angola to construct the Epupa Falls Hydropower Project on the Kunene River in Namibia may result in human rights abuses against an indigenous people. The Namibian government has been planning for years to construct the dam at the Epupa Falls. The indigenous Himba people have fiercely opposed the project because the dam promises to flood at least 12,000 out of their ancestral homes. The Himba, a pastoral people who have lived and tended their flocks in this desert area for over 500 years, received a temporary reprieve in 1999 when Namibia and Angola failed to reach an agreement on a site for the proposed dam.

Although a consortium of Namibian, Swedish, Norwegian and Angolan consultants prepared a feasibility study that concluded that the Epupa Falls site would be more economically viable than smaller alternative sites, the study is seriously inadequate. For example, the study states that the Himba people have not been consulted and the study fails to address under international and Namibian law the dam's adverse affect on the Himba people's rights, among others, to life, health, water and culture, including destruction of sacred gravesites.<sup>235</sup>

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<sup>230</sup> See Tervil Okoko, *Kenya's Indigenous Honey Hunters Lose Their Forest Home*, Env't. News Service, Mar. 24, 2000; *Green Smokescreen for the Eviction of Forest People*, Survival International, Mar. 23, 2000, (visited March 10, 2001) <<http://www.survival.org.uk/index2.htm>>.

<sup>231</sup> Press Release, Survival for Tribal Peoples, Honey-hunters to face Kenyan government in Court, (September 2001), <http://www.survival.org.uk/ogiekup0109.htm>.

<sup>232</sup> *Id.*

<sup>233</sup> Press Release, Survival of Tribal Peoples, Kenya: Government Destroys Ogiek's forest (December 2001), <http://www.survival.org.uk/ogiekuab0112.htm>.

<sup>234</sup> Press Release, Survival for Tribal Peoples, Honey-hunters to face Kenyan government in Court, Survival for Tribal Peoples (September 2001), <http://www.survival.org.uk/ogiekup0109.htm>.

<sup>235</sup> See *Epupa Verdict Put Off*, *The Namibian*, Nov. 1, 1999 (visited at Feb. 16, 2001) <<http://irn.org/programs/epupa/991101.meeting.html>>; Sidney L. Harring, *Commentary on the Environmental Assessment Report of the Feasibility Study on the Proposed Lower Cunene Hydropower Scheme*, Dec. 1997.

#### **D. Nigeria**

Nigeria's reliance for decades on oil and on the foreign corporations that extract it, including the Royal Dutch/Shell Group of Companies and the Chevron Corporation, has resulted in severe environmental degradation of the Niger Delta, Africa's largest wetland, and various human rights abuses. Gas flaring and pipeline leaks have led to acid rain and have destroyed the resources that once sustained millions of Delta region inhabitants who farmed and fished in the now bleak environment. The transnational oil companies have rarely completed cleanups of the numerous, often massive oil spills or compensated affected communities. Organized protests by such communities against these practices have generally been met with brutal suppression through military force.

In the past few years, violent clashes between youth from the Niger Delta's Ijaw tribe, who have actively protested against the activities of Chevron in particular, and Nigerian government troops have resulted in numerous deaths. Even after the national election of a civilian Nigerian president, reports of military violence against the people of the Niger Delta continue. In September 1999, as many as fifty Ijaw youths were reportedly detained by the military, then shot and killed. Several months later, the federal government sent troops to the town of Odi in the Nigerian State of Bayelsa, allegedly to search for Ijaw youths who murdered half a dozen police officers. By the time the troops left, Odi had been razed, its residents had fled and hundreds of residents had been killed.<sup>236</sup>

Meanwhile, various inhabitants of the Niger Delta recently have filed lawsuits in US courts against the oil companies and the Nigerian government. Plaintiffs seek damages and injunctive relief for, among other things, the human rights abuses sustained in their protests against the environmental degradation.<sup>237</sup>

#### **E. South Africa**

In 1998, the Table View Residents Association filed a complaint with the South African Human Rights Commission alleging that Caltex Oil Refinery and Nitrogen Products were violating their right to a clean and healthy environment, guaranteed by the South African Bill of Rights. Petitioners claim that Caltex and Nitrogen have emitted sulphur dioxide, ammonium nitrate and other toxic chemicals into their neighborhood. Such emissions may explain why many residents in the Western Cape community, especially children, suffer from respiratory illnesses, why the air is foul-smelling and why black soot frequently settles on homes. The Commission referred the matter to an environmental expert for advice. In addition, the South African Deputy Minister of Environmental Affairs and Tourism has agreed to work to change

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<sup>236</sup> See Global Exchange, *Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta*, Jan. 2000; Osita Nwajah, *Obasanjo Condemned for the Situation in Nigeria*, Africa News, Dec. 6, 1999.

<sup>237</sup> See *supra* Developments, III.B.3.

ambient air quality and emission standards that would affect the refinery emissions at issue in the case and change pertinent licensing conditions.<sup>238</sup>

## V. Asia

### A. Burma

Since 1995, US-based Unocal and French-based Total, together with Burma's state controlled oil company, the Myanmar Oil and Gas Enterprise, have been constructing a natural gas pipeline from Burma's Yadana natural gas field to an electric power plant in Thailand. The pipeline route traverses the Tenasserim region of Burma, through a dense tropical forest and the traditional lands of the Karen, Mon and Tavoy peoples.

The environmental damage resulting from the project and the behavior of the Burmese army in enabling the project to continue each promise to violate numerous human rights of the Burmese. Regarding the harm to the environment, Thai assessments suggest significant impacts to the ecosystem and many rare species of wildlife, and the joint venturers have made no provisions for such natural disasters. The Burmese government claims that any environmental consequences to the pristine forest and offshore waters will be minimal but has yet to conduct an environmental impact assessment to support its position. By not preventing the project, the Burmese government is allowing potential environmental harm to occur that could violate the rights to life, health, humane treatment, culture, property and residence, among others, of local communities and indigenous peoples. Regarding the behavior of the Burmese military—which provides security services, has forced labor and has allegedly tortured and killed protesters and workers and deprived the latter of certain labor rights—Unocal claims it has no control over such actions. Moreover, Unocal continues to defend its participation in the project despite these consequences by claiming that it has provided much-needed employment to villagers.<sup>239</sup>

Several years ago, Burmese citizens sued the Burmese government and Unocal in US court for human rights abuses associated with the construction of this gas pipeline.<sup>240</sup> Despite setbacks from the federal trial court, the plaintiffs have appealed various procedural rulings to a federal appeals court.

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<sup>238</sup> See South African Human Rights Commission, 4th Annual Report, December 1998 - December 1999, at 50-51, (visited Feb. 16, 2001) <[http://www.sahrc.org.za/annual\\_report\\_99.pdf](http://www.sahrc.org.za/annual_report_99.pdf)>.

<sup>239</sup> See Dave Marash, *Should Unocal be Held Responsible for Burmese Government's Human Rights Violations Against People Working on Natural Gas Pipeline?* Nightline, Mar. 28, 2000 (visited Oct. 2000) <[http://www.abcnews.go.com/onair/nightline/transcripts/nl000328\\_trans\\_1.html](http://www.abcnews.go.com/onair/nightline/transcripts/nl000328_trans_1.html)>; Amnesty International & Sierra Club, "Burma: Violence, Forced Labor and Environmental Destruction," Dec. 1999 <<http://www.amnestyusa.org/justearth/countries/burma.html>>; Earthrights International, *Total Denial*, July 1996.

<sup>240</sup> See *Doe v. Unocal Corp.*, 67 F. Supp. 2d 1140 (C.D. Cal. 1999); *John Doe I v. Unocal*, 963 F. Supp. 880 (C.D. Cal. 1997).

## B. Cambodia

The Taiwanese government's export and the Cambodian government's import of a mercury-laden waste that is toxic to the environment and human health has resulted in various human rights abuses. The export in 1998 of nearly 3,000 tons of the hazardous waste, a product of the Formosa Plastics Group of Taiwan, in violation of Taiwanese law found its way to an open field in Sihanoukville, a southern Cambodian port town. Allegedly, corrupt Cambodian government officials accepted bribes for the import service. Upon its arrival at port, the waste was first unloaded by workers wearing no protective gear, then transported to a field, where impoverished villagers scavenged the waste for the valuable plastic covering. Both port workers and villagers quickly became ill.

Although many Cambodians fled when the toxic nature of the waste became apparent, others staged two days of public demonstrations against the environmentally harmful situation, blaming Cambodian government corruption for the illicit waste dump. Local Cambodian authorities arrested several demonstrators and charged two, Kim Sen and Meas Minear, with inciting riots. This response violated the activists' civil and political rights as confirmed by the court's dismissal of all charges against Sen and Minear and release of all demonstrators in July 1999. Observers report that the prosecution did not offer any evidence to support the charges. Formosa Plastics has since agreed to remove the waste and pay for the medical treatment of any affected by it.<sup>241</sup>

In her 2000 report, the Special Rapporteur on Toxics discussed the situation in Sihanoukville, noting that information provided to her suggests that two local residents died and five others became dizzy as a result of contact with the waste and 50,000 residents fled their homes. The Special Rapporteur has asked the Cambodian Government to "continue to monitor the health condition of the port and site workers and the residents, so as to detect any illness that may appear in the future and might be linked to poisoning by a hazardous substance coming from the wastes," and to be informed of any legal action against the company or settlements based on the dumping of the waste.<sup>242</sup>

## C. China

An environmentally harmful dam construction project in the Yangtze Watershed of China risks violating the rights to housing, property, health and even life, among others, of local communities and will destroy ecosystems of environmental, scientific and aesthetic value to the general population. After decades of debate, the Chinese government approved in 1992 the construction of the world's largest dam project. Without allowing public access to the relevant information or permitting public discussion on the issue, Chinese authorities have assured the

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<sup>241</sup> See Amnesty International & Sierra Club, *Cambodia: Defending Environmental Defenders, A Success Story*, Dec. 1999, (visited Oct. 2000) <<http://www.amnestyusa.org/justearth/countries/cambodia2.html>>; Human Rights Watch, *Toxic Justice: Human Rights, Justice and Toxic Waste in Cambodia*, May 1999 (visited Oct. 2000), <[www.hrw.org/reports/1999/camotox/](http://www.hrw.org/reports/1999/camotox/)>.

<sup>242</sup> *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, Report by the Special Rapporteur on Toxic Waste, U.N. Hum. Rts. Comm., at 16-18, U.N. Doc. E/CN.4/2000/50 (2000).

world that the dam will be environmentally safe and economically beneficial to both the country and to the more than one million inhabitants whose homes the dam will flood.

Environmentalists protest that the dam, in addition to flooding a fertile valley, will block nutrients and migration routes for countless fish species and possibly decimate populations of black finless porpoises and endangered Baiji dolphin. Fiscal critics also note that the power generated by Three Gorges will be more erratic, expensive and polluting than alternative power sources currently in use and is likely to lead the dam project into bankruptcy.

The regional government of the Chongqing Municipality has publicly denounced reports that the resettlement has already created refugees in the Three Gorges Reservoir area. Nevertheless, close to 200,000 people have already been moved from the area, and another half-million will have left their homes by 2003, when the first generator units of the dam will become operational. Moreover, resettlement is behind schedule with only 227,000 farmers resettled since 1992. Officials estimate that 1.07 million farmers will have to move by the time the dam's reservoir is filled in 2009 and dam opponents say that the actual number will be higher. Some of the affected peasants have been moved to poor areas suffering from desertification.<sup>243</sup>

*December 2001 Update: Boycotts and protests in response to the project have occurred throughout 2001.*<sup>244</sup>

#### **D. Indonesia**

Over the last several decades, US-based Freeport McMoRan, Inc. and Freeport-McMoRan Copper & Gold, Inc. have operated the Grasberg Mine, an open pit copper, gold, and silver mine situated in Jayawijaya Mountain, an indigenous cultural site located in Irian Jaya, Indonesia. The mining operation continues to violate, among others, the rights to life, humane treatment, health, environment and culture of the Amungme indigenous people of Irian Jaya as well as the general population of Indonesia. Freeport's activities have led to the pollution of air and water, devastation of ecosystems, destruction of the land, evictions of the Amungme from their homes, violent abuse of the Amungme by Indonesian troops who guard the mines and the disturbance of a sacred site.

In 1996, Tom Beanal, an Amungme tribal leader, filed suit against Freeport in a US federal trial court on behalf of himself and the Amungme. A federal appeals court upheld the trial court's dismissal of the action on grounds of improper pleading.<sup>245</sup> The US Court of

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<sup>243</sup> See Vivien Pik-Kwan Chan, *Land for Gorges Project Illegally Claimed*, South China Morning Post, June 20, 2000; Vivien Pik-Kwan Chan, *Dam Officials Face Scrutiny by Anti-Corruption Taskforce*, South China Morning Post, June 9, 2000; *Chinese Official Says Rumours of Refugees in Three Gorges 'Fabrication*, BBC Monitoring, Mar. 10, 2000; Patricia Adams & Gainne Ryder, *The Three Gorges Dam: A Great Leap Backward for China's Electricity Consumers and Economy*, Dec. 16, 1999 (visited Oct. 2000), <<http://irn.org/programs/threeg/991216.probe.html>>.

<sup>244</sup> See <http://irn.org/programs/threeg/>.

<sup>245</sup> *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 167 (5<sup>th</sup> Cir. 1999).

Appeals for the Fifth Circuit found that the sources cited by the plaintiff—which consisted only of general references to the Rio Declaration and an international law textbook—were not sufficient to support a claim based on international law.<sup>246</sup>

Since the US lawsuit, the Indonesian government has decided to conduct a new environmental audit of Freeport's mining operations, suggesting that one performed in 1999 contained irregularities. The Indonesian Minister of the Environment has even declared that the mining contract between Freeport and the Indonesian government may be revised, pending the results of the audit. However, Indonesian President Abdurrahman Wahid recently met with the newest member of Freeport's board of directors, former US Secretary of State Henry Kissinger, and pledged to honor the current contract. Approximately a week later, Freeport announced that it had set aside US\$ 150 million to rehabilitate 23,000 hectares of the forest that had been decimated by its tailing disposal practices. Such rehabilitation would begin in 2016, after the mine is scheduled to cease operations.<sup>247</sup>

## **VI. Europe**

### **A. Romania**

Since the 1960s, the Romanian state-owned company, Remin, has been using an extremely toxic cyanide solution to leach gold from the soil in the Baia Mare region of northwestern Romania. In 1999, Australia-based Esmeralda Explorations, Ltd. entered into a joint venture with Remin to extract the last remnants of gold from already-processed soils in Baia Mare. Following the conclusion of the joint venture, repeated cyanide spills have threatened human life and surrounding ecosystems and have indicated serious structural problems at the mining site.

On January 30, 2000, the dam holding mine wastes broke after heavy rains, releasing an estimated 100,000 cubic meters of waste water and 95-120 tons of cyanide into the Tisza river system, which winds through Romania and Hungary, and on to the Danube. The cyanide killed millions of fish in the Tisza, including twenty endangered and protected species, as well as numerous birds and mammals dependent on the river. Although orders not to drink water from the Tisza have kept human injuries low, neighbors of the mine report that their children became violently ill for several days after the wave of cyanide spread. They continue to fear for their health and safety. Since the spill, residents in the area of Baia Mara have lost their clean drinking water and their livelihoods, as they can no longer sell their agricultural produce.

Six months after the spill the gold-processing facility was reopened, but local communities had yet to be compensated and the company has not admitted negligence. The United Nations Environmental Program (UNEP) and the UN Office for the Coordination of Humanitarian Affairs (OCHA) conducted an investigation which concluded that the dam was

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<sup>246</sup> See *Beanal*, 197 F.3d at 167.

<sup>247</sup> See *The Real Face of the Kangaroo*, Mar. 2000, (visited Oct. 2000) <<http://www.greenpeace.org/~toxics/reports/aural-romania/pdf>>; *Freeport Indonesia Sets Aside U.S.\$ 150 Mln for Land Reclamation*, Asia Pulse, Mar. 13, 2000; *Freeport Deal Still Open to Change*, The Jakarta Post, Mar. 7, 2000.

poorly designed and constructed; the community was not informed quickly enough about the spill; long-term effects of mining activity on public health from chronic exposure to cyanide and heavy metals “could be very important”; the rivers in the area have been “highly impacted with heavy metals for many years”; and long term impacts of the spill on health and biodiversity have yet to be determined. The UN agencies recommended that the benefits compared to the risks of the mining industry in the area be reexamined and that the community be better educated about the risks.<sup>248</sup>

*December 2001 Update:* In April 2000, the Romanian environmental minister stated publicly that no new risks of river pollution accidents existed.<sup>249</sup> However, three months later, Romania reported that water contaminated with lead and zinc spilled from another mine in the region into a tributary of the already devastatingly polluted Tinza river.<sup>250</sup> Fortunately, that contamination was stopped within hours and another major environmental catastrophe was avoided.<sup>251</sup>

## B. Russia

Recent court activities in St. Petersburg and Vladivostok, Russia demonstrate the importance of safeguarding internationally-recognized criminal due process rights and civil liberties for individuals whose environmental work results in the availability of information to concerned citizens and groups. Such availability of information may mobilize people to fight environmental threats and call for the enforcement of environmental laws.

On December 29, 1999, the St. Petersburg City Court acquitted Aleksandr Nikitin of 1995 charges of espionage and disclosure of state secrets brought because of his research about and co-authorship of a chapter for an environmental report on Russian nuclear submarine accidents. The resulting material highlighted a threat to the environment and human health that the Russian government may have failed to adequately address. In March 2000, the Supreme Court of the Russian Federation upheld the trial court’s acquittal. No longer under house arrest but denied permission to travel abroad since the December decision, Nikitin declared that he intended to continue fighting against unsafe nuclear waste practices in Russia which harm both the environment and human health.<sup>252</sup>

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<sup>248</sup> See George Monbiot, *Romania’s Dead Zone*, Guardian Weekly, May 25-31, 2000; Mineral Policy Institute Press Release, June 2000; *Cyanide Spill Mine Reopens in Romania*, Env’t News Service, June 16, 2000. The UNEP assessment report is available at <<http://www.unep.ch/roe/baiamare.pdf>>. UNEP posts updated information about the area at <<http://www.natural-resources.org/environment/Baiamare>>.

<sup>249</sup> See *Romania says now new risk of river pollution*, PLANET ARK, April 14, 2000, <http://www.planetark.org/dailynewsstory.cfm?newsid=6373>.

<sup>250</sup> See *Romania reports minor river pollution near Hungary*, PLANET ARK, July 26, 2000, <http://www.planetark.org/dailynewsstory.cfm?newsid=7601>.

<sup>251</sup> *Id.*

<sup>252</sup> See Bellona Foundation, *Supreme Victory!* Apr. 17, 2000 (visited Feb. 16, 2001) <<http://www.bellona.no/imaker?id=16538&sub=1>>.

In Vladivostok, a similar case proceeded against Grigory Pasko, a navy captain and reporter for the Russian Pacific Fleet's newspaper. During his years as a reporter, Pasko demonstrated how Russia's decaying nuclear submarine fleet threatened both the environment and the health of communities living near illicit nuclear waste sites. Alleging that Pasko's work constituted a threat to national security, military prosecutors tried Pasko on charges similar to those brought against Nikitin. In July 1999, the military court in Vladivostok finally released Pasko, finding that the prosecution lacked evidence to support the espionage charges against him and had engaged in irregular practices during the investigation and gathering of evidence. The court, however, declined to acquit Pasko and instead declared him guilty of "abuse of office." The court sentenced Pasko to three years in prison, then relieved him of the obligation to serve the sentence under the provisions of a recently adopted amnesty law for prisoners and detainees. Pasko's supporters continue to demand a full acquittal.<sup>253</sup>

The Special Rapporteur on Toxics mentioned the Pasko case in her report to the fifty-sixth session of the Commission on Human Rights. The UN Commission on Human Rights Working Group on Arbitrary Detention brought the case to the attention of the Special Rapporteur.<sup>254</sup>

### C. Turkey

The Ilisu dam, a proposed hydro-electric power project on the Tigris River that is part of the larger South East Anatolia Project, tragically threatens the environment, the human rights to health, water, residence, property, culture, among other rights, and the current political stability in the region. A consortium of foreign companies financed through the Union Bank of Switzerland with the Export Credit Agencies of Austria, Germany, Italy, Japan, Portugal, Sweden, Switzerland, the United Kingdom, and, potentially, the United States plans to build the Project at an estimated cost of two billion US dollars, making it the largest hydro-electric project in Turkey. The companies intend to situate the dam forty miles from Turkey's border with Syria and Iraq where it is expected to flood 15 towns and 52 villages, force the resettlement of up to 25,000 Kurdish people and potentially incite water wars with countries downstream as the dam reduces the flow of the Tigris. Moreover, the dam will impact already poor water quality on the river by increasing the flow of local waste deposits from nearby cities along the river. Sadder still, the flooding will destroy the ancient city of Hasankeyf, which has great cultural, religious and archaeological significance, particularly to the Kurds.

Local residents have not been included in the decision-making. No resettlement plan has been approved and compensation procedures are inadequate. There is no evidence that an environmental impact assessment was ever prepared. Moreover, in July 2000, the International

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<sup>253</sup> See Amnesty International, *All Charges Should be Dropped Against Freed Prisoner of Conscience Grigory Pasko*, Jul. 20, 1999, (visited Feb. 16, 2001) <<http://www.amnesty.org/news/1999/44602299.htm>>.

<sup>254</sup> See *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, Report by the Special Rapporteur on Toxic Waste, U.N. Hum. Rts. Comm., at 14-15, U.N. Doc. E/CN.4/2000/50 (2000).

Development Committee of the Turkish House of Commons issued a report critical of the project and of the United Kingdom's export credit of 200 million US dollars to build the dam.<sup>255</sup>

*December 2001 Update: NGOs, particularly in Europe, continue to campaign against the project.<sup>256</sup> Such efforts most likely contributed to the November 13, 2001, withdrawal of one of the lead contractors, Balfour Beatty.<sup>257</sup> Despite the withdrawal, the project continues.*

## VII. Island Nations

### A. Australia

One of Australia's most stunning national parks and the rights of its indigenous inhabitants are in jeopardy. Beneath Kakadu National Park lies one of the world's largest uranium deposits, known as the Jabiluka uranium mine. Located in Australia's Northern Territory, the mine lies within the boundaries of Kakadu National Park, designated a World Heritage Site in recognition of its outstanding archeological sites and the integrity of its diverse ecosystem, among other features. The Australian government has granted mining concessions to Energy Resources of Australia despite a court ruling that the lands belong to the Mirrar people, the traditional owners of the land who hold it sacred. In July 1999, the World Heritage Committee declared that Kakadu National Park would not be listed as a World Heritage Site in Danger, despite scientific, cultural and technical reports that indicated a serious threat to the park and its inhabitants.<sup>258</sup>

### B. Papua New Guinea

In the rainforests of Papua New Guinea, an Australian mining company owns and operates the Tolukuma gold mine. The company, Dome Resources, uses cyanide — flown to the mine in concentrated pellet form — to separate the gold from raw ore. During a downpour on March 21, 2000, one ton of sodium cyanide pellets fell out of a helicopter that had been transporting cyanide to the mine. Although Dome claims to have recovered between 70 and 95 percent of the pellets from the impact site, up to 150 kilograms of cyanide likely dissolved in heavy rains, poisoning surrounding soil and watercourses. Although the government's Disaster

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<sup>255</sup> See *Ilisu Dam Scandal: MPs Back Campaigners*, Friends of the Earth Press Release, July 12, 2000, (visited Oct. 2000) <<http://www.foe.co.uk/pubsinfo/team/pressrel/2000/20000712105750.html>>; *The Ilisu Dam Turkey: Resettlement and Human Rights, Summary of Proposed Presentation to World Commission on Dams*, Kerim Yildiz, Kurdish Human Rights Project, December 1999, (visited Oct. 2000) <<http://www.eca-watch.org/resettlementandhr.html>> See generally *Ilisu Dam Campaign* (visited March 22, 2001) <<http://www.ilisu.org.uk>>.

<sup>256</sup> E.g. *Ilisu Dam Campaign* (<http://www.ilisu.org.uk>) and *People and Planet* (<http://www.peopleandplanet.org>).

<sup>257</sup> See Press Releases, *Ilisu Dam Campaign* and Friends of the Earth, <http://www.ilisu.org.uk/news23.html>.

<sup>258</sup> See *Jabiluka Update: Senator Hill Goes to Paris, July-Aug 1999* (visited Oct. 2000) <<http://www.aucwa.iinet.net.au/news/jul-aug1999/index.html>>; *Response by the Government of Australia to the UNESCO World Heritage Committee regarding Kakadu National Park - April 1999*, (visited Oct. 2000) <<http://www.biodiversity.environment.gov.au/kakadu/jabiluka/summary.html>>.

and Emergency Services agency immediately issued a warning to people in nearby communities not to drink water from natural sources, the agency feared that the warning might not have reached remote communities. Local residents downstream from the mine had been concerned about water contamination caused by the mine even prior to the accident. A pre-spill investigation conducted by Australia-based Mineral Policy Institute indicated that the Dome mine was discharging toxic waste with levels of metals far exceeding Australian standards. For the communities surrounding the mine that depend on the forest ecosystem for subsistence, the mine, as well as mine-related accidents such as the cyanide spill, poses a serious threat to their rights to life and health.<sup>259</sup>

## VIII. North America

### A. Mexico

Terrible human rights violations have resulted from the Mexican government's concessions to multinational corporations to log the Sierra de Petatlán in Guerrero in southwestern Mexico. On May 2, 1999, Mexican authorities took Rodolfo Montiel Flores and Teodoro Cabrera Garcia, two Guerrerons who had organized opposition to the environmentally harmful logging activity, at gunpoint to a military camp, where they were tortured, threatened and forced to confess to charges that they were drug-trafficking guerrillas. The former Mexican Attorney General's review of the arrest and indictment as a potential human rights violation, including arbitrary detention and torture, yielded a finding that no violations had occurred even though the country's National Commission on Human Rights has reached the exact opposite conclusion in July 2000. Regardless, in August 2000, the Fifth District Judge of Iguala, Guerrero convicted and sentenced Montiel and Cabrera.

More recent developments offer a glimmer of hope. In February 2001, President Vicente Fox Quesada ordered his Secretary of Interior, Santiago Creel Miranda, to intervene in favor of Montiel and Cabrera and commented generally that necessary measures would be taken to prevent injustice.<sup>260</sup>

In addition to Montiel and Cabrera, others have faced human rights abuses since 1995 because of the environmentally unsound logging of old growth forests and the destruction of ecosystems that the Guerreron and federal governments allow to take place. The activities rob local communities of their agricultural livelihood and the general Mexican population of their forests. Moreover, farmers who organize efforts in opposition to the logging meet constantly with violent government responses. During the summer of 1995, federal police officers stopped farmers who were traveling to the Guerreron capital for a demonstration and proceeded to open fire, killing seventeen. Despite threats like these, however, the campesinos have continued to criticize the logging contracts and have achieved some success.<sup>261</sup>

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<sup>259</sup> See *Cyanide Spilled in Papua New Guinea*, Env't News Service, Mar. 24, 2000.

<sup>260</sup> See Juan Manuel Venegas and Victor Ballinas, *President Orders Intervention in Favor of Montiel and Cabrera*, La Jornada, Feb. 7, 2001 (Magdalena Preciado and Claudia Boyd-Barrett trans.)

<sup>261</sup> See Rodolfo Montiel Flores (visited Oct. 2000) <<http://www.goldmanprize.org/press/press.html>>; Amnesty International & Sierra Club, *Mexico: Environmental Defenders Arrested: Urgent Action Needed*, Dec. 1999, (visited

*December 2001 Update: On November 9, 2001, Mexican President Vicente Fox announced the release of Rodolfo Montiel Flores and Teodor Cabrera Garcia.<sup>262</sup> Fox ordered the release less than a month after the October 19th murder of the defendants' lawyer, human rights champion Digna Ochoa.<sup>263</sup> Although the terms of the release are not yet fully known, Montiel and Cabrera are free and safe.<sup>264</sup> Meanwhile, Sierra Club and Amnesty International, among others, continue to call for a full investigation of the Mexican government's actions.<sup>265</sup>*

## **B. United States**

Located near an industrial corridor known as "Cancer Alley," the predominantly African-American community of Mossville, Louisiana lives "across the road from a large vinyl chloride monomer plant." The Calcasieu Parish in which Mossville is situated "contains a large number of chemical manufacturing plants that produce chemicals such as chlorinated hydrocarbon solvents, vinyl chloride monomer, and petroleum-based chemicals."<sup>266</sup> The failure of the US Environmental Protection Agency (EPA), the US Department of Health and Human Services, the Louisiana Department of Environmental Quality and the Louisiana Department of Health and Human Services to effectively remedy this environmental disaster has resulted in violations of various human rights of Mossville residents, including the rights to a clean and healthy environment, health, life and equal protection, the latter of which gives rise to environmental racism.

A 1999 exposure investigation of Mossville residents conducted by the Agency for Toxic Substances and Disease Registry (ATSDR), an agency of the US Department of Health and Human Services, found, *inter alia*, that "[b]lood dioxin levels were elevated in residents of Mossville who participated in the [Exposure Investigation]."<sup>267</sup> However, the report also found that "[d]ioxin TEQ concentrations in four surface soil sample and two chicken eggs were not at

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Oct. 2000) <<http://www.amnestyusa.org/justearth/countries/mexico2.htm>>; AIUSA Just Earth Newsletter, September 2000, (visited Oct. 2000) <[http://www.amnestyusa.org/justearth/newsletter/vol\\_2/caseupdate.html](http://www.amnestyusa.org/justearth/newsletter/vol_2/caseupdate.html)>.

<sup>262</sup> Press Release, Sierra Club, Mexican Environmentalists Released!, <http://www.sierraclub.org/human-rights/mexico>.

<sup>263</sup> Press Release, Sierra Club, Digna Ochoa, Human Rights Champion, Murdered, <http://www.sierraclub.org/human-rights/Mexico/ochoa.asp>.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> See <[http://www.atsdr.cdc.gov/HAC/PHA/calcas/cal\\_p1.html](http://www.atsdr.cdc.gov/HAC/PHA/calcas/cal_p1.html)> at 1, 7-8.

<sup>267</sup> *Health Consultation (Exposure Investigation Report): Calcasieu Estuary, Lake Charles, Calcasieu Parish, Louisiana*, CERCLIS No. LA0002368173 (November 19, 1999), (visited Feb. 16, 2001) <[http://www.atsdr.cdc.gov/HAC/PHA/calcas/cal\\_p3.html](http://www.atsdr.cdc.gov/HAC/PHA/calcas/cal_p3.html)> (ATSDR Report) at 11.

levels of health concern,<sup>268</sup> which may explain why EPA has not yet begun its follow-up to ATSDR's recommendations in the report. Those recommendations included evaluating "potential pathways for human exposure to dioxin from environmental . . . sources" and reducing "human exposures to dioxin from significant exposure pathways that are identified."<sup>269</sup>

The EPA is taking an unreasonable amount of time to complete research on the point sources for dioxin.<sup>270</sup> Were the Cancer Alley companies found to be point sources, they would be required to report on their estimated dioxin emissions. Furthermore, the EPA has delayed its promulgation of new technology control standards under the US Clean Air Act against these industries that, if properly enforced, could significantly combat the dioxin problem.<sup>271</sup>

## IX. Central and South America

### A. Chile

The Ralco dam, the largest of six hydroelectric dams that Endesa Chile once intended to build on Chile's Bio-Bio River, could harm the environment and, in turn, human rights. The upper Bio-Bio River, site of the proposed Ralco dam, is home to the Pehuenche group of the Mapuche Indians, the last such group to continue their traditional lifestyle. The dam would flood over 70 kilometers of the river valley, likely forcing the relocation of the Pehuenche and inundating the thriving forest and its diverse wildlife. The combination of these results could violate the Pehuenche's rights to life, health, culture and residence, among others, and adversely affect the right to a clean and healthy environment of the general population.

Fortunately, Endesa Chile has decided to suspend the project. The power company explained that it did not have final permits for the generator and transmission lines but did not rule out a resumption of the project in the future. This announcement appears to have been motivated by the Chilean Comptroller General's rejection of two Economy Ministry decrees granting Endesa concessions to proceed with dam and generator construction. In response to Endesa's announcement, Chile's new president stated that the country's need for economic development does not justify disregarding the rights of indigenous people.<sup>272</sup>

*December 2001 Update: Although Chile's National Environment Commission condemned Endesa's Ralco dam project as early as 1998, the retraction of that condemnation following the firing of the Commission's director in early 2001 has resulted in an expedited schedule to finish*

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<sup>268</sup> *Id.*

<sup>269</sup> See ATSDR Report, <[http://www.atsdr.cdc.gov/HAC/PHA/calcas/cal\\_p3.html](http://www.atsdr.cdc.gov/HAC/PHA/calcas/cal_p3.html)> at 12.

<sup>270</sup> See generally <<http://www.epa.gov/tri/>>; <[http://www.epa.gov/tri/draft\\_dioxins.pdf](http://www.epa.gov/tri/draft_dioxins.pdf)>.

<sup>271</sup> See <<http://www.epa.gov/ttn/uatw/mactupd.html>>.

<sup>272</sup> See *Endesa Halts Ralco Power Project*, CHIP News, Feb. 20, 2000, (visited Feb. 16, 2001) <<http://www.irn.org/programs/biobio/000221.stop.html>>; International River Network, *Bio-Bio Currents* (visited Feb. 16, 2001) <<http://www.irn.org/programs/biobio/>>.

the project.<sup>273</sup> In fact, since 1999, Endesa had managed to negotiate payments in exchange for land with 86 indigenous families.<sup>274</sup> However, some of these families are no longer pleased with the agreement.<sup>275</sup> Several other families resisting the buy-out filed suit against Endesa charging that the deals violate a 1993 law forbidding payments to indigenous landowners for their land if the indigenous landowners have not initiated the sale.<sup>276</sup> In addition, these resisting families and others have periodically filed cases that temporarily halt the construction until an appeals court reverses the lower court.<sup>277</sup>

## B. Colombia

The U'wa people have lived in Samore, Colombia in the northeastern part of the country for thousands of years, migrating between cloudforests and lush valleys. During the past decade, the U'wa's committed struggle against oil exploration in their ancestral territory has drawn international attention. US-based Occidental Petroleum believes the area may hold as much as 1.4 billion barrels of oil and has sought permission to drill an exploratory well. The U'wa have explained that they have a spiritual connection to their land that does not permit the extraction of oil and that mandates that they preserve the environment there.

Last year, the Colombian government agreed to expand the Unified U'wa Reservation from 150,000 acres to 500,000 acres. Less than a month later, ignoring the U'wa's clear statement that the expansion would not legitimize drilling elsewhere in their ancestral territory, the Ministry of the Environment granted Occidental a license to drill 500 meters from the boundary of the reservation, well within U'wa ancestral territory (even after the expansion, the reservation incorporates only a fraction of the ancestral territory). Development of the well and related access roads will wreak havoc on the territory that the U'wa consider sacred.

Since the fall of 1999, Gibraltar 1 has been a focal point for protest activities and clashes between the U'wa and Colombian soldiers, who have been stationed there to protect the drilling project. In February 2000, 150 riot police used tear gas to disburse hundreds of demonstrators from the area. The U'wa reported that three children drowned when their parents were forced into a nearby river to escape the tear gas. The following day, the U'wa submitted a petition for

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<sup>273</sup> See Sophie Arie, *The Pehuenches' Last Stand*, WORLD PRESS REVIEW ONLINE, June 21, 2001, <http://www.worldpress.org/0801chile.htm>.

<sup>274</sup> *Id.*

<sup>275</sup> See *Relocated Pehuenches Denounce Broken Promises*, BIO BIO UPDATE (International Rivers Network, Berkeley, CA), <http://www.irn.org/programs/biobio/bbupdate20.html>

<sup>276</sup> See Sophie Arie, *The Pehuenches' Last Stand*, WORLD PRESS REVIEW ONLINE, June 21, 2001, <http://www.worldpress.org/0801chile.htm>.

<sup>277</sup> See *Court Rulings Soon*, BIO BIO UPDATE (International Rivers Network, Berkeley, CA), <http://www.irn.org/programs/biobio/bbupdate20.html>.

precautionary measures to the Inter-American Commission on Human Rights. In March 2000, a Colombian court issued a temporary injunction suspending drilling because of concern that the project would jeopardize the U'wa's fundamental rights, including their right to life.<sup>278</sup> In May, an appellate court dissolved the injunction.<sup>279</sup>

On October 1, 2000, Occidental petroleum moved drilling machinery into the U'wa territory and lines of thousands of military personnel protected the equipment from Saravena to Cedeno while blocking the road impeding the mobilization of the people in the region.<sup>280</sup>

*December 2001 Update: Less than a year after Occidental moved drilling machinery into the U'wa territory, the company failed to find any oil at the Gibraltar well. Occidental currently is deciding whether to resume drilling in mid-2002, if at all.*<sup>281</sup>

### C. Panama

The United States' transfer of control of military bases to Panamanian government at the end of 1999 pursuant to the terms of the 1977 Panama Canal treaty<sup>282</sup> has resulted in harm to the environment and human health. The US military has left the bases in a state of extreme environmental degradation, including tens of thousands of acres littered with military garbage. Since the transfer, Panama's president has repeatedly declared that the United States should clean up the unexploded munitions, chronically leaking underground fuel tanks, and the toxic residue of chemical weapons testing. Yet, the Panamanian government has taken little action so far to pursue this goal.<sup>283</sup>

In her report to the fifty-sixth session of the UN Commission on Human Rights, the Special Rapporteur on Toxics discussed the failure of the US army to clear military waste including mines, toxic gas and arms residue which could affect the health of area residents. The

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<sup>278</sup> Titu Augusto Gaitan and U'wa People v. Ministry of the Environment, Protective Action 20000009 (11<sup>th</sup> Cir. Penal Ct., March 29, 2000) (decision of Judge Elsa Riveros de Jimenez). See also *Update 1-Colombia Oil Site Ruled 'Off-limits' to Oxy*, Reuters, Mar. 31, 2000, (visited Jan. 2001) <<http://biz.yahoo.com/rf/000331/7s.html>>; Steven Dudley, *In Colombia, a Dispute Fueled by Oil*, Washington Post, Feb. 20, 2000 (visited Jan. 2001) <[http://www.ran.org/ran\\_campaigns/beyond\\_oil/news/wpost\\_000220.html](http://www.ran.org/ran_campaigns/beyond_oil/news/wpost_000220.html)>; Rainforest Action Network, *U'wa Campaign*, (visited February 2001) <[http://www.ran.org/ran\\_campaigns/beyond\\_oil/oxy/index.html](http://www.ran.org/ran_campaigns/beyond_oil/oxy/index.html)>.

<sup>279</sup> Titu Augusto Gaitan and U'wa People v. Ministry of the Environment, Superior Court of the Judicial District of Santa Fe de Bogota (May 15, 2000) (decision of Judge Marco Elias Arevalo Rozo).

<sup>280</sup> See Communiqué, *Censat Agua Viva*, Oct. 1, 2000; Rainforest Action Network, U'wa updates, Oct. 12, 2000; *Colombia Support Network*, Drillbits & Tailings, Oct. 20, 2000, (visited March 29, 2001) <<http://www.moles.org>>.

<sup>281</sup> See *Occidental Finds No Oil at Colombian Siri Well*, DRILLBITS & TAILINGS (Project Underground, Berkeley, CA), Aug. 3, 2001, [http://www.moles.org/ProjectUnderground/drillbits/6\\_06/3.html](http://www.moles.org/ProjectUnderground/drillbits/6_06/3.html).

<sup>282</sup> Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Pan.-U.S., Sept. 7, 1977, 3 UST 1, TIAS 10029, 1161 UNTS 177.

<sup>283</sup> See John Lindsay-Poland, *Military's Explosive Legacy a Low Priority for Moscoso Government*, *Fellowship of Reconciliation Newsletter*, Mar. 2000.

Panamanian Government believes that the United States has not complied with its obligations under Article IV(4) of the Panama Canal Treaty “to take all measures to ensure insofar as may be practicable that every hazard to human life, health and safety is removed from any defense site or military area of coordination any portion thereof.” In response to comments by the governments of both Panama and the US, the Special Rapporteur found allegations of ordinance residues and toxic waste remaining in extensive areas to be corroborated and that there is “a real hazard to human life and health.” She supports continued monitoring of the situation.<sup>284</sup>

#### D. Peru

Owned by US-based Newmont Mining Corporation, Compania de Minas Buenaventura of Peru, and the International Finance Corporation (IFC) of the World Bank Group, the Yanacocha Gold Mine located in the Northern Peruvian Andes, 375 miles north of Lima, is causing environmental harm to the surrounding area and violating the rights to life, health, property and sustenance, among others, of the nearby residents. As the largest (and most lucrative) gold mine in Latin America, it produces mine waste that has contaminated the water that flows downhill from the mine. Water acidity exceeds the level considered drinkable, fecal coliforms and copper are significantly above World Health Organization standards, and residents report that people and animals have become ill after drinking the water. Fish and frogs, which are a local source of food, have vanished from the rivers downstream from the mine. In addition, the amount of water in streams and canals that flow from the mine has decreased, causing lower agricultural yields and increasing poverty.

Residents have reportedly been given insufficient and misleading information about the impact of the mine and the real consequences of selling their land. The adequacy of emergency response measures was questioned in June 2000 when a truck from the mine spilled mercury while traveling through a small town, poisoning as many as 70 people, including children. Locals were reportedly not informed of the danger for several days after the accident. In addition to the local residents’ receipt of misinformation, the mine has caused social dislocation to these communities, breaking up families and support systems when men leave the area to find work. Indigenous rights abuses have also resulted because the IFC failed to include the local residents’ indigenous peoples development plan in their environmental impact study on grounds that the local residents are not indigenous despite the Peruvian Constitution’s recognition.<sup>285</sup>

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<sup>284</sup> See *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, Report by the Special Rapporteur on Toxic Waste, U.N. Hum. Rts. Comm., at 18-22, U.N. Doc. E/CN.4/2000/50 (2000).

<sup>285</sup> See *Mercury Spill Poisons Villagers Near the Yanacocha Mine in Peru*, Drillbits & Tailings, June 30, 2000, (visited Oct. 2000) <[http://www.moles.org/ProjectUnderground/drillbits/5\\_11/1.html](http://www.moles.org/ProjectUnderground/drillbits/5_11/1.html)>; Shanna Langdon, *Peru’s Yanacocha Gold Mine: The IFC’s Midas Touch?*, September 2000, (visited Oct. 2000) <<http://www.ciel.org/ifccaseperu.html>>.

## APPENDIX

### CONSTITUTIONAL PROVISIONS RELATING TO ENVIRONMENTAL PROTECTION

#### **1. The Republic of Albania**

The Constitution of 1998 states that “everyone has the right to be informed for the status of the environment and its protection.” Part Two, Chapter IV, Article 56. It also states that “the State, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with...a healthy and ecologically adequate environment for the present and future generations;” and “rational exploration of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development.” Part Two, Chapter V, Article 59 (1e-1f).

#### **2. The Republic of Algeria**

The revised Constitution states that “every citizen has the duty to protect public property and the interests of the national collectivity and to respect the property of others.” Title I, Chapter V, Article 66. Public property “is an asset of the national collectivity” and “encompasses the subsoil, the mines and quarries, the sources of natural energy, the mineral, natural and living resources of the different zones, the natural maritime zone, the waters and the forests.” *Id.*, Chapter III, Article 17.

#### **3. The Principality of Andorra**

The 1993 Constitution provides that the “State has the task of ensuring the rational use of the soil and of all the natural resources, so as to guarantee a befitting quality of life for all and, for the sake of the coming generations, to restore and maintain a reasonable ecological balance in the atmosphere, water and land, as well as to protect the autochthonous flora and fauna.” Title II, Chapter V, Article 31.

#### **4. People’s Republic of Angola**

The 1992 Constitution provides that “all citizens shall have the right to live in a healthy and unpolluted environment.” Part II, Article 24(1). The Constitution directs the State to “take the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance.” *Id.*, Article 24(2).

The Constitution further provides that “acts that damage or directly or indirectly jeopardize conservation of the environment shall be punishable by law.” *Id.*, Article 24(3).

#### **5. Argentina**

The 1994 Constitution provides that “all residents enjoy the right to a healthy, balanced environment which is fit for human development and by which productive activities satisfy current necessities without compromising those of future generations.” Part I, Chapter 2, Article

41. The Constitution directs the State to “provide for protecting this right, for utilizing natural resources rationally, for preserving the natural and cultural patrimony and that of biological diversity, and for providing environmental information and education.” *Id.*

The Constitution establishes that “as a first priority, environmental damage shall bring about the obligation to repair it.” *Id.* The Constitution also makes it the duty of residents “to preserve the environment.” *Id.*

## **6. The Republic of Armenia**

The 1995 Constitution provides that the “State shall ensure the protection and reproduction of the environment.” Chapter 1, Article 10. The Constitution further provides that the owner of property may not exercise “the right to property . . . so as to cause damage to the environment.” *Id.*, Article 8.

## **7. The Azerbaijan Republic**

The 1995 Constitution provides that “everyone has the right to live in a healthy environment.” Part II, Chapter III, Article 39(I). The Constitution also establishes the right “to get compensation for damage rendered . . . due to the violations of ecological rights.” *Id.*, Article 39(II). The Constitution further provides that “everyone has the right to collect information on the environmental situation.” *Id.*

## **8. The State of Bahrain**

The 1973 Constitution provides that the State has the duty to “ensure [the] preservation” of all natural resources. Part II, Article 11.

## **9. The Republic of Belarus**

The 1996 Constitution provides that “everyone is entitled to a wholesome environment.” Section II, Article 46. The Constitution makes it the duty of the State to “preserve and restore the environment.” *Id.* The Constitution also establishes the right to “compensation for loss or damage caused by the violation of [the right to a wholesome environment].” *Id.* The Constitution prohibits the use of property in a manner “harmful to the environment.” *Id.*, Article 44. The Constitution further provides the right of the citizens to “receive, store and disseminate complete reliable and timely information . . . on the state of the environment.” *Id.*, Article 34.

## **10. Belgium**

The 1994 Constitution provides that “everyone has the right to lead a life worthy of human dignity”; this right expressly includes “the right to the protection of a sound environment.” Title II, Article 23(4).

### **11. The Republic of Benin**

The 1990 Constitution provides that “everyone person has the right to a healthy, satisfying and lasting environment.” Title II, Article 27. The Constitution makes it the duty of the State to “watch over the protection of the environment.” *Id.* The Constitution also makes it the duty of every person to “defend the [environment].” *Id.*

The African Charter on Human and Peoples’ Rights, annexed to the Constitution of the Republic of Benin, provides that “all peoples have the right to a general satisfactory environment favourable to their development.” Part I, Chapter I, Article 24.

### **12. The Republic of Bolivia**

The amended 1967 Constitution makes it the duty of the State to “regulate the system of exploitation of renewable natural resources, with provisions for their conservation and increment.” Part 3, Title 3, Article 170. The Constitution also makes it the duty of “every inhabitant of the national territory to respect and protect” assets in the patrimony of the nation. *Id.*, Title 1, Article 137.

### **13. The Federative Republic of Brazil**

The 1988 Constitution provides that “everyone has the right to an ecologically balanced environment, which is a public good for the people’s use and is essential for a healthy life.” Title VII, Chapter VI, Article 225. “The Government and the community have a duty to defend and preserve the environment for future and future generations.” *Id.* In particular, the Government has the responsibility to:

- I. preserve and restore essential ecological processes and provide for ecological management of species and ecosystems;
- II. preserve the diversity and integrity of the Country’s genetic patrimony and to supervise entities dedicated to research and manipulation of genetic material;
- III. define, in all units of the Federation, territorial spaces and their components that are to be specially protected, with any change or and suppression permitted only through law, prohibiting any use that compromises the integrity of the characteristics that justify their protection;
- IV. require, as provided by law, a prior environmental impact study, which shall be made public, for installation of works or activities that may cause significant degradation of the environment;
- V. control production, commercialization and employment of techniques, methods and substances that carry a risk to life, the quality of life and the environment;
- VI. promote environmental education at all levels of teaching and public awareness of the need to preserve the environment;
- VII. protect the fauna and the flora, prohibiting, as provided by law, all practices that jeopardize their ecological functions, cause extinction of species or subject animals to cruelty.

*Id.*, Paragraph 1.

The Constitution provides that “the Brazilian Amazon Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone . . . shall be utilized, as provided by law, under conditions assuring preservation of the environment.” *Id.*, Paragraph 4. The Constitution also provides that “conduct and activities considered harmful to the environment shall subject the infractors, be they individuals or legal entities, to criminal and administrative sanctions.” *Id.*, Paragraph 3. The Constitution also establishes the general obligation of such infractors to “repair the damages caused” to the environment. *Id.* The Constitution also requires “those who exploit mineral resources . . . to restore any environmental degradation.” *Id.*, Paragraph 2. The Constitution makes inalienable “vacant governmental lands or lands seized by the State through discriminatory actions, which are necessary to protect natural ecosystems.” *Id.*, Paragraph 5.

#### **14. The Republic of Bulgaria**

The 1991 Constitution provides that “citizens have the right to a healthy and favorable environment.” Chapter 2, Article 55. The Constitution makes it the duty of the State to “ensure the protection and conservation of the environment, the sustenance of animals and the maintenance of their diversity, and the sensible utilization of the country’s natural wealth and resources.” Chapter 1, Article 15. The Constitution further provides that citizens have an “obligation to protect the environment.” Chapter 2, Article 55.

#### **15. Burkina Faso**

The amended 1991 Constitution recognizes “the right to a healthy environment.” Title I, Chapter IV, Article 29. The Constitution also makes “the protection, the defense and the promotion of the environment” a “duty for all.” *Id.* The Constitution also establishes the right of every citizen “to initiate an action or to join a collective action under the form of a petition against the acts . . . affecting the environment.” *Id.*, Article 30.

#### **16. The Republic of Burundi**

The 1998 Constitution Act of Transition states that “public property is sacred and inviolable. Every person has the duty to respect it scrupulously and protect it.” Title III, Part 2, Article 49.

#### **17. The Kingdom of Cambodia**

The 1993 Constitution provides that the “State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecologic system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestial products, wildlife, fish and aquatic resources.” Chapter V, Article 59.

## **18. The Republic of Cameroon**

The amended 1972 Constitution declares that “every person shall have a right to a healthy environment,” that the “State shall ensure the protection and improvement of the environment,” and that the “protection of the environment shall be the duty of every citizen.” Preamble (Part XII, Article 65 provides that the “Preamble shall be part and parcel of this Constitution”).

## **19. The Republic of Cape Verde**

The 1992 Constitution provides that “everyone shall have the right to a healthy, ecologically balanced environment.” Part II, Title III, Article 70(1). The Constitution makes it the duty of the State to “protect the land, nature, natural resources and environment.” Part I, Title I, Article 7(j). The Constitution directs “the state and municipalities, with the cooperation of associations which defends the environment,” to “adopt policies to defend and preserve the environment.” Part II, Title III, Article 70(2). The Constitution places an affirmative duty on the State to “stimulate and support the creation of associations to defend the environment and protect natural resources.” *Id.*, Article 70(3). The Constitution also makes it a duty of everyone to “defend and conserve the environment.” *Id.*, Article 70(1).

## **20. The Republic of Chad**

The 1996 Constitution provides that “every person has the right to a healthy environment.” Title II, Chapter I, Article 47. The Constitution directs “the State and the decentralized Territorial Collectivities” to “see to the protection of the environment.” *Id.*, Article 48. The Constitution also makes it the duty of every citizen to respect and protect the environment. *Id.*, Chapter II, Article 52.

## **21. The Chechen Republic (Chechnya)**

The 1992 Constitution provides that “the citizens of Chechen Republic have the right to a favorable environment.” Section 2, Article 34(1). The Constitution makes it the duty of the State to “take necessary measures for protection of the land, its depths and environment in interests of protection of health of the people and maintenance of normal conditions of their life.” Section 1, Article 11. The Constitution further establishes the right to compensation for “damage caused to citizen, his health or property by wrongful action in the area of nature utilization.” Section 2, Article 34(2).

## **22. The Republic of Chile**

The amended 1980 Constitution provides for the “right to live in an environment free from contamination.” Chapter III, Article 19(8). The Constitution makes it the duty of the State to “watch over the protection of this right and the preservation of nature.” *Id.* The Constitution authorizes the State to enact laws which “establish specific restrictions on the exercise of certain rights or freedoms in order to protect the environment.” *Id.* The Constitution, in particular, authorizes the State to “establish the manner to acquire property and to use, enjoy and dispose of it” for the purpose of “the conservation of the environmental patrimony.” *Id.*, Article 19(24).

The Constitution also establishes the right to appeal to the courts for protection “when the right to live in a contamination-free atmosphere has been affected by an arbitrary or unlawful action imputable to an authority or a specific person.” *Id.*, Article 20. The Constitution requires the court to “immediately take the steps that it deems necessary to . . . ensure due protection to the person affected.” *Id.*

### **23. The People’s Republic of China**

The 1982 Constitution makes it the duty of the State to “ensure the rational use of natural resources and protect rare animals and plants.” Chapter 1, Article 9. The Constitution also provides that the “State protects and improves the living environment and the ecological environment, and prevents and remedies pollution and other public hazards.” *Id.*, Article 26. In addition, the Constitution states that “the State organizes and encourages afforestation and the protection of forests.” *Id.* The Constitution also prohibits the “appropriation or damage of natural resources by any organization or individual by whatever means.” *Id.*, Article 9.

### **24. Colombia**

The 1991 Constitution provides that “every individual has the right to enjoy a healthy environment.” Title II, Chapter 3, Article 79. The Constitution requires the law to “guarantee the community’s participation in the decisions that may affect [the environment].” *Id.* The Constitution makes it the duty of the State “to protect the diversity and integrity of the environment, to conserve the areas of special ecological importance, and to foster education for the achievement of these ends.” *Id.* The Constitution directs the State “to plan the handling and use of natural resources in order to guarantee their sustainable development, conservation, restoration, or replacement,” *id.*, Article 80, and additionally, “to caution and control the factors of environmental deterioration, impose legal sanctions, and demand the repair of any damage caused.” *Id.* The Constitution also directs the State to “cooperate with other nations in the protection of the ecosystems located in the border areas.” *Id.*

The Constitution makes it a duty of every individual “to protect the country’s cultural and natural resources and to keep watch that a healthy environment is being preserved.” *Id.*, Chapter 5, Article 95.

### **25. The Federal Islamic Republic of the Comoros**

The 1996 Constitution proclaims “the right of all Comorans to health.” Preamble.

### **26. The Republic of the Congo**

The 1992 Constitution provides that “each citizen shall have the right to a healthy, satisfactory and enduring environment.” Title II, Article 46. The Constitution directs the State to “strive for the protection and the conservation of the environment.” *Id.* The Constitution establishes the obligation to compensate for “all pollution resulting from an economic activity”; such compensation is “for the benefit of the populations of the exploited

zones.” *Id.* The Constitution also makes it the duty of each citizen to “defend the [environment],” and of each individual “to contribute to the improvement of the quality of life and the preservation of his natural milieu as well as to the protection of the environment.” Title III, Article 65. The Constitution also makes it the duty of every individual “not to negatively effect his environment nor the well-being of his neighbors.” *Id.*

### **27. Constitution of the Republic of Costa Rica**

The amended 1949 Constitution provides for the right of every person “to a healthy and ecologically balanced environment.” Title V, Sole Chapter, Article 50. The Constitution directs the State to “guarantee, defend and preserve this right.” Title V, Sole Chapter, Article 50.) The Constitution also directs the State to enact laws which “will determine the corresponding responsibilities and sanctions.” *Id.* The Constitution also provides for the right of every person “to denounce those acts which infringe this right and to claim reparation for harm caused.” *Id.*

### **28. The Republic of Croatia**

The 1990 Constitution provides that “everyone has the right to a healthy life.” Section III, Part 3, Article 69. The Constitution directs the State to “ensure citizens the right to a healthy environment.” *Id.*

The Constitution also directs “citizens, government, public and economic bodies and associations . . . to pay special attention to the protection of human health, nature and the human environment.” *Id.*

### **29. The Republic of Cuba**

The Amended Constitution of 1992 states that the “State protects the environment and natural resources of the country. It recognizes their close link with the sustainable economy and social development for making human life more sensible, and for ensuring the survival, welfare, and security of present and future generations. It corresponds to the competent organs to implement this policy. It is the duty of the citizens to contribute to the protection of the water and the atmosphere, and to the conservation of the soil, flora, fauna and all the rich potential of nature.” Chapter I, Article 27.

### **30. The Czech Republic**

The 1992 Constitution provides that “everybody has the right to a favorable environment.” Chapter 4, Article 35(1). The Constitution also provides that “in exercising his rights nobody may endanger or cause damage to the living environment, natural resources, the wealth of natural species, and cultural monuments beyond limits set by law.” *Id.*, Article 35(3). In particular, the Constitution provides that the exercise of ownership rights “must not cause damage to human health, nature and the environment beyond the legal limits.” Chapter 2, Part 1, Article 11.

The Constitution entitles everyone “to timely and complete information about the state of the living environment and natural resources.” Chapter 4, Article 35(2).

### **31. The Republic of Ecuador**

The 1998 Constitution provides for the “right to live in an environment that is healthy and ecologically balanced, and that guarantees sustainable development.” Chapter 5, Section 2, Article 86. The Constitution requires the State to enact laws to preserve the environment, conserve ecosystems and biodiversity, prevent environmental pollution, restore degraded natural spaces, and establish a system of protected natural areas that will guarantee the conservation of biodiversity. *Id.* In case of doubt concerning the negative environmental consequences of an action or omission, the State is to implement preventive measures even if there is no scientific evidence of harm. *Id.*, Article 90.

The Constitution also requires the establishment of procedures for holding responsible those who harm the environment. *Id.*, Article 87. The State is also responsible for environmental damage caused by its agents or institutions. *Id.*, Article 91.

The Constitution guarantees the prior informed participation of affected communities in governmental decisions affecting the environment, *id.*, Article 88, and provides for the right of any person to use legal actions to protect the environment. *Id.*, Article 91.

### **32. El Salvador**

The amended 1983 Constitution provides that “every child has the right to live in familial and environmental conditions that permit his integral development, for which he shall have the protection of the State.” Title II, Chapter II, Section 1, Article 34. The Constitution makes it a duty of the State to “control the quality of food products and the environmental conditions that may affect health and well-being.” *Id.*, Article 69.

### **33. Equatorial Guinea**

The 1991 Constitution provides that the State “shall assure conservation of nature.” Title I, Article 6.

### **34. Eritrea**

The 1996 Draft Constitution of Eritrea directs the State “to work to bring about a balanced and sustainable development throughout the country, and shall use all available means to ensure all citizens to improve their livelihood in a sustainable manner, through their development.” Chapter II, Article 10(2). The Draft Constitution makes it the responsibility of the State to “regulate all land, water and natural resources and to ensure their management in a balanced and sustainable manner and in the interest of the present and future generations.” *Id.*, Article 10(3). The Draft Constitution further directs the State to “create the right conditions for securing the participation of the people to safeguard the environment.” *Id.*

### **35. The Republic of Estonia**

The 1992 Constitution authorizes the law to restrict a person's right to freedom of movement in order to "protect the environment." Chapter II, Article 34.

### **36. The Federal Democratic Republic of Ethiopia**

The 1995 Constitution provides that "all persons have the right to a clean and healthy environment." Chapter 3, Part 2, Article 44(1). The Constitution also provides for the right of the Ethiopian people "to sustainable development." *Id.*, Article 43(1).

### **37. Finland**

The amended 1919 Constitution directs "public authorities to strive to ensure for everyone the right to a healthy environment as well as the opportunity to influence decision-making concerning his living environment." Part II, Section 14a.

The Constitution also states that "everyone shall be responsible for the natural world and for its diversity, for the environment and for the cultural heritage." *Id.*

### **38. The Republic of Georgia**

The 1995 Constitution provides that "all have the right to live in a healthy environment." Chapter 2, Article 37(3). The Constitution also provides that "with a view of the creation of a healthy environment, in conformity with the ecological and economic interests of society, in the interest of current and future generations, the state guarantees the protection of the surrounding environment and rational use of nature." *Id.*, Article 37(4).

The Constitution further provides that "a person has the right to receive complete, objective and timely information concerning the state of the environment of his residence and working conditions." *Id.*, Article 37(5).

### **39. Federal Republic of Germany**

The amended 1949 Constitution provides that "the State protects . . . with responsibility to future generations the natural foundations of life." Chapter I, Article 20a.

### **40. The Republic of Ghana**

The 1993 Constitution directs the State to "take appropriate measures needed to protect and safeguard the national environment for posterity," and to "seek cooperation with other states and bodies for purposes of protecting the wider international environment for mankind." Chapter 6, Article 36(9).

The Constitution also makes it the duty of every citizen "to protect and safeguard the environment." Chapter 5, Article 41(k).

#### **41. Greece**

The 1975 Constitution provides that “the protection of the natural and cultural environment constitutes a duty of the State.” Part 2, Article 24(1). The Constitution further provides that “the State is bound to adopt special preventive or repressive measures for the preservation of the environment.” *Id.*

#### **42. The Republic of Guatemala**

The amended 1985 Constitution declares “the right to health” to be a “fundamental right of the human being without any discrimination.” Title II, Chapter II, Section VII, Article 93. The Constitution makes it the obligation of “the State, the municipalities, and the inhabitants of the natural territory . . . to promote social, economic, and technological development that would prevent the contamination of the environment and maintain the ecological balance.” *Id.*, Article 97. The Constitution directs the State to “issue all the necessary regulations to guarantee that the use of the fauna, flora, land, and water may be realized rationally, obviating their depredation.” *Id.*

#### **43. The Co-Operative Republic of Guyana**

The 1980 Constitution provides that “in the interests of the present and future generations, the State will protect and make rational use of its land, mineral and water resources, as well as its fauna and flora, and will take all appropriate measures to conserve and improve the environment.” Part 1, Chapter II, Article 36.

The Constitution also makes it a duty of every citizen “to participate in activities designed to improve the environment.” *Id.*

#### **44. Haiti**

The Constitution of 1987 strictly forbids “any practice that might disturb the ecological balance.” Title XI, Chapter II, Article 253. The Constitution forbids the introduction “into the country wastes or residues of any kind from foreign sources.” *Id.*, Article 258. The Constitution directs the State “to organize the enhancement of natural sites to ensure their protection and make them accessible to all,” *id.*, Article 254, and “to encourage the development of local sources of energy” in order to “protect forest reserves and expand the plant coverage.” *Id.*, Article 255.

The Constitution authorizes the State to punish violations of the law, which “specifies the conditions for protecting flora and fauna.” *Id.*, Article 257. The Constitution also makes it a duty of the citizen to “respect and protect the environment.” Title III, Chapter III, Article 52-1(h).

#### **45. The Republic of Honduras**

The amended 1982 Constitution recognizes the “right to the protection of one’s health” and directs the State to “maintain a satisfactory environment for the protection of everyone’s health.” Title III, Chapter VII, Article 145.

#### **46. The Republic of Hungary**

The amended 1949 Constitution states that the “Republic of Hungary recognises and implements everyone’s right to a healthy environment.” Chapter I, Article 18. The Constitution also declares that “everyone living within the territories of the Republic of Hungary has the right to the highest possible level of physical and mental health” and directs the State to implement this right “through the protection of the . . . natural environment.” Chapter XII, Article 70/D.

#### **47. India**

The amended 1950 Constitution directs the State “to endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.” Part IV, Article 48A. The Constitution also makes it the duty of every citizen of India “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.” Part IVA, Article 51A.

#### **48. The Islamic Republic of Iran**

The amended 1979 Constitution provides that “the preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic.” Chapter IV, Article 50. The Constitution forbids “economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it.” *Id.*

#### **49. The Republic of Kazakhstan**

The 1995 Constitution directs the State to “set objectives for the protection of the environment favorable for the life and health of the people.” Section I, Article 31(1). The Constitution also makes it an obligation of citizens to “preserve nature and protect natural resources.” *Id.*, Article 38. The Constitution further hold officials accountable “for the concealment of facts and circumstances endangering the life and health of the people.” *Id.*, Article 31(2).

#### **50. The State of Kuwait**

The 1962 Constitution directs the State to ensure the preservation of natural resources. Part II, Article 21.

### **51. The Kyrgyz Republic (Kyrgyzstan)**

The 1993 Constitution provides that “citizens of the Kyrgyz Republic shall have the right to healthy safe environment.” Chapter II, Section 3, Article 35(1). The Constitution also establishes the right to “compensation for the damage caused to one’s health and property by the activity in the sphere of nature usage,” *id.*, and makes it the “sacred” duty of every citizen to protect the environment and natural resources. *Id.*, Article 35(2).

### **52. Lao People’s Democratic Republic**

The 1991 Constitution directs all organizations and citizens to “protect the environment and natural resources: land, underground, forests, fauna, water sources and atmosphere.” Chapter II, Article 17.

### **53. The Republic of Latvia**

The Amended Constitution of 1922 (amended 1998) provides that the “State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.” Section 8, Article 115.

### **54. The Republic of Lithuania**

The 1992 Constitution provides that “the State and each individual must protect the environment from harmful influences.” Chapter 4, Article 53. The Constitution also directs the State to “concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts,” and to “supervise the moderate utilization of natural resources as well as their restoration and augmentation.” *Id.*, Article 54. The Constitution prohibits “the exhaustion of land and entrails of the earth, the pollution of waters and air, the production of radioactive impact, as well as the impoverishment of fauna and flora.” *Id.*

### **55. The Republic of Macedonia**

The 1991 Constitution provides that “everyone has the right to a healthy environment to live in,” and directs the State to establish conditions for the exercise of this right. Chapter II, Part 2, Article 43. The Constitution recognizes the fundamental need for “proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development.” Chapter I, Article 8.

The Constitution makes it everyone’s obligation to “promote and protect the environment.” Chapter II, Part 2, Article 43.

## **56. The Republic of Madagascar**

The amended 1992 Constitution provides that “the State, with the participation of the autonomous provinces, assures the protection, the conservation, and the improvement of the environment through appropriate means.” Title II, Section II, Article 39. The Constitution makes it everyone’s duty to “respect the environment.” *Id.*

## **57. The Republic of Malawi**

The 1994 Constitution directs the State to “actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at . . . manag[ing] the environment responsibly in order to (i) prevent the degradation of the environment, (ii) provide a healthy living and working environment for the people of Malawi, (iii) accord full recognition to the rights of future generations by means of environmental protection and the sustainable development of natural resources, and (iv) conserve and enhance the biological diversity of Malawi.” Chapter III, Article 13(d).

## **58. The Republic of Mali**

The 1992 Constitution provides that “every person has the right to a healthy environment.” Title I, Article 15. The Constitution further provides that “the protection, defense and promotion of the environment are an obligation for all and for the State.” *Id.*

## **59. Malta**

The amended 1964 Constitution directs the State to “safeguard the landscape . . . of the Nation.” Chapter II, Article 9.

## **60. Mexico**

The amended 1917 Constitution directs the State to take “necessary measures . . . to preserve and restore the ecological balance [and] to avoid the destruction of natural resources.” Title I, Chapter I, Article 27.

## **61. The Federated States of Micronesia**

The Preamble to the amended 1978 Constitution “affirm[s] [the people of Micronesia’s] common wish . . . to preserve the heritage of the past, and to protect the promise of the future.” Preamble. The Constitution prohibits the testing, storing, using or disposing of radioactive materials, toxic chemicals, or other harmful substances within the jurisdiction of the Federated States of Micronesia, without the express approval of the national government of the Federated States of Micronesia. Article XIII, Section 2.

## **62. The Republic of Moldova**

The 1994 Constitution provides that “every human being has the right to live in an environment that is ecologically safe for life and health, to obtain healthy food products.” Title II, Chapter II, Article 37(1). The Constitution holds “private individuals and legal entities”

responsible for “any damages they may cause to personal health and property due to an ecological offense.” *Id.*, Article 37(4). The Constitution provides that the “right of private property carries with it the duty to observe the rules regarding the protection of the environment.” *Id.*, Article 46(5). The Constitution also makes it “the duty of every citizen to protect the natural environment.” Title II, Chapter III, Article 59.

The Constitution also provides that “the State guarantees every citizen the right of free access to truthful information regarding the state of the natural environment, the living and working conditions, and the quality of food products and household appliances.” Title II, Chapter II, Article 37(2). The Constitution further provides that “nondisclosure or falsification of information regarding factors detrimental to human health constitute offenses punishable by law.” *Id.*, Article 37(3).

### **63. Mongolia**

The 1992 Constitution provides that “the citizens of Mongolia shall enjoy . . . the right to a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance.” Chapter Two, Article 16(2). The Constitution further provides that “the land, its subsoil, forests, water, fauna and flora and other natural resources shall be subject to . . . state protection.” *Id.*, Article 6(1).

The Constitution authorizes the State to “hold responsible the landowners in connection with the manner the land is used, to exchange or take it over with compensation on the grounds of special public need, or confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection and national security.” Chapter One, Article 6(4). The Constitution also makes it a “sacred duty” for every citizen to protect nature and the environment. Chapter Two, Article 17(2).

### **64. The Republic of Mozambique**

The 1990 Constitution provides that “all citizens shall have the right to live in . . . a balanced natural environment.” Part II, Chapter I, Article 72. The Constitution directs the State to “promote efforts to guarantee the ecological balance and the conservation and preservation of the environment for the betterment of the quality of life of its citizens.” Part I, Chapter IV, Article 37. The Constitution also makes it a duty of all citizens to “defend” the natural environment. Part II, Chapter I, Article 72.

### **65. The Republic of Namibia**

The 1990 Constitution directs the State to “actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at . . . maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future.” Chapter 11, Article 95(1). The Constitution also requires the government to “provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.” *Id.*

## **66. The Kingdom of Nepal**

The 1990 Constitution directs the State to “give priority to the protection of the environment and also to the prevention of its further damage due to physical development activities by increasing the awareness of the general public about environmental cleanliness, and . . . [to] make arrangements for the special protection of the rare wildlife, the forests and the vegetation.” Part 4, Article 26.

## **67. The Kingdom of the Netherlands**

The amended 1983 Constitution provides that “it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.” Chapter I, Article 21.

## **68. The Republic of Nicaragua**

The amended 1986 Constitution provides that “Nicaraguans have the right to live in a healthy environment.” Title IV, Chapter III, Article 60. The Constitution makes it the obligation of the State “to preserve, conserve and recover the environment and the natural resources.” *Id.* The Constitution also provides that “the preservation of the environment, and the conservation, development and rational exploitation of the natural resources are responsibilities of the State.” Title VI, Article 102.

## **69. The Republic of Niger**

The 1996 Constitution provides that “each person has the right to a healthy environment.” Title II, Article 27. The Constitution makes it the duty of the State to protect the environment. *Id.* The Constitution directs the State to regulate the “stockpiling, moving and evacuation of toxic wastes . . . situated on national property.” *Id.* The Constitution further provides that “the transit, importation, stockpiling, burial, dumping on the national territory of toxic wastes or foreign pollutants . . . constitutes a crime against the Nation punishable by law.” *Id.*

## **70. The Kingdom of Norway**

The amended 1814 Constitution provides that “every person has a right to an environment that is conducive to health and to natural surrounding whose productivity and diversity are preserved.” Section E, Article 110b. The Constitution mandates that “natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.” *Id.* “In order to safeguard their right [to a healthy environment],” the Constitution establishes the right of citizens “to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.” *Id.*

## **71. The Republic of Palau**

The amended 1981 Constitution directs the national government to “take positive action to . . . conserv[e] a beautiful, healthful and resourceful natural environment.” Article VI.

## **72. The Republic of Panama**

The amended 1972 Constitution provides that “the State has the fundamental obligation to guarantee that its population lives in a healthy environment, free of contamination (pollution), and where air, water and foodstuffs satisfy the requirements for proper development of human life.” Title III, Chapter 7, Article 114. The Constitution also provides that it is the obligation of the State, and all inhabitants of the national territory, to “promote economic and social development that prevents environmental contamination, maintains ecological balance, and avoids the destruction of ecosystems.” *Id.*, Article 115. The Constitution directs the State to “regulate, supervise, and apply, at the proper time, the measures necessary to guarantee rational use of, and benefit from, land, river and sea life, as well as forests, lands and waters, to avoid their misuse, and to ensure their preservation, renewal, and permanence.” *Id.*, Article 116. The Constitution further directs the State to regulate “benefits gained from non-renewable natural resources . . . to avoid social, economic and environmental abuses that could result.” *Id.*, Article 117.

## **73. The Independent State of Papua New Guinea**

The amended 1975 Constitution establishes the goal that the country’s natural resources and environment “be conserved and used for the collective benefit of all and be replenished for the benefit of future generations.” Section: “National Goals and Directive Principles” 10. The Constitution accordingly calls for “(1) wise use to be made of natural resources and the environment . . . in the interests of development and in trust for future generations; and (2) the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities; and (3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.” *Id.* The Constitution makes it the obligation of all persons “to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations.” Section: “Basic Social Obligations.”

## **74. The Republic of Paraguay**

The 1992 Constitution provides that “everyone has the right to live in a healthy, ecologically balanced environment.” Title II, Chapter I, Section About the Environment, Article 7. Thus, “priority objectives of social interest” are “the preservation, recovery, and improvement of the environment, as well as efforts to reconcile these goals with comprehensive human development.” *Id.* The Constitution authorizes the law to “restrict or prohibit those activities that are considered hazardous” to the environment, *id.*, and to regulate “activities that are likely to cause environmental changes” and “define and establish sanctions for ecological crimes.” *Id.*, Article 8. The Constitution specifically prohibits the introduction of toxic waste into the country. *Id.* The Constitution further provides that “any damage to the environment will entail an obligation to restore and to pay for damage.” *Id.*

## **75. Peru**

The 1993 Constitution authorizes the State to “determine national environmental policy.” The Constitution directs the State to promote “the sustainable use of its natural resources,” Title III, Chapter III, Article 67, “the preservation of biological diversity and of natural protected areas” and “sustainable development of Amazonia with adequate legislation.” *Id.*, Article 68.

## **76. The Republic of the Philippines**

The 1986 Constitution provides that “the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.” Article II, Section 16. The Constitution requires the State to consider conservation and ecological concerns into account in developing regulations concerning the use and ownership of property. Article XII, Section 2. The Constitution makes it the duty of the State to “protect, develop, and conserve” communal marine and fishing resources, both inland and offshore. Article XIII, Section 7.

## **77. The Republic of Poland**

The 1997 Constitution makes it the duty of public authorities to protect the environment. Chapter II, Article 74(2). The Constitution directs the authorities to “pursue policies ensuring the ecological safety of current and future generations.” *Id.*, Article 74(1). The Constitution further directs the authorities to “support the activities of citizens to protect and improve the quality of the environment.” *Id.*, Article 74(4).

The Constitution also provides that “everyone is obligated to care for the quality of the environment and shall be held responsible for causing its degradation.” *Id.*, Article 86.

## **78. The Portuguese Republic**

The 1992 Constitution provides that “all have a right to a healthy and ecologically balanced human environment.” Part I, Title III, Chapter II, Article 66(1). The Constitution makes it a fundamental responsibility of the State to “protect and enhance the cultural heritage of the Portuguese people, to protect nature and environment, conserve natural resources and to ensure the proper development of the national territory.” Article 9(e). The Constitution requires the State “to prevent and control pollution, and its effects, and harmful forms of erosion,” to make ecological balance an objective in national planning, to establish nature reserves and guarantee nature conservation, and to “promote the rational use of natural resources, while safeguarding their capacity for renewal and ecological stability.” Part I, Title III, Chapter II, Article 66(2). The Constitution further provides that, “in economic and social matters” a primary duty of the State is to adopt a national policy for energy that is in keeping with conservation of natural resources and a balanced ecology.” Part II, Title I, Article 81 (1).

## **79. Romania**

The 1991 Constitution requires the State to ensure “the restoration and protection of the environment, as well as the preservation of ecological balance.” Title IV, Article 134(2)(e). The Constitution also provides that “the right to own property implies an obligation to comply with tasks related to environmental protection.” Title II, Chapter II, Article 41(6).

## **80. The Russian Federation**

The 1993 Constitution provides that “everyone shall have the right to a favorable environment.” Section 1, Chapter 2, Article 42. The Constitution makes it a fundamental principle that “land and other natural resources shall be used and protected in the Russian Federation as the basis of the life and activity of the peoples living on their respective territories.” *Id.*, Article 9(1).

The Constitution also establishes the right of every person “to compensation for the damage caused to his or her health or property by ecological violations.” *Id.*, Article 42. The Constitution further prohibits owners of land or natural resources from using their property in a manner that harms the environment. *Id.*, Article 36(2). The Constitution also makes it everyone’s obligation to “preserve nature and the environment, and care for natural wealth.” *Id.*, Article 58.

The Constitution further provides that everyone has the right to “reliable information” about the condition of the environment. *Id.*, Article 42.

## **81. Sao Tome and Principe**

The amended 1975 Constitution makes preservation of the “harmonious balance of nature and of the environment” a prime objective of the State. Part I, Article 10(c). The Constitution provides for the right of all to “housing and to an environment of human life.” Part II, Article 48(1).

The Constitution also makes it the duty of all to “defend” the environment. *Id.*, Article 48(1). The Constitution also provides that “it is incumbent upon the State to promote the public health which has as objectives the physical and mental well-being of the populations and their balanced fitting into the socio-ecological environment in which they live.” *Id.*, Article 49.

## **82. Saudi Arabia**

The 1992 Constitution provides that “the State works toward protecting and improving the environment, as well as keep it from being harmed.” Chapter 5, Article 32.

## **83. The Republic of Seychelles**

The 1993 Constitution “recognizes the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment.” Chapter III, Part I, Article 38. The

Constitution directs the State to “to take measures to promote the protection, preservation and improvement of the environment,” and “to promote public awareness of the need to protect, preserve and improve the environment.” *Id.*, Article 38(a), (c). The Constitution also makes it the duty of every citizen to “protect, preserve and improve the environment.” *Id.*, Part II, Article 40(e).

#### **84. The Slovak Republic**

The 1992 Constitution provides that “every person has the right to a favourable environment.” Chapter 2, Section VI, Article 44(1). The Constitution directs the State to “provide for an efficient utilization of natural resources, a balanced ecology, an effective protection of the environment.” *Id.*, Article 44(4).

The Constitution also provides that “every person is obliged to protect and cultivate the environment and cultural heritage,” *id.*, Article 44(2), and that “nobody may endanger or damage the environment, natural resources and cultural monuments beyond the limits stipulated by law.” *Id.*, Article 44(3). The Constitution also prohibits the exercise of ownership rights in a manner that damages the environment. *Id.*, Section II, Article 20(3).

The Constitution further provides the right of every person to “complete and current information on the condition of the environment and the causes and consequences of this State.” *Id.*, Section VI, Article 45.

#### **85. The Republic of Slovenia**

The 1991 Constitution provides that “all persons shall have the right to a healthy living environment.” Section III, Article 72. The Constitution also makes it the duty of the State to “ensure a healthy living environment.” *Id.* The Constitution directs the State to “define under what conditions and to what extent the causer of damage is obliged to make restitution for damage to the living environment.” *Id.* The Constitution makes it the obligation of the State and local community to “ensure the preservation of the natural and cultural heritage,” and of all persons “to protect natural points of interest and rarities and cultural monuments.” *Id.*, Article 73.

#### **86. The Republic of South Africa**

The 1997 Constitution provides that “everyone has the right to an environment that is not harmful to their health or well-being,” and “to have the environment protected, for the benefit of present and future generations.” Chapter 2, Article 24. The Constitution directs the State to “prevent pollution and ecological degradation,” “promote conservation,” and “secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” *Id.*, Article 24(b)(i)-(iii).

### **87. The Republic of Korea (South Korea)**

The 1988 Constitution provides for the right of all citizens “to a healthy and pleasant environment.” Chapter II, Article 35(1). The Constitution directs the state and all citizens to “endeavor to protect the environment.” *Id.* The Constitution directs the State to “protect the land and natural resources,” and to “establish a plan necessary for their balanced development and utilization.” Chapter IX, Article 120(2).

### **88. Spain**

The 1978 Constitution provides that “everyone has the right to enjoy an environment suitable for the development of the person.” Title I, Chapter III, Article 45(1). The Constitution directs the public authorities to “concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment.” *Id.*, Article 45(2).

The Constitution also makes it a duty of everyone to preserve the environment. *Id.*, Article 45(1). The State is to establish penal and administrative sanctions for environmental harm, and those responsible for such harm “shall be obliged to repair the damage caused.” *Id.*, Article 45(3).

### **89. The Democratic Socialist Republic of Sri Lanka**

The 1978 Constitution provides that the “State shall protect, preserve and improve the environment for the benefit of the community.” Chapter VI, Article 27(14). The Constitution also makes it the duty of every person to “protect nature and conserve its riches.” *Id.*, Article 28(f).

### **90. The Democratic Republic of Sudan**

The New Constitution of 1998 states that “...every citizen shall...preserve a pure environment...” Part II, Chapter 11, Article 35(1f).

### **91. Suriname**

The 1987 Constitution sets forth the “creation and improvement of the condition necessary for the protection of nature and for the preservation of the ecological balance” as a social objective of the State. Chapter III, Article 6(c).

### **92. Switzerland**

The New Constitution of 1998 establishes the rights and duties of the Confederation regarding environmental protection. The Constitution sets forth the manner in which to provide for sustainable development, protection of the environment, adequate territorial planning, water and forest use, nature and heritage protection, and the protection of animals. Title 3, Chapter 2, Article 73-80.

### **93. Taiwan**

The 1947 Constitution provides that the “with respect to the utilization of land, the State shall, after taking into account the climatic conditions, the nature of the soil and the life and habits of the people, adopt measures to protect the land and to assist in its development.” Chapter XIII, Section 6, Article 169.

### **94. The Republic of Tajikistan**

The 1994 Constitution ensures the right to health care “by measures aimed at protecting the environment.” Chapter 2, Article 38. The Constitution further provides that “the land, the earth, water, airspace, the world of animals and vegetation, and other natural resources are owned by the State, and the State guarantees their effective use in the interests of the people.” Chapter 1, Article 13. The Constitution also makes “the protection of the natural, historical and cultural heritage” the duty of everyone. Chapter 2, Article 44.

### **95. The United Republic of Tanzania**

The 1985 Constitution directs the State to ensure that “the affairs of the Government are carried out in such a way as to ensure that the natural resources of the nation are developed, preserved and utilised for the benefit of all citizens in general and also to guard against exploitation of man by man.” Section 2, Article 9(1)(c).

The Constitution provides that “everyone has the responsibility of conserving the natural resources of the Union Republic.” Section 3, Article 27(1). The Constitution also states that “everyone is expected to protect with care properties under care of the State, and of collective nature, to combat all forms of destruction.” *Id.*, Article 27(2).

### **96. The Kingdom of Thailand**

The amended 1991 Constitution directs the State to “promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance with persistent development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare and quality of life.” Chapter V, Section 79.

The Constitution also provides that “every person shall have a duty to . . . conserve natural resources and the environment.” Chapter IV, Section 69.

### **97. The Republic of Togo**

The 1992 Constitution provides that “every person shall have the right to a clean environment.” Title II, Article 41. The Constitution directs the State to “oversee the protection of the environment.” *Id.*

## **98. The Republic of Turkey**

The 1982 Constitution provides that “everyone has the right to live in a healthy, balanced environment.” Chapter 3, Section VIII, Part A, Article 56. The Constitution makes it the duty of the State and the citizens to “improve the natural environment, and to prevent environmental pollution.” *Id.* The Constitution directs the State to “take necessary measures to maintain and develop efficient land cultivation [and] to prevent its loss through erosion.” *Id.*, Section III, Part B, Article 44. The Constitution also specifies that land distribution policies “shall not lead . . . to the depletion of forests and other land and underground resources.” *Id.*

## **99. Turkmenistan**

The 1992 Constitution provides that the State “shall be responsible for preserving . . . the environment.” Section I, Article 10.

## **100. The Republic of Uganda**

The 1995 Constitution provides that the “State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.” Chapter XIII. The Constitution directs the State to “promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations”; to manage “the utilization of the natural resources of Uganda . . . in such a way as to meet the development and environmental needs of present and future generations of Ugandans”; to “promote and implement energy policies that will ensure that people’s basic needs and those of environmental preservation are met”; to “create and develop parks, reserves and recreation areas and ensure the conservation of natural resources”; to “promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda.” Chapter XXVII. The Constitution also requires the State to ensure that all Ugandans have “access to . . . clean and safe water.” Chapter XIV(b).

## **101. Ukraine**

The 1996 Constitution provides that “everyone has the right to an environment that is safe for life and health.” Chapter II, Article 50. The Constitution makes it the duty of the State “to ensure ecological safety and to maintain the ecological balance on the territory of Ukraine, [and] to overcome the consequences of the Chernobyl catastrophe -- a catastrophe of global scale.” Chapter I, Article 16.

The Constitution also establishes the right “to compensation for damages inflicted through the violation of [the right to a safe environment].” Chapter II, Article 50. The Constitution further provides that “everyone is obliged not to harm nature . . . and to compensate for any damage he or she inflicted.” *Id.*, Article 66. The Constitution also provides that “the use of property shall not . . . aggravate the ecological situation and the natural qualities of land.” *Id.*, Article 41.

The Constitution further provides that “everyone is guaranteed the right of free access to information about the environmental situation, . . . and also the right to disseminate such information.” *Id.*, Article 50. The Constitution forbids anyone to make such information secret. *Id.*

#### **102. United Arab Emirates**

The 1971 Provisional Constitution provides that “the natural resources and wealth in each Emirate shall be considered the public property of that Emirate,” and that “society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy.” Chapter 2, Article 23.

#### **103. The Oriental Republic of Uruguay**

The amended 1966 Constitution declares that “the protection of the environment is of common interest.” Section II, Chapter II, Article 47. The Constitution provides that “persons should abstain from any act that may cause the serious degradation, destruction, or contamination of the environment.” *Id.*

#### **104. The Republic of Uzbekistan**

The 1992 Constitution provides that “the land, its mineral, fauna and flora, as well as other natural resources shall constitute the national wealth, and shall be rationally used and protected by the State.” Part III, Chapter 12, Article 55. The Constitution provides that “the use of any property must not be harmful to the ecological environment.” *Id.*, Article 54. The Constitution also provides that “all citizens shall protect the environment.” Part II, Chapter 11, Article 50.

#### **105. The Republic of Vanuatu**

The amended 1980 Constitution provides that every person has the duty “to himself and his descendants and to others . . . to safeguard the natural wealth, natural resources and environment in the interests of the present generation and of future generations.” Chapter 2, Part II, Article 7.

#### **106. The Republic of Venezuela**

The amended 1961 Constitution directs the State to “give attention to the protection and conservation of the natural resources within its territory.” Title III, Chapter V, Article 106.

#### **107. The Socialist Republic of Vietnam**

The 1992 Constitution provides that “state organs, units of armed forces, economic organizations, and individuals have the duty to implement state regulations on the rational use of natural resources and protection of the environment.” Chapter 2, Article 29. The Constitution prohibits “all acts of depleting natural resources and destroying the environment.” *Id.*

The Constitution requires organizations and individuals “to protect, replenish, and exploit [land allotted to them] in a rational and economical fashion.” *Id.*, Article 18.

#### **108. The Federal Republic of Yugoslavia (Serbia and Montenegro)**

The 1992 Constitution provides that “man shall be entitled to a healthy environment.” Section II, Article 52. The Constitution charges the State “with maintaining a healthy human environment and to this end shall prescribe the conditions and manner of the performance of economic and other activities.” *Id.* The Constitution also makes it the duty of everyone to “protect the human environment and make use of it in a rational manner.” *Id.* The Constitution further provides that “man shall be entitled to . . . timely information about [the environment’s] condition.” *Id.*

#### **109. Zambia**

The Preamble to the amended 1991 Constitution declares that “we shall . . . conduct the affairs of the state in such manner as to preserve, develop, and utilize its resources for this and future generations.”