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**EARTHJUSTICE**

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**ISSUE PAPER**

**HUMAN RIGHTS AND THE ENVIRONMENT**

***- DEVELOPMENTS -***

**MATERIALS FOR THE FIFTY-EIGHTH SESSION OF THE UNITED NATIONS  
COMMISSION ON HUMAN RIGHTS  
GENEVA, 18 MARCH - 26 APRIL 2002**

**EARTHJUSTICE LEGAL DEFENSE FUND**

## ABOUT EARTHJUSTICE LEGAL DEFENSE FUND

Earthjustice Legal Defense Fund was founded in 1971 and has consultative status with the UN Economic and Social Council. We are a nonprofit public interest law firm dedicated to protecting the magnificent places, natural resources, and wildlife of this earth and to defending the right of all people to a healthy environment. We bring about far-reaching change by enforcing and strengthening environmental laws on behalf of hundreds of organizations and communities.

Earthjustice's International Program uses the power of the law to protect the environment and human health worldwide. We represent public interest and community groups in international tribunals and domestic courts to hold corporations and governments responsible for environmental harm, prevent trade rules from undermining public health and environmental protections, and create strong tools for citizens to defend the right to a healthy environment.

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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. 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. This report highlights recent developments from international, regional and domestic bodies during 2001 and early 2002 in the area of human rights and the environment.<sup>1</sup> As a sampling – but only a sampling – of situations occurring in this past year, this report illustrates the interdependence of human rights and the environment and 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. The experts at a January 2002 joint seminar between the United Nations Environmental Programme and the UN Office of the High Commissioner on Human Rights concluded that “environmental protection constitutes a precondition for the effective enjoyment of human rights protection and that human rights and the environment are interdependent and interrelated.”<sup>3</sup> Therefore, international, governmental and non-governmental institutions dedicated to protecting human rights must begin to 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 set the pace for such recognition and, further, guarantee 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>4</sup> The Final Report was the culmination of a study process initiated in 1989, when several nongovernmental organizations

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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), particularly the December 2001 update to the report prepared for the 57<sup>th</sup> Session in 2001.

<sup>2</sup> International legal norms usually arise from the appearance of a particular rule or principle in 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 Bevans 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> *See infra*, Section II.B.4. and accompanying notes.

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

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 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>5</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>6</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>7</sup> Ms. Ksentini produced a Preliminary Report in 1991<sup>8</sup> and Progress Reports in 1992<sup>9</sup> and 1993.<sup>10</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.

The Sub-Commission specifically welcomed Ms. Ksentini's conclusions and recommendations, as well as the Draft Declaration of Principles, and transmitted the Final

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<sup>5</sup> E/CN.4/Sub.2/1989/58, at 71 (Sub-Commission Dec. 1989/108).

<sup>6</sup> See Sub-Commission Res. 1990/7.

<sup>7</sup> See Commission Res. 1991/44.

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

<sup>9</sup> E/CN.4/Sub.2/1992/7.

<sup>10</sup> E/CN.4/Sub.2/1993/7.

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>11</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>12</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>13</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>14</sup> The Commission renewed its request for comments and again asked the Secretary General to prepare a report summarizing whatever comments were received.<sup>15</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>16</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>17</sup> At the 1997 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.

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<sup>11</sup> Sub-Commission Res. 1994/27.

<sup>12</sup> Commission Res. 1995/14.

<sup>13</sup> See Commission Res. 1995/181.

<sup>14</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>15</sup> Commission Res. 1996/13.

<sup>16</sup> E/CN.4/1996/17.

<sup>17</sup> E/CN.4/1997/18.

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>18</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>19</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 55th 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>20</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>21</sup>

A similar recommendation came in February 2000, from the Commission's inter-session 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 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>22</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

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<sup>18</sup> E/CN.4/1997.19.

<sup>19</sup> E/CN.4/1998/10.

<sup>20</sup> E/CN.4/1999/89.

<sup>21</sup> E/CN.4/1999/104, ¶ 20(b).

<sup>22</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).

of environmental problems – including but not limited to problems related to toxic wastes – because such problems violate a host of fundamental human rights.

Rather than convert the mandate, however, the Commission decided for now simply to renew the existing mandate for the next three years. After the Special Rapporteur presented her report on the Adverse Effects of the Illicit Movement of Dumping and Movement of Dangerous Products and Wastes on the Enjoyment of Human Rights to the 57<sup>th</sup> Session of the Commission,<sup>23</sup> the Commission took note of the Rapporteur’s report and decided to renew the mandate.<sup>24</sup> In her report, the Special Rapporteur states, “Human rights bodies must remain vigilant for human rights violations associated with the activities of multinational corporations, toxic wastes, and other environmental problems. Supervisory mechanisms should be strengthened and codification efforts continued.”<sup>25</sup>

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<sup>23</sup> E/CN.4/2001/55.

<sup>24</sup> E/CN.4/Res/2001/35.

<sup>25</sup> *Id.* at ¶ 104.

## 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. Treaties and Treaty Bodies

#### **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: Technical Guidelines for the Identification and Environmentally Sound Management of Plastic Wastes and for their Disposal**

In January 2002, a Basel Convention working group on human rights and the environment adopted a set of technical guidelines to protect human health and the environment from the improper management and disposal of plastic wastes. These *Technical Guidelines for the Identification and Environmentally Sound Management of Plastic Wastes and for their Disposal* will be sent to the Sixth Conference of the Parties for final adoption in December 2002.<sup>26</sup>

The guidelines respond to the concern of developing countries that a lack of resources is devoted to addressing the growing quantities of plastic waste. In these countries the disposal of the plastics often takes place by burning the plastics in open air or in landfills. The open burning releases pollutants in the air that can cause health problems. Moreover, such burning produces persistent organic pollutants that have numerous adverse effects on humans such as immune and enzyme disorders.

“The guidelines address a range of waste management issues such as sorting for mechanical recycling, health and safety mechanisms, shipping and transport services, feedstock recycling, compaction, energy recovery, and final disposal.”<sup>27</sup>

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<sup>26</sup> See <http://www.basel.int/press/pr1-02%20Basel%20tech%20legal%20WGs%20conclusions.pdf> (last visited February 20, 2002).

<sup>27</sup> *Id.*

## B. UN Economic and Social Council Bodies

### 1. 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 state parties consider the “dangers and risks of environmental pollution” in implementing this right.<sup>28</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, *inter alia*, that state parties “shall take appropriate measures . . . to combat 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 Lithuania*, the CRC recommended that Lithuania “allocate appropriate resources and develop comprehensive policies and programmes to improve the health situation of all children, including measures aiming at a safe and healthy environment.”<sup>29</sup> Likewise in its *Concluding Observations on Uzbekistan*, the Committee recommended that the State seek “international cooperation, to prevent and combat the damaging effects of environmental degradation on children, including pollution and contamination of water supplies.”<sup>30</sup> The CRC also expressed its concerns with the exposure to toxic chemicals and poor access to safe water which “negatively impact upon the health of children...”<sup>31</sup>

In the concluding observations for several other countries the CRC expressed concern that “the survival and development of children within the State party continued to be threatened by early childhood diseases such as acute respiratory infections and diarrhea. Concern is also raised by the poor situation of sanitation and the insufficient access to safe drinking water...”<sup>32</sup> Moreover, the CRC addressed prenatal health concerns by stating that “environmental sanitation” was integral to reproductive health.<sup>33</sup>

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<sup>28</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* <http://www.un.org/documents/ga/res/44/a44r025.htm> (last visited January 29, 2002).

<sup>29</sup> *Concluding Observations on Lithuania*, U.N. CRC, U.N. Doc. CRC/C/15/Add.146 at ¶ 36 (2001). *See also*, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.146.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.146.En?OpenDocument) (last visited March 15, 2002).

<sup>30</sup> *Concluding Observations on Uzbekistan*, U.N. CRC, U.N. Doc. CRC/C/15/Add.167 at ¶ 54 (2001). *See also* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.167.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.167.En?OpenDocument) (last visited March 15, 2002).

<sup>31</sup> *Id.* at ¶ 53.

<sup>32</sup> *Concluding Observations on Côte d’Ivoire*, U.N. CRC, U.N. Doc. CRC/C/15/Add.155 (2001). *See also* *Concluding Observations on the United Republic of Tanzania*, U.N. CRC, U.N. Doc. CRC/C/15/Add.156 (2001), *Concluding Observations on Cameroon*, U.N. CRC, U.N. Doc. CRC/C/15/Add. 164 (2001), *Concluding Observations on Gambia*, U.N. CRC, U.N. Doc. CRC/C/15/Add.165 (2001), *Concluding Observations on Kenya*, U.N. CRC, U.N. Doc. CRC/C/15/Add.160 (2001), *Concluding Observations on Gabon*, U.N. CRC, U.N. Doc. CRC/C/15/Add.171, *Concluding Observations on Malawi*, U.N. CRC, U.N. Doc. CRC/C/15/Add.174 (2002), and *Concluding Observations on Mozambique*, U.N. CRC, U.N. Doc. CRC/C/15/Add.172 (2002). *See* <http://www.unhchr.ch/html/menu2/6/crc/crcs27.htm#27th> (last visited March 15, 2002).

<sup>33</sup> *See* *Concluding Observations on Guatemala*, U.N. CRC, U.N. Doc. CRC/C/15/Add.154. (2001), *Concluding Observations on Chile*, U.N. CRC, U.N. Doc. CRC/C/15/Add.173 (2002), *Concluding observations on Turkey*, U.N. CRC, U.N. Doc. CRC/C/15/Add.155 (2001), *Concluding Observations on Paraguay*, U.N. CRC, U.N. Doc.

## 2. UN Commission on Human Rights: 57<sup>th</sup> Session (2001)

During its 57th Session, from March 19 to April 27, 2001, the Commission passed several resolutions similar to those passed in previous sessions that acknowledge the human right to a clean and healthy environment. In Resolution 2001/65, entitled “Promotion of the Right to a Democratic and Equitable International Order,” the Commission reiterated Resolution 2000/62 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>34</sup> In Resolution 2001/35, entitled “Adverse 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>35</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>36</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>37</sup>

## 3. UN Sub-Commission on the Promotion and Protection of Human Rights

### a. Resolution 2001/2

On April 23, 2001, the Sub-Commission on Human Rights passed a resolution on the Promotion of the Realization of the Right to Drinking Water and Sanitation which recognizes the right to a healthy environment by stating, “various obstacles linked to the realization of the right of everyone to drinking water supply and sanitation seriously impeded 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>38</sup> In addition, the Sub-Commission also appointed Special Rapporteur El Hadji Guissé to conduct a detailed study regarding the relationship of economic, social and cultural

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CRC/C/15/166 (2001), *Concluding Observations on Mauritania*, U.N. Doc. CRC/C/15/Add.159 (2001). See <http://www.unhcr.ch/html/menu2/6/crc/crcs27.htm#27th> (last visited March 15, 2002).

<sup>34</sup> Res. 2001/65, U.N. Comm’n. on Hum. Rts., 57<sup>th</sup> Sess. at ¶ 3k, at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2001.65.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2001.65.En?Opendocument) (last visited Feb. 1, 2002).

<sup>35</sup> Res. 2001/35, U.N. Comm’n on Hum. Rts., 57<sup>th</sup> Sess., at pmb1., para. 9, at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2001.35.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2001.35.En?Opendocument) (last visited Feb. 1, 2002).

<sup>36</sup> *Id.* at ¶ 4.

<sup>37</sup> *Id.* at ¶ 3.

<sup>38</sup> U.N. Doc. E/CN.4/SUB.2/RES/2001/2 (2001).

rights to the right to drinking water supply and sanitation including the relation to other human rights.<sup>39</sup>

### **b. Draft Fundamental Human Rights Principles for Business Enterprises**

In Article 24 of the 2002 Draft Fundamental Human Rights Principle for Business Enterprises, the Sub-Commission states that businesses must recognize and respect applicable laws so that they do not conflict with human rights standards. Businesses must therefore respect the rights of local communities by avoiding endangerment of “the health, environment, culture and institutions of indigenous peoples and communities...”<sup>40</sup> Article 28 of the draft states that businesses must respect the “rights to health, adequate food, and adequate housing, and refrain from actions that obstruct the realization of those rights”<sup>41</sup> and that businesses shall not restrict other economic, social, or cultural rights.<sup>42</sup>

The draft has a specific provision concerning the environment and human rights that obligates businesses to respect international agreements and standards with “regard to the environment as well as human rights; ...[and] take due account of the need to protect the environment, public health, and safety; and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.”<sup>43</sup> In its commentary to the draft, the Sub-Commission states “businesses shall respect the right to a clean and healthy environment in light of the relationship between the environment and human rights...”<sup>44</sup> Although a draft, this document exemplifies the relationship between the environment and human rights and also posits the right to a clean and healthy environment.

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<sup>39</sup> *Id.*

<sup>40</sup> UN. Doc. E/CN.4/Sub.2/2002/WG.2/WP.1/Add.1, article 24 (2002).

<sup>41</sup> *Id.* at Article 28.

<sup>42</sup> *Id.* at Article 28, Comment d.

<sup>43</sup> *Id.* at Article 12.

<sup>44</sup> *Id.* at Article 12, Comment m.

#### **4. UN High Commissioner for Human Rights (OHCHR) and United Nations Environmental Programme (UNEP): Meeting of Experts on Human Rights and the Environment**

The Office of the High Commissioner for Human Rights and the UN Environmental Programme jointly organized a Meeting of Experts January 16-17, 2002 to review and assess the progress of the promotion and protection of human rights vis á vis the environment and the framework of Agenda 21. The meeting recognized the growing relationship between the fields of human rights and the environment, noting that a growing number of international and regional treaties expressly state the right to live in a healthy or satisfactory environment.<sup>45</sup> The experts concluded that “environmental protection constitutes a precondition for the effective enjoyment of human rights protection and that human rights and the environment are interdependent and interrelated.”<sup>46</sup>

The experts further emphasized the link between human rights and the environment by indicating case law which “(1) recogniz[ed] the right to a healthy environment as a fundamental human right; (2) allow[ed] litigation based on this right... (3) acknowled[ed] that other human rights recognized in domestic legal systems can be violated as a result of environmental degradation.”<sup>47</sup> Additionally, they suggested that the judiciary can play a sensitive role in establishing this link in the future.

Further suggestions for future developments included promotion of public awareness of the connection between human rights and the environment, and consistency in procedure through the adoption of new instruments “to support the growing recognition of a right to a secure, healthy and ecologically sound environment, either as a constitutionally guaranteed entitlement/right or as a guiding principle of national and international law.”<sup>48</sup>

#### **5. UN Environmental Program (UNEP)**

##### **a. Seventh Special Session of the Governing Council: Global Ministerial Environmental Forum**

The Seventh Special Session of the United Nations Environmental Programme’s Governing Council convened in Cartagena, Columbia February 12-15, 2002 jointly with the Third Global Ministerial Environmental Forum. At the opening of the session, the President of the Governing Council noted that shortcomings in environmental governance is a fundamental reason why the goals of the UN Conference on Environment and Development (UNCED or the Rio Summit)<sup>49</sup> had not been fully achieved . The President also stressed that UNEP must be

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<sup>45</sup> See <http://www.unhchr.ch/environment/conclusions.html> ¶ 12 (last visited February 12, 2002).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at ¶ 15.

<sup>48</sup> *Id.* at ¶ 18.

<sup>49</sup> UNCED took place in Rio de Janeiro, June 3-14, 1992. See <http://www.un.org/geninfo/bp/enviro.html>. The Conference lead to the passage of the Rio Declaration on Environment and Development, a series of principles

strengthened further to properly govern the framework of sustainable development strategies.<sup>50</sup> The main issues of the conference centered around properly governing the current environmental treaties through ensuring universal participation and reaffirming and strengthening UNEP's role concerning promotion and education of environmental rights.<sup>51</sup>

#### **b. Environmental Study of Occupied Palestinian Territories**

The Governing Council of UNEP has decided to assess the environmental situation in the Occupied Palestinian Territories because of concerns of water pollution, waste dumping, loss of natural vegetation, and the pollution of coastal waters. The study will indicate which areas have the most environmental damage so that UNEP can recommend how to improve such areas of concern. The Minister for Environmental Affairs for Palestine stated that "The build up of hazardous wastes, the contamination of shared water aquifers and other environmental damage in the Occupied Territories threatens this generation and future generations in Palestine and in Israel", pointing out an integral relationship between the very existence of Palestine and the environmental concerns.<sup>52</sup>

### **6. UN Commission on Sustainable Development: World Summit on Sustainable Development (WSSD)**

The World Summit on Sustainable Development will take place in Johannesburg, South Africa from August 26 to September 4, 2002. The Summit will focus on the challenges involved with conserving natural resources in the face of growing population and increasing demands for food, water, shelter, sanitation, energy, health services and economic security. The Summit will examine the progress made since the adoption of Agenda 21 at the 1992 Rio Summit, and then seek to create both intergovernmental and private-public approaches (called Type I and Type II outcomes, respectively) to better implement Agenda 21.

Currently, two of four preparatory meetings for the Summit have concluded since mid-2001. The first, held in New York from April 30 to May 2, 2001, considered the process for future meetings as well as possible main themes for the Summit. This "PrepCom", as they are called, also considered the progress of previous preparatory activities at the local, national, sub-regional, regional, and international levels.

PrepCom 2, held in New York from January 28 to February 8, 2002, focused on the drafting of the Chairman's Paper that establishes the framework for the Summit. During PrepCom 2 the participants reaffirmed their commitments to the Rio principles and the full implementation of

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defining the rights and responsibilities of States; the adoption of Agenda 21, a comprehensive program of action for global action in all areas of sustainable development; the creation of the UN Commission on Sustainable Development to implement Agenda 21; and the opening up for signature of the UN Framework Convention on Climate Change and the Convention on Biological Diversity.

<sup>50</sup> *Earth Negotiations Bulletin*, International Institute for Sustainable Development, Vol. 16, No. 24 (2002). See also <http://www.iisd.ca/linkages/vol16/enb1624e.html> (last visited February 28, 2002)

<sup>51</sup> *Id.*

<sup>52</sup> See <http://www.unep.org/Documents/Default.asp?DocumentID=235&ArticleID=3015> (last visited February 19, 2002).

Agenda 21.<sup>53</sup> The Chairman stated, “Human activities are having an increasing impact on the integrity of complex natural ecosystems that provide essential support for human well-being and economic activities. Managing that natural resource base is essential for protecting the land, water and living resources on which human life and development depend”.<sup>54</sup> The current draft of this paper clearly shows the important tie between a safe and healthy environment and human rights through its proposals for change and ideas for action to be addressed in Johannesburg.

## **7. International Conference on Freshwater**

The International Conference on Freshwater took place from December 3-7, 2001 in Bonn, Germany with the participation of 118 governments, 47 intergovernmental agencies and 73 representatives of major groups. The Conference was convened as a preparatory step on freshwater issues for the upcoming World Summit on Sustainable Development.<sup>55</sup> Inadequate water quality or quantity often creates health problems, conflict and even refugees. The final text of the Conference states that, for the next fourteen years, the international community must provide safe and affordable water for 300,000 additional people each day in order to meet the Millennium Summit goal of halving the proportion of people unable to afford safe drinking water. Additionally, 390,000 people need to be provided with sanitation services over the same period.<sup>56</sup> The conference representatives of 46 countries stated in the Ministerial Declaration that the upcoming Johannesburg Summit must be decisive on water issues further recognizing that 1.2 billion people live in poverty without access to safe drinking water while 2.5 billion do not have access to sanitation services.<sup>57</sup>

## **8. UN High Commissioner for Refugees (UNHCR): Global Report 2002**

UNHCR’s Global Report has a specific section for its global environmental program goals for 2002, which states that environment and refugee protection are integrally intertwined.<sup>58</sup> UNHCR plans to continually update its environmental policy guidelines and strive to ensure a safe and healthy environment in the field through four regional workshops on refugees and the environment and continuous awareness education of the effect of the environment on refugees.<sup>59</sup>

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<sup>53</sup> See [http://www.johannesburgsummit.org/html/documents/prep2final\\_papers/chair\\_paper\\_0225098e\\_1202.doc](http://www.johannesburgsummit.org/html/documents/prep2final_papers/chair_paper_0225098e_1202.doc) (last visited February 28, 2002).

<sup>54</sup> *Id.* at Article 5 (6).

<sup>55</sup> “Summary report from the International Conference on Freshwater”, *Sustainable Developments*, Vol. 66, Number 5 (2001). See also <http://www.hsd.ca/linkages/sd/water/sdh20/> (last visited February 19, 2002).

<sup>56</sup> *Id.* at 3.

<sup>57</sup> *Id.*

<sup>58</sup> <http://www.unhcr.ch/pubs/fdrs/ga2002/globops.pdf> (last visited March 7, 2002)

<sup>59</sup> *Id.*

## C. 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 undertaken by the World Bank Management (Management) could harm their interests. If persuaded, the Panel recommends to the World Bank Board of Executive Directors (Board) that the Panel investigate the project and Management's compliance with Bank policy and procedure. The Panel then reports to the Board on its findings, and the Board decides whether the project can proceed. In addition, the host country can withdraw its request for Bank funding thereby terminating the Bank's involvement. Several of the projects that the Panel has investigated in the past year raise issues of human rights and the environment.<sup>60</sup>

### 1. Review of Coal Sector Environmental and Social Mitigation Project (India)

On June 21, 2001, the Panel received a Request for Inspection related to activities in the Parej East mining area from Ms. Bina Stanis of Chotanagpur Adivasi Sewa Samiti (CASS), a local non-governmental organization representing indigenous residents of the Parej East coal mining Project area.<sup>61</sup> The Panel will be looking into whether or not the Bank has observed its own policies and procedures, inter-alia, on environmental assessment, indigenous peoples and, on involuntary resettlement.<sup>62</sup>

The Requesters claim that lack of proper implementation of the Coal Sector Environmental and Social Mitigation Project (CSESMP) has destroyed their livelihoods, and, consequently, they are less able to meet their nutrition, health, and educational needs, and are unable to adequately participate in the growing formal economy.<sup>63</sup> Requestors clarify that the destruction of their livelihoods results from the improper implementation of CSESMP which has left them without steady employment and instead having caused them to lose their dignity by merely surviving as casual laborers.<sup>64</sup> They now suffer increased illness as a result of pollution of water sources and wells in the resettlement colonies that are not fit for drinking.<sup>65</sup> Furthermore, given that they are landless farmers, they are unable to participate in the growing service economy that goes with the expansion of the mines and suffer increased

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<sup>60</sup> Documents discussed in this section are available at <http://wbln0018.worldbank.org/ipn/ipnweb.nsf> (last visited February 20, 2002).

<sup>61</sup> Press release, World Bank Inspection Panel, World Bank Authorizes An Inspection Panel Investigation of the India Coal Sector Projects, at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(webnews2\)/62F4EB22AF0DF34F85256AD5005420D0](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(webnews2)/62F4EB22AF0DF34F85256AD5005420D0) (last visited February 28, 2002).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> The Inspection Panel Report and Recommendation Request for Inspection INDIA: Coal Sector Environmental and Social Mitigation Project and Coal Sector Rehabilitation Project (Loan No. 4226; Credit-No. 2986), at [http://wbln0018.worldbank.org/ipn/ipnweb.nsf/70c64086027c73ba8525686c00020040/298cb385ed7a427d85256ac6004a87f9/\\$FILE/Eligibility%20Report.pdf](http://wbln0018.worldbank.org/ipn/ipnweb.nsf/70c64086027c73ba8525686c00020040/298cb385ed7a427d85256ac6004a87f9/$FILE/Eligibility%20Report.pdf) (last visited March 15, 2002).

poverty.<sup>66</sup> The requesters also claim that the monetary compensation has been insufficient compared to the loss of their lands.<sup>67</sup> The Panel has extended CSESMP's closing date a year because of Requester's concerns.<sup>68</sup>

## 2. Petroleum Development and Pipeline Project (Chad-Cameroon)

On October 1, 2001, the Board approved the Panel's recommendation to conduct an investigation into claims made by Mr. Ngarleji Yorongar, who was acting for himself and on behalf of more than 100 residents living in the vicinity of three oil fields of the Doba Petroleum Project in southern Chad, on aspects of the Chad Petroleum Development and Pipeline Project, the Management of the Petroleum Economy Project, and the Petroleum Sector Management Capacity Building Project.<sup>69</sup>

The requestors stated that their rights were, or would be directly harmed by the Bank's actions in the design and supervision of the projects. They claimed that the projects presented a threat to the existence of the community, their cultural property, and the environment.<sup>70</sup> Furthermore, they claimed that the people living in the Doba Basin were being harmed, because of the lack of compensation and environmental assessment.<sup>71</sup>

These allegations could hold the Bank in violation of policies concerning environmental assessment, poverty reduction, natural habitats and indigenous peoples, among other things.<sup>72</sup> The Bank will make plans for investigation in the future.

On a related note, the World Bank appointed an independent advisory group on February 21, 2001, as part of the oversight program for the pipeline project.<sup>73</sup> Composed of government, academic and civil society members, this International Advisory Group on the Chad-Cameroon Petroleum Development and Pipeline Project makes semiannual visits to the project region and then reports shortly thereafter to the World Bank on problems and progress in resolving these problems, including environmental and human rights concerns.

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<sup>66</sup> *Id.*

<sup>67</sup> Press release, *World Bank Inspection Panel, World Bank Authorizes An Inspection Panel Investigation of the India Coal Sector Projects*, at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(webnews2\)/62F4EB22AF0DF34F85256AD5005420D0](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(webnews2)/62F4EB22AF0DF34F85256AD5005420D0) (last visited March 15, 2002)

<sup>68</sup> *Id.*

<sup>69</sup> Press releases, *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*, at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(webnews2\)/971286E39484903F85256AE0005FE0DF](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(webnews2)/971286E39484903F85256AE0005FE0DF) (last visited February 28, 2002).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> For a list of Internet links to documents pertaining to this advisory group, including a press release about its formation, see [http://www.worldbank.org/afr/ccproj/project/pro\\_monitor.htm#iag](http://www.worldbank.org/afr/ccproj/project/pro_monitor.htm#iag).

### 3. Third and Fourth Power Projects (Uganda)

On July 27, 2001 the Panel received a request for inspection regarding the third and fourth power projects by the National Association of Professional Environmentalists (NAPE) and Save the Bujagali Crusade (SBC), as well as other local organizations and individuals.<sup>74</sup>

The Requestors stated that the extension of the Owens Falls dam and the construction of the Bujagali dam have or could result in social, economic and environmental harm to the local population. The International Rivers Network, an NGO with expertise on the environmental and human rights effects from dam projects, reports that “the reservoir is expected to increase serious water-borne diseases like malaria and schistosomiasis...permanently harm fisheries...permanently submerge highly productive agricultural land on the river's banks as well as islands of extreme biodiversity...[and]drown Bujagali Falls, a spectacular series of cascading rapids which Ugandans consider a national treasure. Tourism around Bujagali Falls offers great potential to Uganda's burgeoning tourism industry.”<sup>75</sup> The Board has not yet accepted the request. World Health Organization (WHO): Task Force for the Protection of Children’s Environmental Health

March 3, 2002 marked the completion of a new initiative to confront child mortality and morbidity linked to unhealthy environments.<sup>76</sup> Inadequate or polluted air and drinking water are contributing factors to the deaths of three million children under five who die of environmental hazards. Children are particularly vulnerable to pollutants in their environments as a result of being in a period of growth and development. For this reason, WHO created a task force for the protection of children’s environmental health and convened the first International Conference on Environmental Threats to the Health of Children in Bangkok, Thailand.<sup>77</sup>

The Bangkok Conference focused on the main environmental threats to children’s health and development, and on a range of measures to reduce environmental impacts on children, focusing on environmental problems in the Asia-Pacific region.<sup>78</sup> In addition to the pollution risks outlined above, the conference addressed children’s exposure to lead, mercury, pesticides, persistent organic pollutants and other chemicals as well as the effects of tobacco smoke, radiation, climate change, and food quality and safety on children.<sup>79</sup> Additionally the Conference addressed how a safe environment is also important in work and school in addition to the home. The Conference was a welcome initiative that further indicates the essential tie between a safe and healthy environment and the health and well-being of children. WHO plans on launching pilot projects to help countries assess and improve children’s environmental health in the near future.<sup>80</sup>

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<sup>74</sup> Notice of registration, IPN REQUEST RQ01/3, at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/Uganda\\_NOR/\\$FILE/Uganda\\_NOR.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/Uganda_NOR/$FILE/Uganda_NOR.pdf) (Last visited February 28, 2002).

<sup>75</sup> See IRN’s Bujagali Campaign, at <http://www.irn.org/programs/bujagali/> (last visited Mar. 19, 2002).

<sup>76</sup> See Press Release, World Health Organization, Environmental hazards kill at least 3 million children under 5 every year, at <http://www.who.int/inf/en/pr-2002-12.html> (last visited March 7, 2002)

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

#### **D. Organization of Economic Cooperation and Development (OECD): Environmental Strategy for the First Decade of the 21st Century**

On May 16, 2001 the OECD Environment Ministers adopted the OECD Environmental Strategy for the First Decade of the 21st Century,<sup>81</sup> designed to provide direction for environmentally sustainable policies in OECD Member countries and guide the future work of the OECD in the field of environment.<sup>82</sup> The link of these environmental approaches to human rights is apparent in the OECD's hopes to satisfy the Millennium Declaration and the Rio principles with this strategy.<sup>83</sup>

This strategy creates three categories for the assessment of environmental policies. "Green light" policies are adequate but require careful monitoring such as pollution clean-up projects; "Yellow light" policies signal possible uncertainties or problems such as the impact of biotechnology on human health. "Red light" policies urgently need to be addressed such as the effect of current air and water pollution and greenhouse gas emissions on human health.<sup>84</sup> Moreover, the strategy proposes four goals that Member States should achieve to ensure sustainability: regeneration of natural resources, substitutability of non-renewable resources with renewable resources, limitations on the release of hazardous materials to keep them at manageable levels and to protect human health, and avoidance or irreparable environmental harms.<sup>85</sup>

In addition, the OECD has set forth five action items to reach these goals:

- Maintaining the integrity of ecosystems through the efficient management of natural resources.
- De-coupling environmental pressures from economic growth.
- Improving access of information for decision-making.
- Interfacing of social and environmental issues.
- Improving governance and co-operation.<sup>86</sup>

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<sup>81</sup> See *OECD Environmental Strategy for the First Decade of the 21<sup>st</sup> century*, at <http://www.oecd.org/pdf/M00001000/M00001182.pdf> (last visited February 28, 2002).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 3.

<sup>84</sup> *Id.* at 4.

<sup>85</sup> *Id.* at 5-6.

<sup>86</sup> *Id.* at 6.

## II. REGIONAL

Like international bodies, developments from regional bodies during 2001 and 2002 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. European System

#### 1. European Commission on Human Rights

##### a. Sixth Environment Action Programme of the European Community 2001-2010

The new Environment Action Programme titled “Environment 2010: Our Future, Our Choice” identifies four priority areas for the Commission; climate change, nature and biodiversity, environment and health, and natural resources and waste.<sup>87</sup> Among the approaches in the action program to achieve improvements in these four areas is the integration of environmental concerns into all relevant policy areas and ensuring the implementation of existing environmental legislation. The program seeks to identify the dangers and create new standards regarding the effect of the environment on vulnerable groups such as children and the elderly.<sup>88</sup> The objective of the Commission is to achieve a quality of environment where man-made pollutants do not endanger or risk human health.<sup>89</sup>

##### b. *Hatten and Others v. the United Kingdom*

In the case of *Hatten and Others v. the United Kingdom*, the European Court furthered its growing jurisprudence on the application of the right to privacy to environmental harms by finding that noise from overnight air traffic at Heathrow Airport violated the right to privacy and inviolability of the home and family of nearby residents under Article 8 of the European Convention.<sup>90</sup> The noise levels at and around the airport had led to loss of sleep, depression, and ear-infections for these residents.<sup>91</sup> Moreover, the applicants asserted a violation of the right of access to an effective legal remedy under Article 13 of the European Convention on grounds that the scope of review provided by the UK courts was insufficient to allow petitioners to claim that the increase in night flights under the 1993 scheme represented an unjustifiable interference of their privacy.<sup>92</sup> Finding that the United Kingdom had violated both Article 8 and 13, the Commission ordered that the United Kingdom pay the plaintiffs damages and court costs.<sup>93</sup> The

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<sup>87</sup> See <http://europa.eu.int/comm/environment/newprg/index.htm> (last visited February 20, 2002).

<sup>88</sup> See [http://europa.eu.int/comm/environment/newprg/6eapbooklet\\_en.pdf](http://europa.eu.int/comm/environment/newprg/6eapbooklet_en.pdf) at 7. (last visited March 1, 2002).

<sup>89</sup> *Id.*

<sup>90</sup> *Hatten and Others v. United Kingdom*, European Court of Human Rights, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=41&Action=Html&X=318194000&Notice=0&Noticemode=&RelatedMode=0> (last visited March 13, 2002).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

importance of the decision to the link between human rights and the environment is perhaps best illustrated by the concurring opinion of Judge Costa who wrote, “having regard to the Court’s case-law on the right to a healthy environment, maintaining night flights at that level meant that the applicants had to pay too high a price for an economic well-being... Our Court’s case-law has, moreover, not been alone in developing along those lines. For example, Article 37 of the Charter of Fundamental Rights of the European Union of 18 December 2000 is devoted to the protection of the environment.”<sup>94</sup>.

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

### **1. Citizen submissions**

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>95</sup> 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>96</sup>

As of March 2001, the NACEC has developed three factual records, is reviewing eleven citizen submissions, and has dismissed or terminated 22 others. Many of these submissions seek review of situations where the alleged failure to enforce environmental laws has directly affected human rights.<sup>97</sup>

#### **a. Sierra Tarahumara**

A 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. The Secretariat reviewed the submission and decided on November 6, 2001, that Mexico needs to respond within 30 days or, if exceptional circumstances exist, 60 days to some but not all of the petitioner’s allegations.<sup>98</sup> Mexico stated on February 15, 2002 that it handled and concluded 139 citizen complaints filed by Tarahumara communities. Moreover, Mexico asked that the CEC terminate the environmental crimes claimed by

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<sup>94</sup> *Id.* at Separate Opinion of Judge Costa.

<sup>95</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, at [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) (last visited March 14, 2002).

<sup>96</sup> *Id.* at arts. 14-15.

<sup>97</sup> See NACEC, *Citizen Submissions on Enforcement Matters: Submission Status*, at <http://www.cec.org/citizen/status/> (last visited March 18, 2002).

<sup>98</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), at <http://www.cec.org/files/espanol/00-06-det-s.pdf> (last visited Feb. 19, 2002).

petitioners because those claims are subject to a Mexican administrative procedure ultimately resolved by the Federal Public Prosecutor.<sup>99</sup> Mexico additionally posited that since 2002, it held a series of meetings between the relevant authorities and the affected indigenous communities including non-governmental organizations so that they could periodically be informed of the status of their complaints and clarify any outstanding issues.<sup>100</sup> The Secretariat is analyzing the submission in light of Mexico's response to determine whether the submission warrants developing a factual record.<sup>101</sup>

### **b. Tijuana smelter**

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>102</sup> The submission alleged that Mexico failed to enforce Article 170 of the General Law by failing to take appropriate measures to contain and or neutralize the hazardous waste in order to "prevent an imminent risk of harm to the environment and to public health" and that Mexico additionally failed to enforce article 134 of the General Law because it had not taken the necessary actions needed to control and prevent contamination of the soil nearby and within the site.<sup>103</sup>

The Secretariat concluded the final factual record in November 2001, and the CEC publicly released it in February 2002.<sup>104</sup> The Secretariat's fact-finding indicates that the current state of the soil contamination may harm the rights of workers and nearby communities in the future.

The site abandoned by Metales y Derivados is a case of soil contamination by hazardous waste in relation to which measures taken to date have not prevented the dispersal of pollutants or prevented access to the site, which relates to the issue of whether Mexico is effectively enforcing LGEEPA Article 170. It also reveals that, as a matter of fact, no actions have been taken to restore the soil to a condition in which it can be used in the industrial activities corresponding to the zoning of the area, i.e., the Mesa de Otay Industrial Park in the city of Tijuana, Baja California, in order to enforce effectively LGEEPA Article 134.<sup>105</sup>

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<sup>99</sup> See News release, *Mexico Responds to Tarahumara Submission*, at <http://www.cec.org/news/details/index.cfm?varlan=english&ID=2458&year=2002> (last visited March 1, 2002).

<sup>100</sup> *Id.*

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

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

<sup>103</sup> *Id.*

<sup>104</sup> See Citizen Submissions on Enforcement Matters, *Metales y Derivados*, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=67> (last visited March 1, 2002).

<sup>105</sup> *Metales y Derivados*, Final Factual Record (Sem-98-07), at <http://www.cec.org/files/pdf/sem/98-7-FFR-e.pdf> at 60 (last visited March 1, 2002).

### c. Mexico City Airport

Jorge Rafael Martínez Azuela and other neighbors in the area surrounding the Mexico City International Airport submitted a complaint to the CEC on February 7, 2002, asserting that Mexico is failing to effectively enforce its environmental laws with respect to the noise emissions originating at that airport.<sup>106</sup> The petitioners claims that studies exist showing that the noise emissions exceed environmental limits established by law and have caused and continue to cause irreversible damage to the thousands of people living nearby the airport.<sup>107</sup> The petitioners also stated that Mexico's failure to control noise emissions resulted in loss of hearing of nearby residents, negative effects from loss of sleep, such as depression and poor academic performance by students in school because of the noise interruption.<sup>108</sup> The Secretariat determined that the submission met the requisite criteria and requested a response from Mexico.<sup>109</sup>

#### 2. National Workshop on Children's Health and the Environment

The CEC held a National Workshop on Children's Health and the Environment in Mexico, from June 22-22, 2001.<sup>110</sup> CEC Executive Director Janine Ferretti stated during the workshop that the "the benefits of forging stronger links between health and environment become increasingly clear."<sup>111</sup> The workshop will facilitate a children's environmental health agenda in Mexico. In doing so, it confronts directly the link between environmental harm and children's rights.

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<sup>106</sup> Citizen Submissions on Enforcement Matters, Mexico City Airport, *at* <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=78> (last visited March 1, 2002).

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

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> See [http://www.cec.org/files/pdf/POLLUTANTS/jf-speakpts-e2\\_EN.PDF](http://www.cec.org/files/pdf/POLLUTANTS/jf-speakpts-e2_EN.PDF) (Last visited March 13, 2002).

<sup>111</sup> *Id.*

### 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>112</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 2001 and 2002, 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>113</sup>

Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right. Of the approximately 190 nations in the world,<sup>114</sup> there are now 109 national constitutions that mention the protection of the environment or natural resources.<sup>115</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>116</sup> Of these, 53 constitutions explicitly recognize the right to a clean and healthy environment,<sup>117</sup> and 92 constitutions make it the duty of the national government to prevent harm to the environment.<sup>118</sup> Fifty-four constitutions recognize a responsibility of citizens or residents to protect the environment,<sup>119</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>120</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>121</sup> Sixteen constitutions provide an explicit right to information concerning the health of the environment or activities that may affect the environment.<sup>122</sup>

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<sup>112</sup> See I.C.J. Statute, art. 38.

<sup>113</sup> See *infra* Appendix 1 (providing a cumulative list of these countries and a brief description of the relevant provisions)

<sup>114</sup> As of 2002, there are 190 members of the United Nations, Switzerland retaining member status in March 2002. See generally U.N. Member States home page at <http://www.un.org/members/index.html> (last visited March 13, 2002).

<sup>115</sup> See *infra* Appendix 1.

<sup>116</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.

<sup>117</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,

## B. Courts

### 1. Malaysia: High Court in Sabah & Sarwak at Kuching, Suit No. 22-28-99-I.

In a case concerning native customary land rights, the High Court of Malaysia ruled on May 12, 2001, that Nor Anak Nyawai, Sekalai Anak Ling, Jeranku Anak Bakit, Lnai Anaka Tanheh, and all others were entitled to certain disputed land at Sungai Sekabai, Sungai Tajem and Borneo Pulp Plantations.<sup>123</sup> The court agreed that the Plaintiffs had acquired native customary rights to this land and the defendant Borneo Pulp Plantations had trespassed, clear-cut and planted trees to feed a paper mill on the parcels.<sup>124</sup>

The Malaysian federal constitution states that “no person shall be deprived of his life or personal liberty save in accordance with law.”<sup>125</sup> Because Malaysian law treats native customary rights as part of the “right to livelihood,” any interference with such rights is unconstitutional.<sup>126</sup>

In this particular case, Plaintiffs established ownership through ancestry and use of the land for hunting, fishing and collection of forest produce. They further demonstrated that Borneo Pulp Plantation had interfered with such ownership without consulting with the local

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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>118</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, Papa 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>119</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, Papa 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>120</sup> Albania, Armenia, Belarus, Burundi, Chile, Czech Republic, Moldova, Mongolia, Romania, Russia, Slovakia, Switzerland, Ukraine, Uzbekistan.

<sup>121</sup> Angola, Argentina, Azerbaijan, Belarus, Brazil, Chechnya, Chile, Congo, Costa Rica, Ecuador, Haiti, Kyrgyzstan, Moldova, Mongolia, Paraguay, Poland, Russia, Spain, Ukraine.

<sup>122</sup> Albania, Azerbaijan, Belarus, Colombia, Czech Republic, Ecuador, Eritrea (draft), Georgia, Kazakhstan, Latvia, Moldova, Norway, Russia, Slovakia, Ukraine, Yugoslavia.

<sup>123</sup> Malaysia in the High Court in Sabah & Sarawak at Kuching Suit No. 22-28-99-I (copy of decision on file with Earthjustice).

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

<sup>125</sup> *Id.* at ¶ 51.

<sup>126</sup> *Id.*

community.<sup>127</sup> In particular, the Court stated that if plantations were allowed to conduct activities without reference to the community group it would be an

...arbitrary diminution of the community's right effected by might, and not by right or justice. The logical outcome is that there will be nothing for the community right to work on at all: the community will lose its value as a cohesive and disciplinary force and will disappear, leaving the mass of individuals who will have no roots, no traditions, no beliefs and no livelihood except they will suffer a miracle of adaptation. There have been instances in Malaya and in other countries...of whole communities disappearing, even literally dying out, in contact with lop-sided and rapid "development". Where they cannot adapt fast enough, the only benefit "in the sense that they are better off dead."<sup>128</sup>

In granting Plaintiffs' the right to the disputed land, the Court reminded the Defendants that the general principles of the draft Declaration on the Human Rights of Indigenous Communities suggests that companies should consult the indigenous in their future activities. Quoting Articles 4 and 7 the Court emphasized that indigenous communities should have full participation rights in the legal systems and should be entitled to redress for any deprivation of their "integrity as a distinct peoples".<sup>129</sup>

The decision assessed the impact that environmentally unfriendly business practices such as clear-cutting can have on indigenous rights and, thus, illustrates a link between human rights and the environment. Nevertheless, the Sarawak State Assembly of Malaysia, uninhibited by the Court's strong ruling, passed a land surveyors bill last November 2001 that may hinder future claims by indigenous communities to certain ancestral lands.

## **2. Russia: Military Supreme Court, Case No. VKPI 01-68**

The decision of the Russian Military Supreme Court on February 13, 2002, to abolish a secret decree that provided the foundation for the conviction of environmental whistleblower, Grigory Pasko, may eventually result in the overturning of Mr. Pasko's conviction.<sup>130</sup> The case illustrates the link between the environmental harms and the human rights of free speech and privacy.

Pasko was convicted of espionage on December 25, 2001 because of his contacts with a Japanese journalist, Tadashi Okano, which ultimately resulted in the production of a television documentary about Russia's illegal dumping of nuclear waste into the Sea of Japan.<sup>131</sup> The Supreme Court ruled that a secret decree, underlying the conviction, which forbids Russian

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<sup>127</sup> *Id.* at ¶ 22.

<sup>128</sup> *Id.* at ¶ 109.

<sup>129</sup> *Id.* at ¶ 111.

<sup>130</sup> See <http://www.sierraclub.org/human-rights/russia/pasko.asp> (last visited March 13, 2002).

<sup>131</sup> The Pasko Case, at <http://www.bellona.no/imaker?id=23009&sub=1> (last visited March 13, 2002).

military personnel with access to a state secret to have any contacts with foreign citizens, violates Mr. Pasko's right to inviolability of the private life that Article 23 (1) of the Russian Constitution safeguards.<sup>132</sup> On these grounds, the Court abolished the decree.<sup>133</sup> The Court has not yet scheduled Pasko's appeal.

### 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 developing countries that have resulted from environmental degradation allegedly caused by European and US corporations. Although these cases have not yet been decided on the merits, they have 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. *Wiwa v. Royal Dutch Shell Petroleum Co.* (US District Court for the Southern District of New York, Case No. 96 Civ. 8386 (KMW))

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

After the US Court of Appeals for the Second Circuit rejected the defendant's motion to dismiss the case on grounds of *forum non conveniens* in September 2000<sup>134</sup> and the US Supreme Court decided in March 2001 not to hear arguments challenging that decision,<sup>135</sup> the case was sent back, or "remanded," to the federal trial court for further proceedings. On February 22, 2002, the federal trial court rejected almost all of the additional grounds that Defendants raised to dismiss the claims in this action thereby allowing the case to move to discovery phase.<sup>136</sup>

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000).

<sup>135</sup> *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) *cert. denied*, \_\_\_ U.S. \_\_\_, 121 S. Ct. 1402 (2001), at [www.supremecourtus.gov/docket/00-1168.htm](http://www.supremecourtus.gov/docket/00-1168.htm) (last visited Feb. 19, 2002).

<sup>136</sup> *Wiwa v. Royal Dutch Petroleum Co.*, 2002 U.S. Dist. LEXIS 3293, at <http://www.earthrights.org/shell/mtd02.html> (last visited March 18, 2002).

The ruling addressed several significant substantive aspects of the case, which will likely pave the way for similar cases in the future. First, the Honorable Kimba M. Wood of the US District Court for the Southern District of New York ruled that plaintiffs adequately proved that the corporation's actions were intimately tied to the state of Nigeria, and that, in the case of Royal Dutch/Shell, the actions of Shell Nigeria were intimately tied to the Royal Dutch/Shell parent for the Alien Tort Claims Act and the Torture Victim Protection Act to provide bases for subject matter jurisdiction for the key claims against Royal Dutch/Shell and Brian Anderson, the Nigerian chairman for Royal Dutch/Shell and Managing Director of Shell Nigeria. Second, the Court rejected Mr. Anderson's motion to dismiss the claims against him on grounds of *forum non conveniens*, relying on the reasoning of the Second Circuit in their previous ruling against such a dismissal for Royal Dutch / Shell. Finally, Judge Wood denied a motion to dismiss on the grounds of the Act of State doctrine, which precludes a case from being heard on the grounds that one nation-state should not involve itself in the internal affairs of another. The Court found that no damage to US-Nigerian relations would result from this case, that no threat of embarrassment to the Nigerian government exists, and that the public interest in preventing these type of harms was more compelling.

Consequently, the Court will now hear arguments on the merits of the following alleged human rights violations that stem from environmental harms caused by oil exploration and drilling in the Niger Delta: “(1) crimes against humanity with respect to Doe and Owens Wiwa; (2) torture with respect to Doe; (3) cruel, inhuman, or degrading treatment with respect to Doe and Owens Wiwa; (4) violation of the right to life, liberty and security of person with respect to Doe; (5) violation of the right to peaceful assembly and association with respect to Doe and Wiwa.”<sup>137</sup> The case will move to the discovery phase after the plaintiffs amend their complaint to restate two claims that the Court did dismiss.

**b. *Bano v. Union Carbide* (US District Court for the Southern District of New York, Case No. 99 Civ. 11329 (JFK))**

In November of 1999, several victims of the 1984 Union Carbide India Limited gas plant disaster at Bhopal, India filed suit in US federal court against the parent US corporation, Union Carbide, and its former CEO, Warren Anderson, in federal court in New York.<sup>138</sup> The environmentally harmful explosion killed five thousand people and injured many more. Plaintiffs alleged violations of human rights, environmental and criminal law and sought damages for the ongoing pollution and land contamination.

The District Court transferred the cases to the Indian courts on the ground of *forum non conveniens*.<sup>139</sup> The Indian Supreme Court ordered a settlement in 1989 for a mere \$470 million, which amounts to less than \$10,000 for each immediate death.<sup>140</sup> The Indian Supreme Court also

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<sup>137</sup> *Id.* at \*12.

<sup>138</sup> *Bano v. Union Carbide*, 2000 US Dist. LEXIS 12326 (August 28, 2000), at <http://www.earthrights.org/bhopal/bano0800.rtf> (last visited March 18, 2002).

<sup>139</sup> *Id.*

<sup>140</sup> See <http://www.earthrights.org/bhopal> (last visited March 18, 2002).

allowed criminal cases to proceed against Union Carbide and Warren Anderson, but although the Indian prosecutor issued arrest warrants, neither defendant ever appeared.<sup>141</sup>

Despite the trial court's dismissal, the US Court of Appeals for the Second Circuit decided last year to reinstate the common law environmental claims against both the parent corporation and its former CEO.<sup>142</sup> Addressing the claims against Anderson, the Court found that he "had exercised significant direct control over management of the Bhopal plant, including control over safety procedures"<sup>143</sup> and the trial court had not stated specific reasons for dismissing such claims against him. Consequently, an important case concerning harms to humans a result of environmental degradation has been given the opportunity to continue.

## C. Governments

### 1. Kenya: Order from the Meru Central District Committee to Clean Up Water Contamination

In February 2001, the Meru Central District Environmental Committee in Kenya ordered the Meru Council to stop dumping garbage in the Nkunga and the lower section of Mt. Kenya forest because the waste in the forest contaminates the water flowing from and within the forest on which thousands of people rely and, in turn, creates a health hazard for these communities. The Meru people live at the base of the spectacular Mount Kenya, a UN World Heritage site, which contains an impressive diversity of plant and wildlife species and is very popular with outdoor enthusiasts.<sup>144</sup>

The Environmental Committee further disciplined the Council with its statement that the Council has been insensitive to the welfare of the people for the past 30 years by allowing human exposure to water-borne diseases from contaminated water.. In an effort to enforce its decision, the Environmental Committee called upon the forest department to close the forest to the public until the contamination is eliminated.

On a related note, the United Nations Development Programme Global Environment Facility Small Grants Programme, confirming that "the Municipal Council of Meru has been dumping garbage in the Imenti forest of Mt. Kenya for several years" is helping solve this problem by granting funds to establish a recycling program and determine alternative sites for dumping in Meru.<sup>145</sup>

The Meru Environmental Committee's actions demonstrate recognition of the harm to human rights, particularly the rights to life and health that environmental degradation poses.

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<sup>141</sup> *Id.*

<sup>142</sup> *Bano v. Union Carbide*, 273 F.3d 120 (2<sup>nd</sup> Cir. 2001), at <http://www.earthrights.org/bhopal/remand.html> (last visited March 18, 2002).

<sup>143</sup> *Id.*

<sup>144</sup> <http://www.kilimanjaro.com/kenya/mtkenya.htm> (last visited Mar. 19, 2002); <http://wildnetafrica.co.za/wildlifeneews/2000/10/790.html> (last visited Mar. 19, 2002).

<sup>145</sup> UNEP project descriptions, at <http://www.nationaudio.com/News/EastAfrican/26112001A/Regional/Regional3.html> (last visited Mar. 19, 2002).

## 2. Bangladesh and India: Bio-Village

Bangladesh and India are in the process of establishing a bio-village in the world's largest mangrove forest.<sup>146</sup> Apart from preserving the forest's diversity, the bio-village will also help to bring freedom from poverty for communities in the Sundarbans and generate employment through environmentally-friendly fishing and farming industries. The governments will finalize the project in May 2002 and hold a regional workshop in June to review the proposal. They will then submit it to the United Nations Fund for International Partnerships for financial support and implementation. The bio-village project demonstrates a link between environmentally-sound development projects and the protection of human rights.

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<sup>146</sup> News releases, *Bangladesh, India to set up bio-village in Sundarbans*, at <http://propoor.org/news/xar0227.asp> (last visited March 14, 2002).

## 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 favorable 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 favorable 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 utilized 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.”



**EARTHJUSTICE**

*Because the earth needs a good lawyer*

ISSUE PAPER

**HUMAN RIGHTS AND THE ENVIRONMENT**

***- CASE STUDIES -***

**ADDITIONAL MATERIALS FOR THE FIFTY-EIGHTH SESSION OF THE  
UNITED NATIONS COMMISSION ON HUMAN RIGHTS  
GENEVA, 18 MARCH - 26 APRIL 2002**

EARTHJUSTICE LEGAL DEFENSE FUND

## ABOUT EARTHJUSTICE LEGAL DEFENSE FUND

Earthjustice Legal Defense Fund was founded in 1971 and has consultative status with the UN Economic and Social Council. We are a nonprofit public interest law firm dedicated to protecting the magnificent places, natural resources, and wildlife of this earth and to defending the right of all people to a healthy environment. We bring about far-reaching change by enforcing and strengthening environmental laws on behalf of hundreds of organizations and communities.

Earthjustice's International Program uses the power of the law to protect the environment and human health worldwide. We represent public interest and community groups in international tribunals and domestic courts to hold corporations and governments responsible for environmental harm, prevent trade rules from undermining public health and environmental protections, and create strong tools for citizens to defend the right to a healthy environment.

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## INTRODUCTION

Around the globe in 2001 and early 2002, environmental harms from construction projects and dams, resource exploitation, logging activities and accidents have repeatedly violated rights of indigenous peoples and local communities while at the same time destroying precious ecosystems. Similarly, preparations for new activities abound that are certain to have similar devastating effects. Efforts to protest or alert people to environmental threats are continuously met with deprivations of civil liberties and due process.

Corporations, international institutions and national governments contribute to the environmental harms that result in 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 redress these tragedies. When existing enforcement systems have succeeded, they almost always have employed a rights-based approach to environmental protection, thereby strengthening the principle as an international legal norm.

Because of the time and expense needed to obtain primary source material to support most of the factual allegations contained in these cases studies, we have had to rely upon secondary source information that, at times, may contain some inaccuracies. Nevertheless, this information, which one can easily obtain on the Internet as the footnotes indicate, is sufficient for purposes of highlighting environmental degradation and health problems in various regions of the world that have resulted or may soon result in a deprivation of human rights.

### **I. Africa**

#### **A. Democratic Republic of Congo**

The recent skyrocketing demand for cellular telephones has led to an increased demand and correspondingly high price tag for coltan—short for columbite-tantalite—which is used to construct a necessary component of mobile phones and other electronic devices such as laptop computers.<sup>1</sup> Because the DRC contains eighty percent of the world's coltan reserves and its population is extremely poor,<sup>2</sup> the high demand for coltan

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<sup>1</sup> *Miners Buried in DR Congo*, BBC News, Jan. 15, 2002, [http://news.bbc.co.uk/1/hi/english/world/africa/newsid\\_1761000/1761540.stm](http://news.bbc.co.uk/1/hi/english/world/africa/newsid_1761000/1761540.stm) (last visited Mar. 15, 2002); *What is Coltan?: The Link Between Your Cellphone and Congo*, *Nightline*, Jan. 21, 2002, [http://abcnews.go.com/sections/nightline/DailyNews/coltan\\_explainer.html](http://abcnews.go.com/sections/nightline/DailyNews/coltan_explainer.html) (last visited Mar. 19, 2002).

<sup>2</sup> *What is Coltan?: The Link Between Your Cellphone and Congo*, *Nightline*, Jan. 21, 2002, [http://abcnews.go.com/sections/nightline/DailyNews/coltan\\_explainer.html](http://abcnews.go.com/sections/nightline/DailyNews/coltan_explainer.html) (last visited Mar. 19, 2002).

has led to increased coltan mining activities in the DRC which, in turn, has intensified a currently raging civil war.<sup>3</sup>

Furthermore, both the increased coltan mining and the continued civil war have resulted in harms to the environment and human health.<sup>4</sup> First, the civil war has displaced thousands of miners and their families and forced them to relocate to national parks and wildlife reserves, including UN World Heritage sites, to seek out coltan.<sup>5</sup> Such relocation endangers one of the world's rarest creatures, the eastern lowland gorilla, as well as elephants and other species.<sup>6</sup> Second, the instability of the coltan mines has caused harm to workers. On January 15, 2002, one coltan mine in the Eastern Congo collapsed, killing at least 30 people.<sup>7</sup> That coltan mining has given rise to continued civil war, civilian displacement, worksite accidents, and the destruction of precious biodiversity provides another example of the linkages between environmental degradation and human rights.

## **B. Tanzania**

On July 30-31, 1996, thousands of people were forced from their homes by Tanzanian police in an effort to make way for the development of the Kahama Mining Corporation's Bulyanhulu goldmine.<sup>8</sup> Locals allege that during this time as many as 52 miners were buried alive by the company's bulldozer while it was filling in small-scale mining pits. Since September 2001, environmental and human rights groups have been calling for an independent review to investigate these accusations.<sup>9</sup>

The Kahama Mining Corporation denies these allegations, stating that "the eviction of the small-scale miners was monitored by police, government officials, tunnel inspectors and company officials...[and] all pits were checked before being filled by bulldozers."<sup>10</sup> Thus far, the Tanzanian police, Amnesty International and the World Bank have all carried out their own investigations, and none of these inquires have

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<sup>3</sup> For example, the Rwandan army, which backs the Congolese Tutsi rebel movement, earned approximately \$20 million per month for coltan mining in the year 2000 to finance their operations. *Id.*

<sup>4</sup> Natalie D. Ware, *Congo War and the Role of Coltan*, <http://www.american.edu/TED/ice/congo-coltan.htm> (last visited Mar. 15, 2002).

<sup>5</sup> *Miners' Rush For Coltan Threatens Rare Gorilla*, April 13, 2001 <http://www.oneworld.net/cgi-bin/index.cgi?root=526&url=http://ens.lycos.com/ens/apr2001/2001L-04-13-12.html> (last visited Mar. 15, 2002).

<sup>6</sup> *Id.*

<sup>7</sup> *Miners Buried in DR Congo*, BBC News, Jan. 15, 2002 [http://news.bbc.co.uk/1/hi/english/world/africa/newsid\\_1761000/1761540.stm](http://news.bbc.co.uk/1/hi/english/world/africa/newsid_1761000/1761540.stm) (last visited Mar. 15, 2002).

<sup>8</sup> News release, *Environmental and Human Rights NGOs call for Independent Review of Forced displacement and alleged massacre at Bulyanhulu, Tanzania*, at [http://www.ciel.org/Ifi/Press\\_Tanzania\\_27Sept01.html](http://www.ciel.org/Ifi/Press_Tanzania_27Sept01.html) (last visited March 14, 2002).

<sup>9</sup> *Id.* See also <http://www.minesandcommunities.org/Company/bulyanhulu1.htm> (last visited Mar. 15, 2002).

<sup>10</sup> <http://www.minesandcommunities.org/Company/bulyanhulu1.htm> (last visited Mar. 19, 2002).

uncovered conclusive evidence to support the allegations.<sup>11</sup> Nevertheless, the debate continues.

The Bulyanhulu controversy led to detainment of two activists. After holding a press conference to maintain pressure on the government to investigate on November 19, 2001, Mr. Rugemeleza Nshala, President of the Lawyers' Environmental Action Team (LEAT), and Augustine Mrema, the National Chairman of the Tanzanian Labour Party, were arrested by Tanzanian authorities a few days later on November 24.<sup>12</sup>

Recently, on January 14, 2002, LEAT submitted a complaint to the International Finance Corporation on human rights violations.<sup>13</sup> Additionally on March 6, 2002, one of Tanzania's most respected legal figures, Judge Mark Bomani, publicly came out in support of further investigation into the matter.<sup>14</sup>

## II. Asia

### A. China, India, and Pakistan

The computer and other electronic wastes (often referred to as "e-waste") exported to China, India, and Pakistan, and India are severely polluting their environment and may be affecting human health, according to a report entitled *Exporting Harm* prepared by the Basel Action Network and Silicon Valley Toxics Coalition, both US-based, together with contributions from Toxics Link India, Greenpeace China and the Society for the Conservation and Protection of the Environment (SCOPE) from Pakistan.<sup>15</sup> Generally, certain computer components, as well as other electronics, contain an array of toxic materials including lead, beryllium, mercury, cadmium, and brominated flame retardants.<sup>16</sup> According to the *Exporting Harm* Report, the dismantling of these computers and other electronics and the discarding or recycling of the dismantled components can result in the release of these toxic materials that find their way into the

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<sup>11</sup> Judge Mark Bomani Calls for Independent Commission on Bulyanhulu Allegations, at [http://www.irinnews.org/report.asp?ReportID=23896&SelectRegion=East\\_Africa&SelectCountry=TANZANIA](http://www.irinnews.org/report.asp?ReportID=23896&SelectRegion=East_Africa&SelectCountry=TANZANIA) (last visited Mar. 19, 2002).

<sup>12</sup> News release, *Environmental Organizations Blast Tanzanian Government for Attempts to Cover-up Allegations of Killings and Forced Evictions at Bulyanhulu Mine*, at [http://www.ciel.org/Ifi/arrest\\_tanzania\\_nov01.html](http://www.ciel.org/Ifi/arrest_tanzania_nov01.html) (last visited Mar. 19, 2002).

<sup>13</sup> LEAT Bulyanhulu Complaint Submitted to IFC/MIGA Compliance Advisor/Ombudsman, at <http://www.lead.or.tz/active/buly/miga.complaint.php> (last visited Mar. 19, 2002).

<sup>14</sup> Judge Mark Bomani Calls for Independent Commission on Bulyanhulu Allegations, at [http://www.irinnews.org/report.asp?ReportID=23896&SelectRegion=East\\_Africa&SelectCountry=TANZANIA](http://www.irinnews.org/report.asp?ReportID=23896&SelectRegion=East_Africa&SelectCountry=TANZANIA) (last visited Mar. 19, 2002).

<sup>15</sup> *Exporting Harm: The High-Tech Trashing of Asia*, at <http://www.ban.org/>, (last visited April 17, 2002), on file with Earthjustice ("Exporting Harm Report"). Members of the UN Commission on Human Rights are strongly encouraged to view the photographs and diagrams included in the report even if time does not allow for reading the entire report. See also *High-tech U.S. Trash Floods Asia*, at <http://www.ens-news.com/ens/feb2002/2002L-02-26-07.html> (last visited March 27, 2002); Danielle Knight, *Toxic U.S. Tech Waste Dumped Abroad, Not Recycled*, at [http://www.oneworld.org/ips2/feb02/02\\_29\\_004.html](http://www.oneworld.org/ips2/feb02/02_29_004.html) (last visited March 27, 2002); *Exporting Harm: The High-Tech Trashing of Asia*, at <http://www.svtc.org/cleancc/pubs/tt2.htm> at 8 (last visited March 27, 2002).

<sup>16</sup> *Id.* at Annex I.

air, surface water, soil, and groundwater. Human contact with such releases—whether through direct skin exposure, the breathing of the burnt toxins, or the drinking of contaminated groundwater—can lead to a host of health problems.<sup>17</sup>

For example, in the Guiyu region of China, approximately 100,000 adult and child workers dismantle obsolete computers predominantly sent from North America and separate the components and the materials comprising such components into piles for disposal and recycling.<sup>18</sup> The dismantling process often involves the burning of plastic and wires, melting and burning of toxic circuit boards and dumping along rivers, open fields, and irrigation channels.<sup>19</sup> Soil and water tests for the region have revealed dangerous levels of toxins, including lead and chromium.<sup>20</sup> Although the exact human health effects from these processes remain largely unknown, fresh water is now shipped into the province daily because the population is concerned about drinking the foul-tasting local water.<sup>21</sup>

The *Exporting Harm* report suggests some solutions to this problem, including a ban on exports of the hazardous e-waste, a decrease in the levels of toxic substances used to manufacture the products, and efforts to hold producers responsible for their product's disposal.<sup>22</sup>

## **B. India**

Some 15,000 villagers have begun protesting the operations of the Shiv Shakti Sponge Iron Limited (SSSIL) plant because emissions of carbon monoxide, sulphur and nitrogen oxide from the production of sponge irons have polluted the villagers' water supply resulting in human health effects and caused other adverse environmental effects<sup>23</sup>

The SSSIL has stated that water pollution is not rampant in the area and further notes that the unit has placed three bag filters to stop dust from escaping in the air.<sup>24</sup> Despite the company's statements, each time there is a southerly wind, the nearby high school must shut down due to the thickness of the coal laden smoke.<sup>25</sup> The toxic dust from the coal, iron ore and dolomites has also settled into wells and ponds in the region polluting drinking water and leading to water scarcity.<sup>26</sup> The pollution from SSSIL has created a variety of health problems including stomach disorders, skin problems, and respiratory diseases.<sup>27</sup>

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<sup>17</sup> *Id.* at 26.

<sup>18</sup> *Exporting Harm* Report at 17-23.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at Annex II, III (Guiyu soil and water test results).

<sup>21</sup> *Exporting Harm* Report at 17-23.

<sup>22</sup> *Id.* at 40-43.

<sup>23</sup> *Billowing Rage*, at [http://www.cseindia.org/html/dte/dte20020315/dte\\_srep.htm](http://www.cseindia.org/html/dte/dte20020315/dte_srep.htm) (last visited March 27, 2002).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

In 2000, a team from the Balasore Pollution Control Board visited the site and reported that SSSIL was violating the 1974 Waste Act and the 1974 Air Act. However, after a suit was filed in December 2001, SSSIL managed to receive a stay order to keep the plant open.<sup>28</sup>

### C. Malaysia

After a lagging economy thwarted earlier attempts, work has proceeded on the “mammoth” \$6.2 billion Bakun Hydroelectric Dam project, and completion is expected in 2002.<sup>29</sup> Scores of groups have campaigned for an end to the project over the years, including the indigenous communities of Malaysia, together with the opposition Democratic Action Party and the Coalition of Concerned NGOs on Bakun, which includes over 40 Malaysian NGOs, Friends of the Earth, the International Rivers Network, and the Earth Island Institute.<sup>30</sup> The NGO coalition claims that:

Bakun Dam will inundate an area as large as Singapore [. . . including] species of flora and fauna used for medicine, food, fibre and other social uses . . . [and] create adverse impacts on water levels and salt-water intrusion in the river downstream, potentially affecting tens of thousands of people in Sarawak. It will also cause degradation of fish habitat and loss of fisheries resources downstream and in the inundated area.

The 10,000 indigenous people forcibly displaced by the project have not received adequate compensation. Those who had relocated to the Kampung Asap resettlement site are now suffering from abject poverty, malnutrition, unemployment, appalling housing scheme and dire social economic condition. Some have moved back into the dam site and more are inclined to do the same.<sup>31</sup>

The Malaysian Human Rights Commission met with the local Sarawak government in December 2001 to investigate allegations of human rights abuses in the dam’s construction.<sup>32</sup> In addition to the refusal of some 200 natives to relocate, others expressed unhappiness about the size of land given to them at their new settlement, the

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<sup>28</sup> *Id.*

<sup>29</sup> *Coalition of Concerned NGOS Against Bakun*, <http://www.suaram.org/bakun/> (last visited Mar. 20, 2002); Assif Shameen, *A Sinking Feeling: Financing Bakun is Looking Almost as Tricky as Building The Dam*, <http://www.asiaweek.com/asiaweek/97/0704/biz4.html> (last visited Mar. 15, 2002).

<sup>30</sup> Tony Allison, *Malaysia's Bakun project: Build and Be Damned*, Oct. 28, 2000, <http://www.atimes.com/reports/BJ28Ai01.html> (last visited Mar. 20, 2002).

<sup>31</sup> Coalition of concerned NGOS against Bakun, <http://www.suaram.org/bakun/> (last visited Mar. 20, 2002).

<sup>32</sup> Leong Kar Yen, *Suhakam to Meet Sarawak Government on Native Rights*, <http://www.earthisland.org/borneo/news/articles/011104article.html> (last visited Mar. 20, 2002).

high price for houses, the inconsistent income, lack of job opportunities, and poor basic infrastructure there.<sup>33</sup>

### III. Europe

#### A. Russia

Chelyabinsk, the capital of the Chelyabinsk province in Russia and the site of one of the former Soviet Union's major nuclear manufacturing centers now suffers from extreme contamination and pollution.<sup>34</sup> Over the past 50 years, the Mayak complex, which was once a main military production center, has contaminated the region with highly dangerous nuclear and chemical wastes. Between 1949 and 1956, liquid wastes in the Tech-Iset-Tobul river system exposed over 124,000 people living along the riverbank to radiation. Then, in 1957 a nuclear waste storage tank exploded at the Mayak complex contaminating a total area of 23,000 square kilometers and releasing twice the amount of radiation as the Chernobyl accident.<sup>35</sup> The Soviet government seemed to keep the matter secret until 1992 when Boris Yeltsin signed a decree revealing the harms.<sup>36</sup> Finally, in 1967 a lake used to divert radioactive waste dried up and blew the waste over a 2,200 square kilometer radius.<sup>37</sup>

The health effects of the contamination have been devastating. After decades of constant accidents and contamination, instances of birth defects and sterility throughout the province have increased significantly.<sup>38</sup> Moreover, although twenty-two provincial villages were evacuated after the 1957 explosion, the contaminated city of Muslymova was not evacuated and its residents continued to rely solely upon the Tech-Iset-Tobul river system for drinking water.<sup>39</sup> As a result, the numbers of birth defects and cancer deaths in Muslymova soared and cancer mutations were fifteen times that of the average Russian.<sup>40</sup> Moreover, a 1991 report on the health of the people living on the banks of the Techa River shows that the incidence of leukemia has increased by 41 percent since 1950, the incidence of other cancers has risen by 21 percent between 1980-1990, and circulatory diseases have risen by 31 percent.<sup>41</sup>

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<sup>33</sup> *Id.* See also <http://www.worldpaper.com/2002/jan01/dam5.html> (last visited Mar. 20, 2002).

<sup>34</sup> *Forty Years of Nuclear Contamination in Chelyabinsk, Russia*, at <http://www.wedo.org/ehealth/forty.htm> (last visited March 26, 2002). See also *Chelyabinsk: The Most Contaminated Spot on the Planet*, at <http://www.logtv.com/chelya/> (last visited April 17, 2002).

<sup>35</sup> *Id.*

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

<sup>37</sup> *Forty Years of Nuclear Contamination in Chelyabinsk, Russia*, at <http://www.wedo.org/ehealth/forty.htm> (last visited March 26, 2002).

<sup>38</sup> *Chelyabinsk Nuclear Disasters*, <http://www.logtv.com/chelya/cheldis.html>. Fifty percent of the population was allegedly born sterile twenty years ago. *Forty Years of Nuclear Contamination in Chelyabinsk, Russia*, at <http://www.wedo.org/ehealth/forty.htm> (last visited March 26, 2002).

<sup>39</sup> *Forty Years of Nuclear Contamination in Chelyabinsk, Russia*, at <http://www.wedo.org/ehealth/forty.htm> (last visited March 26, 2002).

<sup>40</sup> *Id.*

<sup>41</sup> Figures may be even higher given these percentages are based purely on the number of death certificates issued, and do not take into account the numbers of people still living with the effects of the environmental damage from the nuclear plant. *Id.*

In 1997 the Russian environmental law organization Ecojuris and local Chelyabinsk lawyer named Anna Ilina won a precedent setting case in the regional court ordering payment of compensation for emotional distress damages to second and third generation victims of radiation exposure from the Mayak facility.<sup>42</sup> The decision was the first official recognition that harms from the Mayak facility are adversely impacting the children and grandchildren of those exposed. However, many more second and third generation victims who were not party to the suit remain uncompensated. Moreover, efforts by the Russian government to clean up or otherwise redress the impacts from the radioactive contamination, such as providing medical monitoring, have not yet occurred.

## **B. Ukraine**

The combination of the deterioration in centralized water pipeline systems, unworkable sewage systems, an excess of agricultural drainage, and air contamination in the Ukraine<sup>43</sup> have resulted in severely polluted surface and groundwater.<sup>44</sup> Some of the major contaminants found in the drinking water include DDT and lindane; these and other pesticides were banned years ago but their residues “stored in plots in the countryside that are unknown to the general public” continue to leak into the soil today.<sup>45</sup>

The contaminated drinking water has led to a variety of health effects and diseases in the population such as hepatitis, oncological diseases, metabolic disorders, allergies, skin diseases, endocrine dysfunction, intestine infections, and cholera.<sup>46</sup> Moreover, the Ukraine has one of the lowest birth rates in Europe because of the impacts from the polluted water on pregnant women. Moreover, about 70 percent of pregnant women allegedly have extragenital and obstetric disorders, including anemia, late toxicosis, cardiovascular disorders and urogenital diseases.<sup>47</sup> Sadly, the consumption of processed water also causes many diseases in women and children including metabolic diseases, nephritis, polyarthritis, and scoliosis.<sup>48</sup>

## **IV. Island Nations**

### **Australia**

One of Australia’s most stunning national parks and the rights of its indigenous inhabitants are in jeopardy. Beneath Kadaku 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 Kadaku National Park, designated a UN

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<sup>42</sup> Information about the case on file with Earthjustice.

<sup>43</sup> In 1990 the air in Ukrainian cities contained different 36 pollutants. *Ukraine’s Drinking Water Grossly Polluted*, at <http://www.wedo.org/ehealth/ukraine.htm> (last visited March 26, 2002).

<sup>44</sup> *Id.* See also *Rehabilitating Ukraine’s Dnipro River: IDRC*, [http://www.idrc.ca/oceei/emdul/c-u-mon-1\\_e.cfm](http://www.idrc.ca/oceei/emdul/c-u-mon-1_e.cfm) (last visited April 16, 2002).

<sup>45</sup> *Ukraine’s Drinking Water Grossly Polluted*, at <http://www.wedo.org/ehealth/ukraine.htm> (last visited March 26, 2002).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

World Heritage Site in recognition of its outstanding archeological sites and the integrity of its diverse ecosystem. The Australian government has granted mining concessions to Energy Resources of Australia (ERA) 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 (WHC) decided to postpone any declaration to list Kakadu National Park as a World Heritage Site in Danger, despite scientific, cultural and technical reports that indicated a serious threat to the park and its inhabitants. Eventually, at the November 2000 WHC meeting in Cairns, the Australian government succeeded in convincing the WHC not to make any such declaration.<sup>49</sup>

Less than six months later, in March 2001, the majority shareholder of ERA—Rio Tinto—announced that it would not mine Jabiluka in the short-term.<sup>50</sup> In response to Rio Tinto's announcement, a representative from Victoria called on the Australian government to commence discussions with Rio Tinto about handing the mine site back to the Mirrar.<sup>51</sup> However, ERA maintains that it will eventually develop Jabiluka even if Rio Tinto's announcement currently has placed the project on hold.<sup>52</sup> Thus, for now, the human rights of the Mirrar people and the right of all Australians to the protection of Kakadu National Park remain in jeopardy.

## V. North America

### United States

Each proposal to drill in the Arctic Refuge's coastal plain carries with it a threat to the Gwich'in Nation's way of life. The coastal plain is home to over 250 species, including the 129,000-strong Porcupine Caribou Herd, which uses the coastal plain as their spring calving and nursery grounds.<sup>53</sup> Numbering over seven thousand, the people of the Gwich'in nation depend on the Porcupine Caribou Herd for their subsistence and culture.<sup>54</sup> The Gwich'in use the caribou for "food, clothing, shoes, shelters, medicines, blankets, sleds, tools, and...the Gwich'in tell caribou stories, sing caribou songs, dance caribou dances."<sup>55</sup>

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<sup>49</sup> *Anti-Nuclear Alliance of Western Australia*, Jabiluka Update – January 2001, at <http://www.anawa.org.au/nt/jabiluka-update-01-01.html> (last visited Dec. 19, 2001).

<sup>50</sup> *Anti-Nuclear Alliance of Western Australia*, Jabiluka Update – March - May 2001, at <http://www.anawa.org.au/nt/jabiluka-update-05-01.html> (last visited Dec. 19, 2001).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Gwich'in Peoples of Alaska Hang in the Balance of US Presidential Elections*, [http://www.moles.org/ProjectUnderground/drillbits/5\\_18/1.html](http://www.moles.org/ProjectUnderground/drillbits/5_18/1.html) (last visited Mar. 20, 2002). *See also* <http://www.alaska.net/~gwichin/background.html> (last visited Mar. 21, 2002) (Gwich'in Nation official Internet site).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

The Gwich'in Nation has been fighting this battle since the 1980s, when oil corporations renewed their efforts to drill the coastal plain.<sup>56</sup> Recently, on March 18, 2002, the Gwich'in called on supporters in the United States to contact their legislators to ensure that a new drilling amendment does not creep its way into the current energy bill.<sup>57</sup> The Gwich'in stress that "this issue is about the basic inherent fundamental human rights of the Gwich'in to continue to live their ancestral way of life."<sup>58</sup>

## **VI. Central and South America**

### **A. Colombia**

In the fall of 2000, the United States and Colombia began an intensive aerial herbicide application program to eradicate coca and poppy crops in drug-producing areas of Colombia as part of a greater anti-narcotics initiative called Plan Colombia. To date, the program is violating human rights of Colombian and Ecuadorian peasants and indigenous peoples living in the affected regions. The spray mixture and the manner in which it is applied have resulted in numerous health problems for residents, destruction of their food resources, contamination of their surface water, damage to surrounding wilderness areas, and tremendous deforestation resulting from relocation of spray victims and their farms that is beyond levels that the United States and Colombia claim results from coca and poppy production.

Despite these harms, the United States and Colombia have provided only limited information about the program and have not conducted adequate health and environmental assessments. Consequently, these governments are depriving these individuals of their rights to a clean and healthy environment, health, life, sustenance, property, inviolability of the home and family, and access to information.

Reports to date indicate that the aerial herbicide application program has resulted in serious human rights abuses.<sup>59</sup> Health harms from the spraying include gastrointestinal disorders (e.g. severe bleeding, nausea, and vomiting), testicular inflammation, high fevers, dizziness, respiratory ailments, skin rashes, and severe eye irritation. The spraying may also have caused birth defects and miscarriages. Moreover, the spraying has destroyed more than 1,500 hectares of legal food crops (e.g. yucca, corn, plantains, tomatoes, sugar cane, grass for livestock grazing) and fruit trees and has resulted in the death of livestock (e.g. cows, chickens). Regarding environmental harms, the spraying

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<sup>56</sup> *Gwich'in Nation Fights for Caribou in Alaska*, August 28, 2000, <http://www.cnn.com/2000/NATURE/08/28/caribou.enh/> (Mar. 21, 2002)

<sup>57</sup> Email from the Project Underground listserv, on file with Earthjustice.

<sup>58</sup> <http://www.alaska.net/~gwichin/helpsave.html> (Mar. 21, 2002).

<sup>59</sup> Earthjustice and Amazon Alliance have gathered a great deal of evidence that supports each of the effects on the health, livelihood, and the environment of the Colombians and Ecuadorians detailed in this section of the issue paper. We would be pleased to provide the UN Commission on Human Rights and/or any of the government delegations with copies of such evidence. Please contact us at [info@ejusintl.org](mailto:info@ejusintl.org) or [amazon@amazonalliance.org](mailto:amazon@amazonalliance.org).

has parched wilderness areas and caused deforestation and loss of critical habitat to endangered bird species because spray victims relocate to farm their legal crops. Other environmental harms include contamination of surface waters and death of fish. In sum, the situation provides a clear example of the link between the environment and human rights—severe damage to the air, water, land and biodiversity caused by the spraying is violating various human rights.

## **B. Peru**

The health and environmental conditions endured by the 30,000 residents of La Oroya in the central Peruvian Andes represent a clear violation of the human rights to health, life, food, and a clean and healthy environment. Since 1922, a nearby multi-metal smelter, operated by the Doe Run corporation, has been contaminating the urban environment surrounding the smelter with toxic emissions. A 1999 blood evaluation conducted in La Oroya by the Ministry of Health shows that 99.1% of 346 children tested have blood-lead levels indicative of lead poisoning, and that nearly 20% of these require immediate hospitalization.<sup>60</sup> Because lead inhibits neurological development, the thousands of children poisoned by the smelter will likely be impaired for life.<sup>61</sup>

Sadly, the Peruvian government and Doe Run do not publicly recognize the severity of the situation, and are not addressing the atmospheric contamination or the public health crisis. Urgent action is needed in La Oroya and surrounding communities to curtail the emissions from the smelter, relocate the inhabitants of areas contaminated by historic emissions, mitigate the areas with toxic contamination, and provide medical treatment and monitoring to the many thousands of people whose health and lives have been compromised by the wanton operation of this metallurgical complex during the past century.<sup>62</sup>

## **C. Ecuador**

The Oriente region of Ecuador consists of 32 million acres of tropical rainforest home to 95,000 indigenous people whom are currently facing extinction due to the actions of an oil company.<sup>63</sup> Chevron-Texaco dumped some 4.3 million gallons of toxic oil waste in the last 20 years, and has left large open pits of toxic waste.<sup>64</sup> A class action lawsuit, which seeks site clean-up estimated at one billion dollars, is pending in the US courts.<sup>65</sup>

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<sup>60</sup> “Estudio de Plomo en Sangre en una Poblacion Seleccionada de La Oroya.” Ministerio de Salud, DIGESA, Noviembre de 1999.

<sup>61</sup> Needleman, Herbert et al. "The Long-Term Effects of Exposure to Low Doses of Lead in Childhood: An 11-Year Follow-up Report." 332 *New England Journal of Medicine* at 83-88 (1990).

<sup>62</sup> Anna Cederstav et al, *La Oroya Cannot Wait* (2001).

<sup>63</sup> See <http://www.amazonwatch.org/> (last visited March 28, 2002).

<sup>64</sup> *Id.*

<sup>65</sup> *Aguinda v. Texaco, Inc.*, 142 F.Supp.2d 534 (S.D.N.Y., 2001), currently on appeal before the US Court of Appeals for the Second Circuit.

The Ecuadorian government has recently granted another US oil company the right to build a pipeline that will carry crude oil from the Amazon to the Andes, ending at the Pacific Coast.<sup>66</sup> The project will double Ecuador's oil production and promises to lead to further deforestation of an already fragile ecosystem and create danger for the health and environment of the indigenous communities in the Amazon already suffering from past oil exploits.<sup>67</sup> To date, groups of environmentalist and indigenous peoples have been protesting the heavy oil pipeline by encamping in the trees until the Ecuadorian National Police removes them.<sup>68</sup>

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<sup>66</sup>See <http://www.amazonwatch.org> (last visited March 28, 2002).

<sup>67</sup> *Id.*

<sup>68</sup> Press release, *Pipeline Protests Continue as Ecuadorian Armed Forces Evict Mindo Environmentalists: Local Community Blocks Highway and Confiscates OCP Vehicles in Response*, at <http://www.amazonwatch.org> (last visited March 27, 2002).