



EARTHJUSTICE

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ISSUE PAPER

HUMAN RIGHTS AND THE ENVIRONMENT

**MATERIALS FOR THE 60TH SESSION OF THE UNITED NATIONS COMMISSION
ON HUMAN RIGHTS
GENEVA, 15 MARCH - 23 APRIL 2004**

EARTHJUSTICE

ABOUT EARTHJUSTICE

Earthjustice was founded in 1971 and has consultative status with the U.N. 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 2003 in the area of human rights and the environment.¹ 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 and increasing recognition of a human 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, is emerging as an important component of international law.² The relationship between environmental problems and human rights violations calls for a holistic treatment of these issues. Therefore, international, governmental and non-governmental institutions dedicated to protecting human rights must 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 U.N. Commission on Human Rights should set the pace for such recognition and, further, guarantee the right to a clean and healthy environment.

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.³ The Final Report was the culmination of a study process initiated in 1989, when several nongovernmental organizations presented information to the Sub-Commission regarding the need for all human rights bodies at the United Nations to study the connections between human rights and the environment. In response, the Sub-Commission asked Ms. Ksentini, then a member of the Sub-Commission, to prepare a note on methods to prepare a study on the relationship between human rights and the environment.⁴ 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.

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

² International legal norms typically arise from international conventions, international custom, or as general principles of law recognized by civilized nations. *See* Statute of the International Court of Justice (ICJ Statute), June 26, 1945, 59 Stat. 1055, T.S. No. 993, 3 Bevens 1179, art. 38(1). Weight is also accorded to the judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. *Id.*

³ E/CN.4/Sub.2/1994/9.

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

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.⁵ Again, the Commission endorsed the Sub-Commission's action and Ms. Ksentini commenced work as Special Rapporteur on Human Rights and the Environment.⁶ Ms. Ksentini produced a Preliminary Report in 1991⁷ and Progress Reports in 1992⁸ and 1993.⁹

In her Final Report, Ms. Ksentini described the legal foundations for environmental human rights and relates a range of examples of the interconnectedness of human rights and the environment. In May 1994, the Draft Declaration of Principles on Human Rights and the Environment was produced at a 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 Report to the Commission on Human Rights. The Final Report included 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.¹⁰

In that posture, the question of human rights and the environment came before the Commission at its 51st session in 1995. The Commission took note of Ms. Ksentini's Final

⁵ See Sub-Commission Res. 1990/7.

⁶ See Commission Res. 1991/44.

⁷ E/CN.4/Sub.2/1991/8.

⁸ E/CN.4/Sub.2/1992/7.

⁹ E/CN.4/Sub.2/1993/7.

¹⁰ Sub-Commission Res. 1994/27.

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 1996.¹¹ On a related topic, in 1995 the Commission 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.¹² 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 non-governmental organizations on issues raised in Ms. Ksentini's Final Report on human rights and the environment.¹³ The Commission renewed its request for comments and again asked the Secretary General to prepare a report summarizing whatever comments were received.¹⁴ 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.¹⁵

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 non-governmental organization.¹⁶ 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 55th session and invited the Secretary General to bring the Commission's consideration of human rights and the environment to the attention of the General Assembly at its special session on Agenda 21, the Commission on Sustainable Development, the United Nations Environment Programme and other relevant bodies and organizations. The Commission further requested that the Secretary General prepare a report on the General Assembly special session and the listed international bodies and organizations.

The Commission also received the Toxics Rapporteur's progress report, in which she reported on various situations involving the human rights effects of toxics.¹⁷ 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

¹¹ Commission Res. 1995/14.

¹² See Commission Res. 1995/181.

¹³ 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.

¹⁴ Commission Res. 1996/13.

¹⁵ E/CN.4/1996/17.

¹⁶ E/CN.4/1997/18.

¹⁷ E/CN.4/1997/19.

involving the human rights impact of toxics.¹⁸ 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.¹⁹ 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.²⁰

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.'"²¹ The issue of converting the Special Rapporteur's mandate reflects the growing understanding that the full enjoyment of human rights requires addressing a broad range of environmental problems – including but not limited to problems related to toxic wastes – because such problems implicate a host of fundamental human rights.

At the 57th Session of the Commission in 2001, 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.²² In her report, the Special Rapporteur stated, "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."²³

¹⁸ E/CN.4/1998/10.

¹⁹ E/CN.4/1999/89.

²⁰ E/CN.4/1999/104, ¶ 20(b).

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

²² E/CN.4/2001/55.

²³ *Id.* at ¶ 104.

However, after the Commission took note of the Rapporteur's report, it decided not to convert but to simply renew the existing mandate for the three years ending April 2004, and to continue consideration of this question at its 58th Session.²⁴

Similarly, at its 58th Session in April 2002, the Commission reaffirmed “that illicit traffic in and dumping of toxic and dangerous products and wastes constitute a serious threat to the human rights to life and the enjoyment of the highest attainable standard of physical health.” However, the Commission did not address the question of converting the mandate, deciding instead to continue consideration of the question at its 59th Session.²⁵ At the 59th Session, the Commission repeated the 58th Session Resolution in its entirety.²⁶

²⁴ E/CN.4/Res/2001/35.

²⁵ E/CN.4/2002/27.

²⁶ E/CN.4/2003/20.

DEVELOPMENTS

I. INTERNATIONAL

Actions and statements from international bodies continue to shape the emergent customary international right to a clean and healthy environment. Explicit and implicit 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 reveals that environmental harms adversely affect various individual and community rights such as the rights to life, health, water, food, work, culture, development, information and participation, and that a human rights-based approach to environmental protection (e.g. right to a clean and healthy environment, right to water, right to nature protection, and other basic procedural and democratic rights) can provide an effective remedy. Whether explicit or implicit, the increasing practice of substantively upholding and encouraging respect for the right to a clean and healthy environment is important and should be recognized and strengthened. The following is a description of the major human rights affected by environmental harms. For most of these rights, reference is made to specific case studies discussed in the second part of this Issue Paper.

Right to Life

The right to life, perhaps the most basic human right, has extensive environmental links. The most obvious connections manifest themselves in situations such as the Chernobyl nuclear disaster and the Bhopal gas leak, each of which fouled the environment in ways that directly contributed to the loss of many lives. Less obvious but equally devastating, extractive industries such as mining, logging, and oil development deprive indigenous peoples of the physical bases for their cultures and subsistence, and thereby threaten their very lives.

Right to Health

The right to health, closely linked to the right to life, arises when environmental degradation pollutes air, land or water. For example, toxic air pollution in South Durban, South Africa causes many adverse health effects. Or, to cite another of the many examples available, mercury and PCB contamination in Greenland endangers the health of local inhabitants and even unborn children.

Right to Water

The right to water is intrinsically linked to the rights to life and health. Without access to clean drinking water, individuals and communities worldwide suffer serious illnesses. For example, the disposal of hazardous waste in China discussed in this paper, which resulted in severe groundwater contamination, deprives the local residents and future generations of the right to water.

Right to Work

Along with deprivation of natural resources often comes deprivation of the right to work. When mine wastes are dumped into the ocean in Indonesia devastating the marine environment, local fishermen are put out of work.

Right to Culture

Environmental degradation also implicates the right to culture. Some of the most glaring examples of cultural deprivations involve indigenous peoples, whose lifestyles often depend on their relationship with the natural environment. Destruction of coastal mangroves in Brazil is a graphic example of the threat to cultural rights that results when a group of people loses the physical basis for its culture.

Right to Development

The right to development and the right to a healthy environment share considerable common ground. Although purely economic development activities often have negative environmental effects, a holistic model of sustainable development recognizes that environmentally destructive economic progress does not produce long-term societal progress. Thus, for example, oil development in Ecuador might bring an influx of capital, but depletion of the country's natural resources ultimately interferes with the ability of the population – particularly indigenous peoples who live off the land – to develop.

Right to Information

The right to information in the environmental context has at least two components: the right to obtain government-held information on request, and the government's affirmative duty to apprise the people of environmental dangers and emergencies. One example of violation of the former component includes the efforts of Russian military officials to interfere with local residents' requests for information related to the disposal and abandonment of hazardous wastes.

Right to Participate

The right to information is itself a component of the right to popular participation, which includes everything from suffrage to direct participation in planning of development activities. This right comes into play whenever a government makes that decision without providing meaningful opportunities for affected parties to participate. When the government of China allowed development of the Three Gorges Dam without consulting the affected communities along the Yangtze River, it violated the right of its citizens to participate.

The examples of environmental aspects of recognized human rights described throughout this report represent only a sampling of the many linkages between human rights and environmental protection. Other substantive areas that combine human rights and environmental considerations include: humanitarian law, the rights of indigenous people, the plight of people

displaced from their homes because of environmental conditions (“environmental refugees”), and the effects of development projects funded by multilateral development banks.

A. Treaties and Treaty Bodies

1) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

At the April 28 through May 2, 2003, meeting of the Open-Ended Working Group of the Basel Convention, over 100 States Party agreed to fund the first group of projects to implement the Strategic Plan, produced by the Sixth Conference of the Parties. The Strategic Plan aims to achieve environmentally sound management of hazardous and other wastes as envisaged by the Basel Convention. A total of \$880,000 was allocated to five projects in Africa, five in Latin American, three in Asia, and two in Europe.²⁷ Sound management of hazardous and other waste promotes the protection of various human rights, including the rights to health, life, water and food.

It is important to note that the important efforts 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 on the one hand, and the Basel Convention on the other, are complementary, and the two efforts should collaborate, as appropriate, to maximize the impacts of their work.

In October 2003, the Pacific Regional Center was launched to assist the Basel Convention joint implementation efforts in the South Pacific.²⁸ The decision to set up the Pacific Regional Center was made at the Sixth Conference of the Parties to the Basel Convention.²⁹

2) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

In November 2003, Armenia became the 50th country to ratify the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, starting the 90-day countdown to the treaty’s entry into force.³⁰ The Convention allows parties to choose which potentially hazardous chemicals may be imported

²⁷ *Report of the Open-Ended Working Group of the Basel Convention*, UNEP, at 20, U.N. Doc. UNEP/CHW/OEWG/1/16 (2003), available at <http://www.basel.int/meetings/oewg/oewg1/16eReport.doc> (visited January 15, 2004); see also Press Release, U.N.E.P., Basel Convention Funds First Set of Projects for Translating Strategic Plan on Hazardous Wastes Into Reality (May 6, 2003), available at <http://www.basel.int/press/presrel060503.doc> (visited January 15, 2004).

²⁸ See Press Release, UNEP., A Pacific Regional Center was Launched Today to Combat Increasing Levels of Waste in the South Pacific (October 18, 2003), available at <http://www.basel.int/centers/regsites/pacific/BCRC-Pacific.doc> (visited January 15, 2004).

²⁹ *Id.*

³⁰ See Press Release, UNEP, Treaty on Hazardous Chemicals and Pesticides Trade to Become Law (November 27, 2003) available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=354&ArticleID=4306&l=en> (visited January 15, 2004).

based on the country's ability to safely manage those chemicals. The Convention's entry into force conveys international significance to the link between the rights to life, health, and information, and environmental threats posed by hazardous chemicals. Thus far, most of the Parties to the Rotterdam Convention are developing countries.³¹

3) Convention on Biodiversity (CBD)

In September 2003 The Cartagena Protocol on Biosafety entered into force.³² The Protocol was created to protect human health and biological diversity from the potential dangers of genetically modified organisms by instituting a legal structure for GMO transboundary movement.³³

In February 2004, the Seventh Conference of the Parties to the CBD took place in Malaysia.³⁴ The CBD was one of the major agreements adopted at the Earth Summit in Rio de Janeiro in 1992 and has been ratified by over 187 countries and the European Community.³⁵ The three main goals of the Convention are: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of the benefits from the use of genetic resources.³⁶ These goals indicate international agreement on the need for a healthy environment and specific indicators to measure environmental health. In particular, the goals of sustainable use and equitable sharing of benefits seek to ensure that the human rights to life, food, work, sustenance, culture, information and access to justice are protected in the context of the destruction and/or commercialization of biological and genetic resources.

4) Kyoto Protocol

In December 2003, the 188 parties to the United Nations Framework Convention on Climate Change met for their annual meeting in Milan, Italy.³⁷ Ministers agreed that climate change is the most important global challenge to humanity and that its harmful effects are already being experienced in many parts of the world.³⁸ These harmful effects can have adverse impacts on the enjoyment of various human rights. Many of the discussions mentioned cooperation between developed and developing nations and the importance of funding for least

³¹ *Id.*

³² See Press Release, European Commission, Safe Management of GMOs: the Cartagena Protocol on Biosafety Becomes Law (September 11, 2003), *available at* <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004)

³³ *Id.*

³⁴ See Press Release, UNEP, Governments Set Rigorous Targets for Reducing the Rate of Biodiversity Loss by 2010 (February 20, 2004), *available at* <http://www.biodiv.org/doc/press/2004/pr-2004-02-20-cop-en.doc> (visited March 3, 2004).

³⁵ See Press Release, Secretariat of the CBD, Seventh Conference of the Parties to the Convention on Biological Diversity (COP-7) (January 19, 2004), *available at* <http://www.biodiv.org/doc/press/2004/pr-2004-01-16-cop-en.doc> (visited February 25, 2004).

³⁶ *Id.*

³⁷ See Press Release, Secretariat of the Framework Convention on Climate Change, Milan Conference Concludes as Ministers Call for Urgent and Coordinated Action on Climate Change (December 12, 2003), *available at* http://unfccc.int/press/prel2003/pressrel121203_1.pdf (visited March 3, 2004).

³⁸ *Id.*

developed countries, which have been recognized as most vulnerable to climate change.³⁹ Two funding programs, the Special Climate Change Fund and the Least Developed Countries Fund, which support technology transfer, adaptation projects, and other activities, were further developed at the conference.⁴⁰

B. U.N. Economic and Social Council

The Economic and Social Council coordinates the work of 14 U.N. agencies, 10 functional commissions and five regional commissions; receives reports from 11 U.N. funds and programmes; and issues policy recommendations to the U.N. system and to Member States. Under the U.N. Charter, the Council is responsible for promoting higher standards of living, full employment, and economic and social progress; identifying solutions to international economic, social and health problems; facilitating international cultural and educational cooperation; and encouraging universal respect for human rights and fundamental freedoms. In the context of each of these functions, environment-related human rights issues regularly arise. The Council has taken action in this context that further demonstrates the emerging right to a clean and healthy environment.⁴¹

In 2003, the Council adopted a resolution on the Coordinated Implementation of the Habitat Agenda (E/2003/L.12) where it stated commitments made by governments to implement the Habitat Agenda, the Declaration on Cities and Other Human Settlements in the New Millennium and the Millennium Development Goal of achieving a significant improvement in the lives of at least 100 million slum dwellers by 2020.⁴²

In 2003, the Council adopted the recommendations of the Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labeling of Chemicals and asked the Secretary-General to circulate the recommendations and monitor the status of implementation of the Globally Harmonized System (E/2003/46).⁴³

In 2003, the Council in its Ministerial Declaration of the high-level segment on promoting an integrated approach to rural development in developing countries for poverty eradication and sustainable development, called for the reduction and elimination of agricultural subsidies and urged developed countries to implement commitments made at Doha to facilitate market access for products from developing countries.⁴⁴ The Council noted that rural areas of developing countries are home to three quarters of the world's poor, and recommended that rural development follow an integrated approach involving economic, social and environmental

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See <http://www.un.org/esa/coordination/ecosoc/about.htm> (visited March 23, 2004).

⁴² See Press Release, ECOSOC, ECOSOC Adopts Texts on Economic, Environmental, Indigenous Issues (July 25, 2003), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet> (visited January 15, 2003).

⁴³ *Id.*

⁴⁴ See Press Release, ECOSOC, Economic and Social Council Adopts Ministerial Declaration on Promoting Rural Development for Poverty Eradication (July 2, 2003), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet> (visited January 15, 2003).

aspects with mutually reinforcing policies and programs.⁴⁵ The Declaration also emphasized the empowerment of rural women at all levels and in all aspects of rural development.⁴⁶

C. U.N. Economic and Social Council Bodies

1) U.N. Commission on Human Rights: 59th Session (2003)

During its 59th session, from March 17 to April 25, 2003, the Commission adopted several resolutions similar to those passed in previous sessions regarding the human right to a clean and healthy environment.⁴⁷ These resolutions included a request that the Secretary-General prepare a report on the consideration being given to the possible relationship between the environment and human rights, including the right to development, as part of sustainable development.⁴⁸

(a) Resolution 2003/20

Resolution 2003/20, entitled Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, affirmed that the illicit movement and dumping of toxic and dangerous products and wastes as a serious threat to the human rights to life and the enjoyment of the highest possible standard of physical health, and urged further recognition, cooperation, and action regarding this issue.⁴⁹

(b) Resolution 2003/71

The Commission on Human Rights adopted a Resolution entitled Human Rights and the Environment as Part of Sustainable Development in which it recognized again that environmental damage can have potentially negative effects on the enjoyment of human rights.⁵⁰

2) Special Rapporteur on the Right to Food

In January 2003, the Special Rapporteur on the right to food issued a report stressing the recognition of the right to food as a human right entailing an obligation to ensure that every human being be free from hunger.⁵¹ The report describes this obligation to include the provision

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Office of the High Commissioner for Human Rights, *Resolutions Adopted at the 59th Session*, at <http://www.unhchr.ch/html/menu2/2/59chr/resolutions.htm> (visited February 5, 2004).

⁴⁸ See Press Release, Commission on Human Rights, Commission on Human Rights Adopts Resolution on Situation in Iraq; Concludes Substantive Work (April 25, 2003), *available at* <http://www.unhchr.ch/hurricane/hurricane.nsf/NewsRoom/Subcomm?OpenFrameSet> (visited February 5, 2004).

⁴⁹ *Commission on Human Rights: Report on the 59th Session*, UNCHR, 59th Sess., Supp. No. 3, at 83, U.N. Doc. E/CN.4/2003/135 (2003).

⁵⁰ *Id.* at 261.

⁵¹ *Economic, Social and Cultural Rights: The Right to Food*, Commission on Human Rights, Special Rapporteur Jean Ziegler, at 7, para. 18, U.N. Doc. E/CN.4/2003/54 (2003).

of an enabling environment for people to feed themselves.⁵² The Special Rapporteur also set up a system to receive and respond to complaints of violations of the right to food.⁵³

3) U.N. Sub-Commission on the Promotion and Protection of Human Rights

The Sub-Commission is the main subsidiary body of the Commission and was established by the Commission at its first session in 1947 under the authority of the Economic and Social Council. In 1999, the Economic and Social Council changed its title from Sub-Commission on Prevention of Discrimination and Protection of Minorities to Sub-Commission on the Promotion and Protection of Human Rights.⁵⁴ The Sub-Commission held its 55th annual session from July 28 through August 15, 2003, during which it passed several resolutions underscoring the link between environmental health and human rights.

(a) Resolution 2003/1

During its 55th session, the Sub-Commission adopted Resolution 2003/1, entitled Promotion of the Realization of the Right to Drinking Water and Sanitation.⁵⁵ In this Resolution, the Sub-Commission recognized that obstacles to access to drinking water and sanitation for everyone impede the achievement of economic, social, and cultural rights.⁵⁶ The Sub-Commission also recognized that equality in this area is a crucial for the attainment of the right to a healthy environment.⁵⁷

(b) Resolution 2003/9

During its 55th session, the Sub-Commission adopted Resolution 2003/9, entitled The Right to Food, and Progress in Developing International Voluntary Guidelines for its Implementation.⁵⁸ The Resolution acknowledged that development of voluntary guidelines for the implementation of the right to adequate food would be the first example of intergovernmental voluntary guidelines developed for the implementation of a specific economic, social, and cultural right.⁵⁹ In 2002, the U.N. Food and Agriculture Organization established the Open-Ended Intergovernmental Working Group to create these voluntary guidelines.⁶⁰ Its first meeting was held in March 2003.⁶¹

⁵² *Id.*

⁵³ *Id.* at 17, para. 53.

⁵⁴ See United Nations, *Sub-Commission on the Promotion and Protection of Human Rights*, at <http://www.unhchr.ch/html/menu2/2/sc.htm> (visited February 5, 2004).

⁵⁵ *Report of the Sub-Commission on the Promotion and Protection of Human Rights on its Fifty-Fifth Session*, U.N. Sub-Commission on the Promotion and Protection of Human Rights, 55th Sess., at 17, U.N. Doc. E/CN.4/Sub.2/2003/43 (2003).

⁵⁶ *Id.* at 18.

⁵⁷ *Id.*

⁵⁸ *Id.* at 36.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

(c) Resolution 2003/14

The Sub-Commission also enacted a Resolution entitled The Social Forum, in which it reiterated a mandate for a Social Forum to meet annually to: exchange information on the enjoyment of economic, social, and cultural rights and their relationship with globalization processes; to monitor situations of poverty; propose standards, guidelines, and other recommendations for consideration; and to monitor the agreements from the major world conferences and make contributions to such events.⁶² The annual Social Forum was instituted in part because of the Sub-Commission's recognition that the reduction of rural poverty is imperative since three quarters of the world's poorest people live in rural areas and 900 million of them draw their livelihoods from agriculture and other rural activities.⁶³ Indeed, the Sub-Commission decided that the next meeting of the Social Forum, to be held in May of 2004, should have as its theme, "Rural Poverty, Development and the rights of peasants and other rural communities."⁶⁴

(d) Resolution 2003/17

The Sub-Commission adopted a Resolution on the Prohibition of Forced Evictions in order to address the practice of mass forced evictions without compensation⁶⁵ and urged governments to undertake immediate measures to eliminate the practice of forced evictions, repeal existing plans involving forced evictions, and provide compensation to past victims of forced eviction.⁶⁶ The Sub-Commission's emphasis on large-scale evictions is pertinent to the state of human rights and the environment because projects that involve major environmental modification and destruction, such as the building of dams, often involve forced displacement of people and communities from their land without adequate compensation.

(e) Resolution 2003/24

In Resolution 2003/14, entitled Human Rights Implications, Particularly for Indigenous Peoples, of the Disappearance of States for Environmental Reasons,⁶⁷ the Sub-Commission noted that environmental changes can reduce the surface area of states and threaten the existence of certain island states.⁶⁸ The Sub-Commission also recognized that these environmental conditions implicate the right not to be stateless and also the right of Indigenous Peoples to retain their character⁶⁹ and urged the Commission on Human Rights to call on the Secretary-General to prepare a report on the legal implications of the disappearance of states for environmental reasons, including the implications for the human rights of residents of such states and also to recommend that the Assembly set up a working group to consider the issue.⁷⁰

⁶² *Id.* at 47.

⁶³ *Id.* at 46.

⁶⁴ *Id.* at 48.

⁶⁵ *Id.* at 54.

⁶⁶ *Id.* at 55.

⁶⁷ *Id.* at 67.

⁶⁸ *Id.* at 68.

⁶⁹ *Id.* at 67-68.

⁷⁰ *Id.* at 13.

(f) Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its Fifth Session

The Sessional Working Group on the Working Methods and Activities of Transnational Corporations held its fifth session in July of 2003.⁷¹ In a discussion of the impact of transnational corporations on the enjoyment of civil, cultural, economic, political, and social rights, the Report emphasized the Chairperson's concern for transnational corporation respect for solidarity rights, which includes the right to development and the right to a healthy environment.⁷² The Report goes on to state that the right to a healthy environment has undergone a series of challenges due to the activities of transnational corporations (a notable example mentioned was the disaster at Bhopal, India) and problems of international toxic waste trade for developing countries.⁷³ The report also notes that the activities and working methods of transnational corporations have had an impact on individual rights as well, such as the right to health and the right to life.⁷⁴

In August 2003, the Sub-Commission on the Promotion and Protection of Human Rights proclaimed the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. These voluntary norms include the right to equal opportunity and non-discriminatory treatment, the right to security of persons, rights of workers, respect for national sovereignty and human rights, obligations concerning consumer protection, and notably, obligations concerning environmental protection. This proclamation is significant, among other reasons, because the Sub-Commission, a human rights body, is calling on transnational corporations to protect the environment.⁷⁵

(g) Preliminary Report on Indigenous Peoples' Permanent Sovereignty Over Natural Resources

At its 54th session, the Sub-Commission appointed Ms. Erica-Irene A. Daes as Special Rapporteur to undertake a study and submit a preliminary report on Indigenous Peoples' Permanent Sovereignty Over Natural Resources.⁷⁶ The preliminary report, released in July of 2003, emphasized that self-determination, both political and economic, would never be possible without the legal authority of indigenous peoples to exercise control over their lands to thereby enjoy the benefits deriving from their natural resources.⁷⁷ Special Rapporteur Daes also noted that the reconciliation of the interests of states with the rights of indigenous peoples to their

⁷¹ *Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its Fifth Session*, U.N. Subcommission on the Promotion and Protection of Human Rights, 55th Session at 1, U.N. Doc. E/CN.4/Sub.2/2003/13 (2003).

⁷² *Id.*

⁷³ *Id.* at 9.

⁷⁴ *Id.*

⁷⁵ *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, U.N. Subcommission on the Promotion and Protection of Human Rights, 55th Session, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

⁷⁶ *Indigenous Peoples' Permanent Sovereignty Over Natural Resources*, Preliminary Report of the Special Rapporteur, Erica-Irene A. Daes, 55th Session at 1, U.N. Doc. E/CN.4/Sub.2/2003/20 (2003).

⁷⁷ *Id.* at 2.

natural resources has been recognized as a crucial step for the advancement of the rights of indigenous peoples.⁷⁸

4) U.N. Commission on Sustainable Development

During its 11th session, held from April 28 to May 9, 2003, the Commission on Sustainable Development decided its work should be organized into implementation cycles with each cycle focusing on a thematic set of issues.⁷⁹ Year 2004-2005 will focus on water, sanitation, and human settlements.⁸⁰ Year 2005-2006 will focus on energy for sustainable development, industrial development, and air pollution and atmosphere issues.⁸¹

In June 2003, a 10-Year Framework for Implementation of Programmes for Sustainable Consumption and Production was agreed to in a meeting in Marrakech.⁸² The 10-year “Marrakech Process” is part of the commitment agreed to by world leaders at the 2002 Johannesburg Summit to accelerate the shift towards sustainable lifestyles that promote social and economic development for all.⁸³ The report from this meeting will be presented to the 12th session of the Commission on Sustainable Development in 2004.⁸⁴

D. U.N. General Assembly Bodies

1) United Nations Global Environment Facility (GEF)

In a report published in March of 2003, *Keeping the Promise on Water*, the GEF emphasized the link between degradation of water resources and human rights that relate to education, poverty and world hunger.⁸⁵ The report also discussed the importance of aquatic biodiversity to declining fish stocks and hunger in developing countries.⁸⁶

⁷⁸ *Id.*

⁷⁹ See Multi-Year Programme of Work for CSD: 2004/2005 to 2016/2017 at <http://www.un.org/esa/sustdev/csd/csd11/CSD11.htm> (visited February 5, 2004).

⁸⁰ *Commission on Sustainable Development: Report of the Eleventh Session*, United Nations Commission on Sustainable Development, 11th Sess., Supp. No. 9, at 17, U.N. Doc. E/CN.17/2003/6 (2003).

⁸¹ *Id.*

⁸² See Press Release, U.N. Commission on Sustainable Development, New ‘Marrakech Process’ Promotes Sustainable Consumption and Production on an International Basis (June 20, 2003), available at http://www.un.org/esa/sustdev/media/Marrakech_200603.pdf (visited February 5, 2004).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Keeping the Promise on Water: GEF’s Contributions to Sustaining Our Planet’s Water Ecosystems*, U.N. Global Environment Facility, at 3, available at <http://www.gefweb.org/Outreach/outreach-Publications/GEFWater2003.pdf> (2003)(visited February 6, 2004).

⁸⁶ *Id.* at 12.

2) United Nations Human Settlements Programme

In October 2003, Canada committed just over US \$10 million to the United Nations Human Settlements Programme Water and Sanitation Trust Fund⁸⁷ and later in December the Norwegian government signed an agreement to commit \$1.3 million to the Fund.⁸⁸ The Fund was launched on World Habitat Day 2002 and is dedicated to meeting the specific target of halving, by the year 2015, the proportion of people who do not have access to basic sanitation or clean water.⁸⁹

Also in 2003, the United Nations Human Settlement Programme released a publication entitled *Water and Sanitation in the World's Cities: Local Actions for Global Goals*.⁹⁰ The publication sets out the current situation of inadequate provision of water and sanitation worldwide; describes impacts on health and economic performance; analyzes the proximate and underlying causes of poor provision, and also outlines the potential results of further deterioration and how resources can be used to deliver proper services through integrated water resource management.⁹¹

3) United Nations Environment Program (UNEP)

In 2003, UNEP released two reports on the environmental status of conflict-affected nations. One is based on the UNEP's environmental assessment of post-conflict Afghanistan.⁹² The report details the state of Afghanistan's environment including a discussion of the urban environment and natural resources in the country, along with a section devoted to environmental governance in the country and recommendations for the future.⁹³ UNEP also produced a preliminary assessment of the most urgent environmental conditions for the post-conflict environment of Iraq.⁹⁴ The assessment provides a summary of chronic environmental issues and an account of the environmental impacts of military conflict.⁹⁵ The report acknowledged that this, and other UNEP post-conflict reports, shows that "the environment can have major implications for human livelihoods," and as such, environmental issues must be incorporated into *all* sectors in post-conflict situations.⁹⁶

⁸⁷ See Press Release, United Nations Human Habitat Settlements Programme, \$10 million contributed by Canadian Government for U.N.-HABITAT's Water and Sanitation Trust Fund (October 27, 2003), *available at* http://www.unhabitat.org/mediacentre/unhsp_14_03.asp (visited February 6, 2004).

⁸⁸ See Press Release, United Nations Human Habitat Settlements Programme, Norway contributes over \$1 million to U.N.-HABITAT'S Water and Sanitation Trust Fund (December 5, 2003), *available at* http://www.unhabitat.org/mediacentre/unhsp_16_03.asp (visited February 6, 2004).

⁸⁹ *Id.*

⁹⁰ *Water and Sanitation in the World's Cities: Local Actions for Global Goals*, United Nations Human Settlements Programme, *at* <http://www.unhabitat.org/register/item.asp?ID=1008> (visited February 11, 2004).

⁹¹ *Id.*

⁹² *Afghanistan: Post-Conflict Environmental Assessment*, UNEP, *available at* <http://www.unep.org/Evaluation/PDF/afghanistanpcajanuary2003.pdf> (2003)(visited February 11, 2004).

⁹³ *Id.* at 2-3.

⁹⁴ *Desk Study on the Environment in Iraq*, UNEP, *available at* http://postconflict.unep.ch/publications/Iraq_DS.pdf (2003)(visited February 11, 2004).

⁹⁵ *Id.* at 4.

⁹⁶ *Id.* at 6.

E. World Bank

In 2003, the World Bank issued numerous publications and statements acknowledging the link between human rights and environmental health. In order to guide future development the World Bank launched its Little Green Data Book 2003, filled with a wealth of information about the state of the global environment.⁹⁷ The book notes that air pollution in many areas can be a major environmental threat to human health, and that forests, an important source of livelihood for many people, are central to the support of natural systems as well as economic growth.⁹⁸

In July 2003, the World Bank released a report entitled *World Resources 2002-2004: Decisions for the Earth*, where it called for considerable changes in decision-making with regard to the world's natural resources.⁹⁹ The report acknowledged the overwhelming human dependence on rapidly deteriorating ecosystems and the importance of environmental governance to ameliorate the situation.¹⁰⁰

In November 2003, an independent review of extractive industries, commissioned by the World Bank, was released.¹⁰¹ The review recommended that the World Bank stop financing oil and coal projects in developing nations.¹⁰² The review also recommended that the World Bank phase out oil production projects and start investing in renewable energy resource development, emissions reducing, and clean energy projects.¹⁰³

In December 2003, the World Bank announced their endorsement of the Extractive Industries Transparency Initiative, which works towards increasing transparency with regards to revenues and other information about extractive industry operations.¹⁰⁴ Extractive industries have been known to cause significant environmental damage, with long-lasting effects on human rights conditions in extraction areas.

⁹⁷ See Press Release, World Bank, *Environmental Inequality is Growing; 50 Percent Global CO₂ Emissions Coming from Rich Countries* (April 29, 2004), available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20107994~menuPK:34465~pagePK:64003015~piPK:64003012~theSitePK:4607,00.html#> (visited February 12, 2004).

⁹⁸ *Id.*

⁹⁹ See Press Release, World Bank, *Landmark Report Urges Governance Reforms to Arrest Decline of World's Environment* (July 11, 2003), available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20119714~menuPK:34465~pagePK:64003015~piPK:64003012~theSitePK:4607,00.html#> (visited February 11, 2004).

¹⁰⁰ *Id.*

¹⁰¹ Lucien O. Chauvin, *Report Recommends World Bank Stop Financing Projects in Developing Nations*, 26 No. 25 INT'L ENV'T, 1183(2003).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See Press Release, World Bank, *WBG Endorses Extractive Industries Transparency Initiative* (December 9, 2003), available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20143509~menuPK:34465~pagePK:64003015~piPK:64003012~theSitePK:4607,00.html#> (visited February 11, 2004).

1) World Bank Inspection Panel

The World Bank created an Inspection Panel in 1993 to furnish an “independent forum for private citizens who believe that they or their interests have been or could be directly harmed by a project financed by the World Bank.”¹⁰⁵ If persuaded, the Panel recommends to the World Bank Board of Executive Directors that the Panel investigate the project and Management’s compliance with Bank policy and procedure.¹⁰⁶ The Panel then reports to the Board on its findings, and the Board decides what actions the Bank should take in response to the Panel’s findings.¹⁰⁷ In its most recently published Annual Report, the Panel noted that their work is critical, in part because they continue to provide support for Bank compliance with environmental and social safeguard policies.¹⁰⁸

(a) Manila Second Sewerage Project (MSSP) (Philippines)

On September 26, 2003, the Inspection Panel received a Request for Inspection regarding the Manila Second Sewerage Project by Timpuyog Zambales Inc., a local non-profit non-governmental organization, on behalf of itself and close to 1,300 residents of the Zambales province in the Philippines.¹⁰⁹ The request stated that one of the project’s components involves sea dumping of liquid wastes near where the claimants live and is the source of pollution and harm to their communities.¹¹⁰ Claimants also alleged that certain issues have yet to be sufficiently addressed, including health risks from sea dumping, economic impacts to the fishing industry near dumping sites, and the possible destruction of tourist coastal destinations.¹¹¹ The Panel Report and Recommendations were sent to the Board of Executive Directors on November 25, 2003.¹¹² Noting a failure to satisfy procedural requirements, the Panel could not make a recommendation on whether to investigate or not.¹¹³ In response, the Inspection Panel received a new Request for Inspection from the local non-profit in October of 2003.¹¹⁴ No further action has been reported.

¹⁰⁵ The World Bank Group, *Overview*, at <http://wbln0018.worldbank.org/ipn/ipnweb.nsf/WOverview/overview?opendocument#1> (visited February 11, 2004).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Annual Report: August 1, 2001 to June 30, 2002*, World Bank Inspection Panel, at 3, available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/2002AnnualReport/\\$FILE/2002+Annual+Report.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/2002AnnualReport/$FILE/2002+Annual+Report.pdf) (2002)(visited February 11, 2004).

¹⁰⁹ *Notice of Registration -- Re: Request for Inspection PHILIPPINES -- Manila Second Sewerage Project (MSSP) (Loan No. 4019-PH)*, World Bank Inspection Panel, at 1, IPN Request RQ03/1 (2003), available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/PhilippinesNOR/\\$FILE/Philippines+NOR.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/PhilippinesNOR/$FILE/Philippines+NOR.pdf) (visited February 11, 2004).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Inspection Panel Register*, World Bank Inspection Panel, available at [http://wbln0018.worldbank.org/ipn/ipnweb.nsf/\(attachmentweb\)/PH_panelregister/\\$FILE/PH_panel+register.pdf](http://wbln0018.worldbank.org/ipn/ipnweb.nsf/(attachmentweb)/PH_panelregister/$FILE/PH_panel+register.pdf) (visited February 11, 2004).

¹¹³ *Report and Recommendation On Request for Inspection – Philippines: Manila Second Sewerage Project (MSSP)(Loan No. 4019-PH)*, World Bank Inspection Panel, at 14, available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/8442778ba27b386185256878000a5e6a/91081f348dfe94dd85256e0400542c4e/\\$FILE/Panel%20Recommendation.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/8442778ba27b386185256878000a5e6a/91081f348dfe94dd85256e0400542c4e/$FILE/Panel%20Recommendation.pdf) (visited February 11, 2004).

¹¹⁴ See Press Release, World Bank Inspection Panel, The Inspection Panel Receives a New Request for Inspection – Philippines: Manila Second Sewerage Project (MSSP)(Loan No. 4019-PH) (October 2, 2003), available at

(b) Coal Sector Environmental and Social Mitigation Project and Coal Sector Rehabilitation Project (India)

In June 2001, the Inspection Panel received a Request for Inspection from a local non-governmental organization representing residents of a mining area.¹¹⁵ The Inspection Panel Investigation Report, which followed in November 2003, detailed the condition of social and environmental compliance with the project.¹¹⁶ In a discussion of the Report in July 2003, the Board found non-compliance with regard to involuntary resettlement, environmental assessment, consultation, disclosure of information, and timely provision of land titles to resettled persons.¹¹⁷

(c) Cameroon Petroleum Development and Pipeline Project and Petroleum Environment Capacity Enhancement Project

On September 25, 2002, the Panel received a Request from the Centre for the Environment and Development (CED), a local nongovernmental organization based in Youndé, representing several residents of Mpango village (Kribi), and a number of people who live along the oil pipeline route, among others.¹¹⁸ The Request claimed that activities related to the construction of an oil pipeline between Cameroon and neighboring Chad represent a threat to local communities and the environment.¹¹⁹

According to the Request, “[a]s a general rule, there have been serious infringements of our rights which are due to violation of the policies of the World Bank and which have taken the following forms: insufficient information during the preparatory phase of the project and since implementation has begun; an inadequate consultation process; insufficient, non-existent or inadequate compensation; non-respect for workers’ rights; a renewed outbreak of sexually transmitted diseases and HIV/AIDS all along the oil pipeline and around the project’s main bases (from north to south), an increase in the prostitution of minors along the length of the oil pipeline.”¹²⁰

[http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/PHPressRelease/\\$FILE/PHPress+Release.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/PHPressRelease/$FILE/PHPress+Release.pdf) (visited February 11, 2004).

¹¹⁵ *The Inspection Panel Report and Recommendation on Request for Inspection – INDIA: Coal Sector Environmental and Social Mitigation Project (Credit No. 2862-IN) and Coal Sector Rehabilitation Project (Loan No. 4226; Credit-No. 2986)*, World Bank Inspection Panel, at 1-3, available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/8442778ba27b386185256878000a5e6a/298cb385ed7a427d85256ac6004a87f9/\\$FILE/Eligibility%20Report.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/8442778ba27b386185256878000a5e6a/298cb385ed7a427d85256ac6004a87f9/$FILE/Eligibility%20Report.pdf) (visited February 11, 2004).

¹¹⁶ *India: Coal Sector Environmental and Social Mitigation Report (Credit No. 2862-IN) – The Inspection Panel Investigation Report*, World Bank Inspection Panel, at v, available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/8442778ba27b386185256878000a5e6a/298cb385ed7a427d85256ac6004a87f9/\\$FILE/Final%20Investigation%20Report.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/8442778ba27b386185256878000a5e6a/298cb385ed7a427d85256ac6004a87f9/$FILE/Final%20Investigation%20Report.pdf) (visited February 11, 2004).

¹¹⁷ See Press Release, World Bank Inspection Panel, World Bank Board Discusses Coal Project Findings (July 25, 2003), available at

[http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/INDPressRelease/\\$FILE/IND+Press+Release.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/INDPressRelease/$FILE/IND+Press+Release.pdf) (visited February 11, 2004).

¹¹⁸ See World Bank Inspection Panel, Notice of Registration Re: Request for Inspection – CAMEROON: Petroleum Development and Pipeline Project (Loan No. 7020-CM); (September 30, 2002), available at [http://wbln0018.worldbank.org/ipn/ipnweb.nsf/\(attachmentweb\)/NOR/\\$FILE/NOR.pdf](http://wbln0018.worldbank.org/ipn/ipnweb.nsf/(attachmentweb)/NOR/$FILE/NOR.pdf).

¹¹⁹ *Id.*

¹²⁰ *Id.*

More specific claims include: (i) impoverishment of the local population along the pipeline due to inadequacies of the resettlement and compensation process; (ii) pulmonary and other health problems associated with dust resulting from construction work; (iii) drying up, reduction of flow or pollution of water sources with adverse effects on the availability of water for consumption and irrigation, and on fisheries; (iv) noise nuisance with negative impact on the availability of game for subsistence; (v) inadequate design and implementation of the plan for the protection and benefit of indigenous peoples; (vi) inadequate design and implementation of the resettlement and compensation programs (including poor quality of the in-kind materials provided); (vii) inadequacy of the grievance procedure under the resettlement and compensation Programs; (viii) inadequate selection and implementation of the compensatory protected areas; (ix) inadequate scope and processing of the environmental assessment prepared for the project, including mitigation measures; (x) failure to assess and address the fragile domestic institutional capacity required to handle to the project; and (xi) violation of workers' rights and poor working conditions, including adverse impacts on workers' health.¹²¹

In November 2002, the Panel Report and Recommendations were sent to the Board with a Panel Investigation Report following in May 2003.¹²² The Panel Investigation included an environmental impact assessment, public health discussion, and a discussion of mitigation measures related to environmental impacts and social impacts of the project.¹²³

F. World Health Organization (WHO)

The WHO recognizes the link between human rights a healthy environment by focusing program resources on myriad environmental health programs.¹²⁴ WHO environmental health program areas include children, environmental burden of disease, water and sanitation, food safety, solid wastes, noise, climate, occupational health, electro-magnetic fields, ultraviolet radiation, air, ionizing radiation, chemicals, and chemical incidents and emergencies.¹²⁵

In 2003, the WHO published a number of reports related to human rights and the environment. In its annual world health report, "World Health Report 2003: Shaping the Future," the WHO recognized that the health effects of global environmental change represent a threat that must be addressed by health care systems in order make them stronger.¹²⁶ The Food Safety Department of the WHO published a report in 2003 entitled, "The Present State of

¹²¹ *Id.*

¹²² *The Inspection Panel Register – Part I: Requests Registered*, World Bank Inspection Panel, Request No. RQ 02/2, available at [http://wbIn0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/PanelRegisterCM/\\$FILE/Panel+Register+CM.pdf](http://wbIn0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/PanelRegisterCM/$FILE/Panel+Register+CM.pdf) (visited February 11, 2004).

¹²³ *Investigation Report – CAMEROON: Petroleum Development and Pipeline Project (Loan No. 7020-CM) and Petroleum Environment Capacity Enhancement (CAPECE) Project (Credit No. 3372-CM)*, World Bank Investigation Panel, at iv, available at [http://wbIn0018.worldbank.org/IPN/ipnweb.nsf/8442778ba27b386185256878000a5e6a/081abed76d5636b485256c93005f152a/\\$FILE/Investigation%20Rpt_Cameroon.pdf](http://wbIn0018.worldbank.org/IPN/ipnweb.nsf/8442778ba27b386185256878000a5e6a/081abed76d5636b485256c93005f152a/$FILE/Investigation%20Rpt_Cameroon.pdf) (visited February 11, 2004).

¹²⁴ The World Health Organization, *Protection of the Human Environment*, at http://www.who.int/phe/health_topics/en/ (visited February 12, 2004).

¹²⁵ *Id.*

¹²⁶ *The World Health Report 2003: Shaping the Future*, World Health Organization, at 6 (2003), available at <http://www.who.int/whr/2003/en/> (visited February 12, 2004).

Foodborne Disease in OECD Countries,” in which it noted that foodborne disease is an important and growing public health problem in many countries¹²⁷ and that chemicals and toxins in the environment and food are contributing to this global problem.¹²⁸

Also in 2003, the WHO published a report entitled, “The Right to Water,” in which an entire chapter is dedicated to an explanation of water as a human right.¹²⁹ The report recognizes that the lack of safe water is a cause of serious illness and that contaminated water harms people’s health.¹³⁰ The report goes further to state that access to a regular supply of safe water is a basic human right and that these supplies have been under great pressure by pollution and other environmental changes.¹³¹ The report also acknowledges a connection between healthy environmental conditions and the human right to health.¹³²

In addition, the WHO published a report entitled, “Climate Change and Human Health: Risks and Responses,” in which it noted that human alteration of ecosystems and regional climates have increased awareness that long-term health depends on the stability and functioning of the world’s ecological systems.¹³³ The report also emphasizes that the climate is important to human health and well-being, both internationally recognized human rights; and as such, sets out to describe the impacts of climate change on health.¹³⁴

G. Organization for Economic Co-operation and Development (OECD)

In December 2003, the OECD held a Global Forum for Sustainable Development in which it provided as a background document a report entitled “Financing Water for All.”¹³⁵ The report explained the reasons for its focus on water, including: (1) access to water is a human right; (2) water is important to achieving other goals such as poverty eradication, education, and gender equality; (3) water has been underemphasized and neglected; (4) access to clean water and proper sanitation, and attention to wastewater disposal and treatment has benefits for public health; and (5) effective water resources development and management are basic to sustainable growth and poverty reduction.¹³⁶

¹²⁷ *The Present State of Foodborne Disease in OECD Countries*, WHO, at 1 (2003), available at http://www.who.int/foodsafety/publications/foodborne_disease/en/OECD%20Final%20for%20WEB.pdf (visited February 12, 2004).

¹²⁸ *Id.* at 2.

¹²⁹ *The Right to Water*, WHO, at 6 (2003), available at http://www.who.int/water_sanitation_health/rightwater/en/print.html (visited February 12, 2004).

¹³⁰ *Id.*

¹³¹ *Id.* at 7.

¹³² *Id.*

¹³³ *Climate Change and Human Health: Risks and Responses*, WHO (2003).

¹³⁴ *Id.*

¹³⁵ See Background Documentation for the OECD Global Forum for Sustainable Development, 18-19th December, 2003, at http://www.oecd.org/document/15/0,2340,en_2649_37465_21556687_1_1_1_37465,00.html (visited February 12, 2004).

¹³⁶ *Financing Water for All*, World Panel on Financing Water Infrastructure, at vii-viii (2003), available at <http://www.oecd.org/dataoecd/60/11/21556665.pdf> (visited February 12, 2004).

II. REGIONAL

Like the above international bodies, developments from regional bodies during 2003 have continued to advance and solidify a customary international legal right to a clean and healthy environment.

A. European Union

1) European Commission

In recognition of the link between the environment and human health, in late 2003 the European Commission held three regional conferences to include a wide range of participants in drawing up and implementing the European policy on environment and health.¹³⁷ Work is planned to initially focus on children because they consume more air, water, and food in relation to their body size than adults, and therefore are more vulnerable to environmental hazards than adults.¹³⁸ The long-term goals of the policy are to reduce the amount of disease caused by environmental factors and to identify new threats before they can damage people's health.¹³⁹

In late 2003, the Commission also adopted legislative proposals towards full application of the Århus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.¹⁴⁰ The Århus Convention is an international agreement that sets up a basic rules to encourage citizen involvement in environmental matters and improve environmental enforcement.¹⁴¹ The Convention gives the public access to environmental information, affords the public participation rights in environmental decision-making, and allows the public to seek judicial redress when environmental laws are violated.¹⁴²

The Commission presented a proposal for a Directive to regulate the management of waste from extractive industries, namely mining and quarrying, in June 2003.¹⁴³ The Directive was initiated because of the potential of such waste to produce serious threats to the environment and human health in the absence of proper management.¹⁴⁴

¹³⁷ *Environment for Europeans*, European Commission, No. 14, November 2003, at 5, available at http://europa.eu.int/comm/environment/news/efe/pdf/news14_en.pdf (visited February 25, 2004).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See Press Release, European Commission, Environmental Democracy: Commission Promotes Citizens' Involvement in Environmental Matters (October 28, 2003), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ See Press Release, European Commission, Mining Waste: Commission Proposes New Rules to Prevent Pollution and Accidents (June 2, 2003), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁴⁴ *Id.*

In June 2003, the Commission also announced the launch of the European Environment and Health Strategy to combat the incidence of environmentally related health problems in Europe.¹⁴⁵ The focus of the Strategy is to reduce diseases caused by environmental factors.¹⁴⁶

In October 2003, the European Commission adopted a proposal for a new chemical policy in the EU.¹⁴⁷ Under the new system, called REACH (registration, evaluation and authorization of chemicals), manufacturers and importers of chemicals will be required to register their chemicals in a central database with information on uses, safe handling, and properties.¹⁴⁸ The new system was created in part because of the concern for the relationship between chemicals and disease.¹⁴⁹

In December 2003, the European Commission adopted a progress report that found that the EU will miss its emission targets under the 1997 Kyoto Protocol unless EU member states take on additional measures and policies to reduce greenhouse gas emissions.¹⁵⁰ The report states that under existing policies and measures only the United Kingdom and Sweden will reach their agreed share of EU greenhouse gas reduction targets.¹⁵¹ New policies and measures to assist Member States in reducing their emissions are being created by the European Climate Change Programme, which was launched in 2000 by the European Commission.¹⁵² With the additional policies and measures already identified, Finland, France, Greece, and Ireland would reach their emissions target limits.¹⁵³

In December 2003, the European Commission adopted its first Environmental Policy Review, with one of its key messages being to promote sustainable development on a global scale.¹⁵⁴ With regard to health and the environment, the review recognized that protection of human health from environmental threats has been a continuous goal for EU environmental policy.¹⁵⁵

¹⁴⁵ See Press Release, European Commission, Environment and Health; the European Commission Launches a Strategy to Reduce Diseases Linked to Environmental Factors (June 11, 2003), *available at* <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁴⁶ *Id.*

¹⁴⁷ See Environment for Europeans, European Commission, No. 15, February 2004, at 12, *available at* http://europa.eu.int/comm/environment/news/efe/pdf/news15_en.pdf (visited February 25, 2004).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See, Press Release, European Commission, Climate Change: More Action Required From Member States to Cut Greenhouse Gas Emissions (December 2, 2003), *available at* <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See Press Release, European Commission, First Environmental Policy Review Highlights Need to Speed Up Reforms to Better Protect the Environment and Promote Sustainable Development (December 3, 2003), *available at* <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁵⁵ *Id.*

In February 2004, agreement was reached on the new Environmental Liability Directive.¹⁵⁶ The new Directive is the first EU law to use the “polluter pays” principle and will ensure that those who cause environmental damage will be held responsible.¹⁵⁷ Environmental damage under the Directive includes damage to animals, plants, natural habitats, water resources, and land contamination, which cause significant harm to human health.¹⁵⁸ This political agreement now needs to be formally adopted by the European Parliament and Council, which is expected to occur in March 2004.¹⁵⁹

In February 2004, the European Commission and the European Environment Agency launched the European Pollutant Emission Register (EPER), which will be publicly accessible on the internet and will be the first Europe-wide register of industrial emissions into air and water.¹⁶⁰ The EPER has been reported as a tool to enable European citizens to exercise their “right to know.”¹⁶¹

During 2003, the European Commission issued formal requests and took legal action against several states regarding non-compliance with environmental laws. Article 226 of the Treaty Establishing the European Community gives the Commission the power to take legal action against a Member State that is not respecting its treaty obligations.¹⁶² The following are just a few such instances.

In July 2003, the Commission reported that it was pursuing 42 infringement proceedings against 15 Member States relating to eight separate EU air quality laws.¹⁶³ All eight laws focus on preventing or reducing the harmful effects of air pollution on public health and the environment.¹⁶⁴ In the same month, the Commission reported that it was pursuing infringement proceedings against the United Kingdom, France, Italy, Ireland, Spain, Germany, Belgium, and Luxembourg for failure to comply with the Environmental Impact Assessment Directive. The Directive seeks to protect the environment by requiring that environmental effects of projects be studied before they are approved as well as provision of a public consultation process.¹⁶⁵ The

¹⁵⁶ See Press Release, European Commission, Environmental Liability: Commission Welcomes Agreement on New Directive (February 20, 2004), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited March 3, 2004).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ See Press Release, European Commission, Commission and EEA Make Public Extensive Information About Industrial Air Pollution in Your Neighborhood (February 23, 2004), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁶¹ *Id.*

¹⁶² TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Dec. 12, 2002, O.J. (C325) art. 226 (2002), available at http://europa.eu.int/eur-lex/en/treaties/dat/EC_consol.pdf (visited March 10, 2004).

¹⁶³ See Press Release, European Commission, Commission Tells All 15 Member States to Secure Compliance with EU Laws on Air Pollution (July 22, 2003), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁶⁴ *Id.*

¹⁶⁵ See Press Release, European Commission, Environmental Impact Assessment Directive: Commission Pursues Legal Action Against Eight Member States (July 22, 2003), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

Commission has decided to refer four of the Member States to the Court of Justice and issue fines to the remaining four Member States.¹⁶⁶

In October 2003, the Commission sent a first written notice to Greece, Spain, and Ireland alleging a failure to designate fixed penalties for an EU regulation on ozone-depleting substances to protect human health and the environment.¹⁶⁷ In October, the Commission also reported its decision to take action against Greece and Spain for failure to comply with the EU Waste Framework, Landfill, and Hazardous Waste Directives.¹⁶⁸ The directives aim to create a coordinated system for the safe collection, treatment, storage, and disposal of waste.¹⁶⁹ The Commission has taken action because of the concern that non-implementation of the waste directives could expose citizens and the environment to the risks and dangers of illegal landfills and poor waste management.¹⁷⁰

In November 2003, the Commission reported the European Court of Justice's decision to impose fines on Spain for not meeting EU water quality standards in certain Spanish rivers and lakes.¹⁷¹ The ruling is a follow-up to an earlier Court decision in 1998 that found Spain in violation of the Bathing Water Quality Directive.¹⁷² In order to protect public health, the Bathing Water Directive establishes minimum water quality standards and requires Member States to carry out monitoring and send annual reports to the Commission.¹⁷³

In January 2004, the Commission reported that it is taking legal action against Greece, France, the Netherlands, Belgium, Portugal, Spain, Germany and Ireland for non-compliance with EU water quality laws enacted to protect the environment and public health.¹⁷⁴ The laws include directives on Drinking Water, Urban Wastewater Treatment, Bathing Water Quality, and Dangerous Substances.¹⁷⁵ In January, the Commission also announced it is taking legal action against France, Greece, Italy, Spain, Luxembourg and the United Kingdom for failure to comply with EU waste laws on general waste management, hazardous waste, waste oils, landfills, and hazardous chemicals.¹⁷⁶

¹⁶⁶ *Id.*

¹⁶⁷ See Press Release, European Commission, Ozone-Depleting Substances: Commission Asks Greece, Ireland and Spain to Indicate Penalties for Breaches of EU Law (October 21, 2003), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁶⁸ See Press Release, European Commission, Waste: Commission Takes Legal Action Against Greece and Spain (October 21, 2003), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See Press Release, European Commission, Spanish Bathing Water: Commission Welcomes European Court Penalty Decision (November 25, 2003), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ See Press Release, European Commission, Water Policy: Commission Acts Against Eight Member States (January 13, 2004), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁷⁵ *Id.*

¹⁷⁶ See Press Release, European Commission, Waste Legislation: Commission Pursues Legal Action Against 6 Member States (January 15, 2004), available at <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

In 2003, the Commission selected several projects to fund under the LIFE-Environment, LIFE-Nature, and LIFE-Third Countries schemes. LIFE is the EU's program to provide financial support for environmental and nature conservation projects throughout the EU, in candidate countries, and in bordering areas.¹⁷⁷ Projects range from sustainable management of water resources¹⁷⁸ to capacity building for environmental policy protection in third countries bordering the Mediterranean and the Baltic Sea.¹⁷⁹

B. Organization of American States (OAS)

In January 2004, OAS launched a campaign entitled "Sustainable Development and Biocultural Conservation in the Brazil-Suriname Border Region."¹⁸⁰ The purpose of the project is to work in partnership with the indigenous peoples of the region in order to contribute to the conservation of their culture and the sustainable development of their natural resources.¹⁸¹

1) Inter-American Commission on Human Rights

On February 20, 2003, the Inter-American Commission on Human Rights decided that two petitions by Tierraviva, an NGO representing two indigenous communities of Chaco, alleging violations of the American Convention and Constitution of the Republic of Paraguay, were admissible.¹⁸² Both petitions alleged that the Republic of Paraguay violated the Sawhoyamaya Indigenous Community's right to property, among other rights contained in the American Convention on Human Rights as well as the Constitution of Paraguay which acknowledges the right of indigenous peoples to develop their lifestyles in their own habitat.¹⁸³ The petitioners argue that more than 11 years have gone by since the procedures were first set in motion to recover part of the ancestral lands of the Sawhoyamaya Indigenous Community, yet to date that initiative has not been favorably resolved, even though Paraguayan legislation recognizes the right of the indigenous peoples to develop their ways of life in their own habitat, and that the State has not protected the lands claimed. In addition, they argue that the members of the Community are living in sub-human conditions; as a result, several people, including minors, have died due to lack of adequate food and lack of medical care. The Commission has yet to report its decision on the merits of each case.¹⁸⁴

¹⁷⁷ ¹⁷⁷ See Press Release, European Commission, LIFE-Environment: 104 Environmental Innovation Projects Share EUR 69 Million of Commission Funding (September 5, 2003), *available at* <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004).

¹⁷⁸ *Id.*

¹⁷⁹ See Press Release, European Commission, LIFE-Third Countries: Commission Funds 17 Environment Projects in Third Countries (September 5, 2003), *available at* <http://www.europa.eu.int/comm/environment/press/index.htm> (visited February 25, 2004)

¹⁸⁰ See Press Release, OAS, Multilateral Project Launched in Suriname (January 26, 2004), *available at* http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=SU-012604 (visited February 25, 2004).

¹⁸¹ *Id.*

¹⁸² Petition 0326/01 and 0322/2001, Inter-Am. C.H.R., *at* <http://www.cidh.org/DefaultE.htm> (visited March 10, 2004).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

C. North American Commission on Environmental Cooperation

The North American Agreement on Environmental Cooperation (NAAEC), known as the “environmental side agreement” to the North American Free Trade Agreement (NAFTA), established the North American Commission on Environmental Cooperation (NACEC) comprising a Council, Secretariat and Joint Public Advisory Committee.¹⁸⁵

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.”¹⁸⁶ Many of these submissions seek review of situations where the alleged failure to enforce environmental laws has directly affected human rights.¹⁸⁷ In 2003, the NACEC received numerous citizen submissions on enforcement matters.

1) Ontario Power Generation

In May 2003, 49 Canadian and United States NGOs filed a submission to the NACEC asserting that emissions of mercury, sulfur dioxide, and nitrogen oxides from Ontario Power Generation’s coal-powered facilities pollute air and water downwind in the northeastern United States and Eastern Canada and that Canada has failed to enforce the Canadian Environmental Protection Act and the Fisheries Act.¹⁸⁸ After receiving a response from the government of Canada in November 2003, the Secretariat began considering whether to recommend a factual record and has yet to report its decision on the matter.¹⁸⁹

2) Lake Chapala II

Also in May 2003, the Secretariat received a submission alleging that Mexico is failing to enforce its environmental laws with respect to the Lerma-Chapala-Santiago-Pacifico basin, which has produced environmental deterioration and uneven water distribution in the basin, as well as the danger that the lake and its migratory bird population will disappear altogether.¹⁹⁰ The submitters claim that the government of Mexico is failing to enforce several environmental laws by: (1) failing to regulate water use and distribution in the basin; (2) failing to carry out inspections and monitoring; and (3) failing to revoke water concessions and authorizations.¹⁹¹ The Secretariat is still awaiting a response from the government of Mexico.¹⁹²

¹⁸⁵ 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 (visited November 27, 2002).

¹⁸⁶ *Id.* at arts. 14-15.

¹⁸⁷ See NACEC, *Citizen Submissions on Enforcement Matters: Current Status of Filed Submissions*, at <http://www.cec.org/citizen/status/> (visited November 20, 2002).

¹⁸⁸ See NACEC, *Citizen Submissions on Enforcement Matters, Ontario Power Generation*, Submission ID 03-001, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=88> (visited February 25, 2004).

¹⁸⁹ *Id.*

¹⁹⁰ See NACEC, *Citizen Submissions on Enforcement Matters, Lake Chapala II*, Submission ID SEM-03-003, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=90> (visited February 25, 2004).

¹⁹¹ *Id.*

¹⁹² *Id.*

3) Alca-Iztapalapsa II

This submission asserts that Mexico is failing to effectively enforce its environmental laws with respect to pollution of hazardous waste at a particular footwear materials factory which the submitter claims has affected his health and the health of his family.¹⁹³ In December 2003, the Secretariat began considering whether to recommend a factual record, but has yet to report a decision on the matter.¹⁹⁴

4) Montreal Technoparc

This submission, filed by several Canadian and United States environmental NGOs asserts that Canada is failing to effectively enforce the federal Fisheries Act against the City of Montreal with regard to discharge of toxic pollutants from the city's Technoparc site into the St. Lawrence River.¹⁹⁵ Submitters cited information on the adverse effects of the discharges on human health and aquatic ecosystems.¹⁹⁶ The Secretariat has not issued a decision on whether to recommend a factual record.¹⁹⁷

5) Cytrar III

In August 2003, the Secretariat received a submission alleging that Mexico is failing to enforce its environmental law at a hazardous waste landfill owned by Cytrar.¹⁹⁸ The submission asserts that Cytrar: (1) is in violation of applicable environmental laws; (2) did not comply with design specifications regarding cell lining; and (3) allowed hazardous waste from the US to be buried at the site.¹⁹⁹ Submitters assert that these actions have caused damage to human health and the environment.²⁰⁰ The submission also alleges that environmental authorities have failed to initiate legal proceedings against the company for the environmental violations, and have failed to provide access to information regarding the site to submitters.²⁰¹

6) El Boludo Project

This submission asserts that Mexico is failing to effectively enforce its environmental laws with respect to the El Boludo mining project on the El Tiro site, which is owned by submitters.²⁰² The submitters assert that the company is violating the General Law of Ecological Balance and Environmental Protection and applicable provisions of hazardous waste and mining

¹⁹³ See NACEC, *Citizen Submissions on Enforcement Matters, Alca-Iztapalapsa II*, Submission ID SEM-03-004, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=93> (visited February 25, 2004).

¹⁹⁴ *Id.*

¹⁹⁵ See NACEC, *Citizen Submissions on Enforcement Matters, Montreal Technoparc*, Submission ID SEM-03-005, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=94> (visited February 25, 2004).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ See NACEC, *Citizen Submissions on Enforcement Matters, Cytrar III*, Submission ID SEM-03-006, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=95> (visited February 25, 2004).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² See NACEC, *Citizen Submissions on Enforcement Matters, El Boludo Project*, Submission ID SEM-02-004, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=80> (visited February 25, 2004).

laws and regulations.²⁰³ The Secretariat received Mexico's response in September 2003 and is still considering whether to recommend a factual record on the matter.²⁰⁴

7) Children's Health

In February 2003, the NACEC held a workshop on risk assessment and children's environmental health.²⁰⁵ The background document for the workshop pointed out the particular vulnerability of children to poor environmental conditions along with the fact that children can have disproportionately higher exposures to many environmental toxicants than adults.²⁰⁶

8) Pollutants and Health Program

The CEC Pollutants and Health Program seeks to establish cooperative initiatives to prevent or correct adverse effects, on a North American scale, from pollution to human and ecosystem health. Guidance on methods to accomplish this mission is embodied within the language of Article 10 of NAAEC. These methods include: encouraging technical cooperation between the Parties; promoting pollution prevention techniques and strategies; recommending appropriate limits for specific pollutants; taking into account differences in ecosystems; recommending approaches for the comparability of techniques and methodologies for data gathering and analysis, data management, and electronic data communications; and promoting access to publicly available information concerning the environment that is held by public authorities of each Party.²⁰⁷

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.²⁰⁸ 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.

A. Constitutions²⁰⁹

Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right. Of the approximately 191 nations in the world,²¹⁰ there

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ See NACEC, North American Workshop on Risk Assessment and Children's Environmental Health February 2003: Background Document, at 1, available at http://www.cec.org/files/PDF/POLLUTANTS/cdjuarez_en.pdf (visited February 25, 2004).

²⁰⁶ *Id.* at 6.

²⁰⁷ See NACEC, *Citizen Submissions on Enforcement Matters, Pollutants and Health*, at http://www.cec.org/programs_projects/pollutants_health/index.cfm?varlan=english (visited December 3, 2002).

²⁰⁸ See I.C.J. Statute, art. 38.

²⁰⁹ See *infra* Appendix 1 (providing a cumulative list of these countries and a brief description of the relevant provisions).

are now 109 national constitutions that mention the protection of the environment or natural resources.²¹¹ One hundred of them recognize the right to a clean and healthy environment and/or the state's obligation to prevent environmental harm.²¹² Of these, 53 constitutions explicitly recognize the right to a clean and healthy environment,²¹³ and 92 constitutions make it the duty of the national government to prevent harm to the environment.²¹⁴ Fifty-four constitutions recognize a responsibility of citizens or residents to protect the environment,²¹⁵ while 14 prohibit the use of property in a manner that harms the environment or encourage land use planning to prevent such harm.²¹⁶ 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.²¹⁷ Sixteen constitutions provide an explicit right to

²¹⁰ To date, there are 191 members of the United Nations, Timor-Leste retaining member status in September 2002. See generally U.N., *Member States*, at <http://www.un.org/members/index.html> (last visited Mar. 10, 2004).

²¹¹ See *infra* Appendix 1.

²¹² 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.

²¹³ Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, Colombia, Congo, Costa Rica, Croatia, Cuba, Czech Republic, Ecuador, El Salvador, Ethiopia, Finland, Georgia, Honduras, Hungary, Kyrgyzstan, Latvia, Macedonia, Mali, Moldova, Mongolia, Mozambique, Nicaragua, Niger, Norway, Paraguay, Philippines, Portugal, Russia, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Tajikistan, Togo, Turkey, Ukraine, Yugoslavia. In addition to these, the constitutions of Comoros and Guatemala recognize a right to health that is not explicitly tied to the state of the environment.

²¹⁴ Andorra, Angola, Argentina, Armenia, Bahrain, Belarus, Benin, Bolivia, Brazil, Bulgaria, Cambodia, Cameroon, Cape Verde, Chad, Chechnya, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Ecuador, El Salvador, Equatorial Guinea, Eritrea (draft), Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Iran, Kazakhstan, Kuwait, Laos, Latvia, Lithuania, Macedonia, Madagascar, Malawi, Mali, Malta, Mexico, Micronesia, Mongolia, Mozambique, Namibia, Nepal, Netherlands, Nicaragua, Niger, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Sao Tome and Principe, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Suriname, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Turkey, Turkmenistan, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam, Yugoslavia, Zambia.

²¹⁵ Algeria, Argentina, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, China, Colombia, Congo, Cuba, Czech Republic, Finland, Ghana, Guatemala, Guyana, Haiti, India, Kazakhstan, Kyrgyzstan, Laos, Lithuania, Macedonia, Madagascar, Mali, Moldova, Mongolia, Mozambique, Panama, Papua New Guinea, Poland, Russia, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, South Korea, Spain, Sri Lanka, Sudan, Tajikistan, Tanzania, Thailand, Turkey, Ukraine, Uruguay, Uzbekistan, Vanuatu, Vietnam, Yugoslavia.

²¹⁶ Albania, Armenia, Belarus, Burundi, Chile, Czech Republic, Moldova, Mongolia, Romania, Russia, Slovakia, Switzerland, Ukraine, Uzbekistan.

²¹⁷ Angola, Argentina, Azerbaijan, Belarus, Brazil, Chechnya, Chile, Congo, Costa Rica, Ecuador, Haiti, Kyrgyzstan, Moldova, Mongolia, Paraguay, Poland, Russia, Spain, Ukraine.

information concerning the health of the environment or activities that may affect the environment.²¹⁸

B. Courts

1) Canada

The Canadian Supreme Court gave effect to the polluter-pays principle and upheld, against allegations of unfair bias, an order by the Quebec Minister of the Environment directing Imperial Oil to undertake a soil contamination study.²¹⁹ The bias allegations stemmed from the fact that the Minister had previously been involved in an unsuccessful decontamination attempt, which had become subject to a lawsuit. Imperial Oil argued that the Minister's impartiality was compromised by his interest in shifting responsibility for the site.

To analyze the bias allegations, the Supreme Court first described the framework of Quebec's environmental laws.²²⁰ The Court wrote:

The Quebec legislation reflects the growing concern on the part of legislatures and of society about the safeguarding of the environment. That concern does not reflect only the collective desire to protect it in the interests of the people who live and work in it, and exploit its resources, today. It may also be evidence of an emerging sense of inter-generational solidarity and acknowledgement of an environmental debt to humanity and to the world tomorrow.

The centerpiece of Quebec's environmental legislation is the Environmental Quality Act, which was originally enacted in 1972. That Act recognizes that every person is entitled to a healthy environment and to its protection, and to the safeguarding of the living species inhabiting it. To ensure that this right may be effectively exercised, and that the duties created to give effect to it are executed, the Act provides for a variety of mechanisms for taking action. * * * * The Superior Court is given broad powers of injunction, to prevent or stop any act that might interfere with the fundamental right to the preservation of the quality of the environment.²²¹

The Court found that the Minister's power to order studies like that required of Imperial Oil applies the polluter-pay principle, which it found "firmly entrenched in environmental law in Canada" and also recognized at the international level, for example, in the Rio Declaration on Environment and Development.²²²

²¹⁸ Albania, Azerbaijan, Belarus, Colombia, Czech Republic, Ecuador, Eritrea (draft), Georgia, Kazakhstan, Latvia, Moldova, Norway, Russia, Slovakia, Ukraine, Yugoslavia.

²¹⁹ *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] 231 D.L.R. 4th 577, S.C.C. 58 (October 30, 2003).

²²⁰ *Id.* ¶ 18.

²²¹ *Id.* ¶¶ 19-20.

²²² *Id.* ¶ 23.

As a matter of administrative law, the Court observed that the Minister was obliged to “carefully and attentively examine the observations submitted to him,” but his duty of impartiality had to be considered in light of his role in managing environmental problems. The Court held that the Minister’s paramount duty was “protecting the public interest in the environment,” ¶ 34,²²³ and, under the circumstances, gave this duty greater weight than the duty to avoid the appearance of partiality.

2) Chile

The Court of Appeals ruled that the National Forestry Corporation (CONAF) failed in its duty to protect rare *alerce* trees from illegal logging and wrongfully withheld information about its enforcement efforts.²²⁴ On January 30, 2004, the Court vindicated Jose Comandari, who owns property where the alerce grow. Comandari had requested that CONAF explain its efforts to control illegal exploitation of the alerce on his property. CONAF denied his request, stating that disclosure would compromise its investigations. The Court of Appeals rejected CONAF’s argument, stating that the principles of transparency and citizen control of public agencies required disclosure.

The Chilean state’s duty to protect environmental resources is also raised by a controversy concerning Pumalín Park, in the southern province of Palena.²²⁵ The park consists of nearly 300,000 hectares owned by U.S. citizen Douglas Tompkins.²²⁶ Tompkins negotiated with Chilean authorities for seven years for the land to be designated as a nature preserve and protected. In January 2004, certain senators argued that the designation of the park implicates Chilean sovereignty, on the theory that protecting the land by law could limit the state’s ability to develop infrastructure and limit judicial authority to condemn property for the public good.²²⁷ These senators have asked for the park designation to be referred to the National Security Council (COSENA).²²⁸ COSENA is a body, constituted pursuant to the 1980 Constitution, which consists of President Ricardo Lagos, the commanders of the armed forces, and civilian officials. President Lagos has rejected the request to consult COSENA on the park designation. The affair underscores the link between democratic and environmental rights.

Indigenous rights were vindicated by a Chilean court in April 2003, when construction of the Ralco dam and hydroelectric plant was enjoined. Construction of the dam on the upper Bío-Bío River was begun before compensation was agreed with all of the Pehuenche people, who would be displaced. Four women refused to accept the offer of compensation by the contractor, Endesa-España. They sued in the Chilean courts to stop the dam. In addition, the Inter-American Commission on Human Rights in February took up their claim against the Chilean government for “denial of justice.” These legal developments apparently pressured the Chilean

²²³ *Id.* ¶ 34.

²²⁴ *Jose Comandari v. National Forestry Corporation (CONAF)* (Civil Action No. 6121-2002) (January 30, 2003).

²²⁵ Gustavo González, *Sovereignty Debate Surrounds Nature Park*, Inter Press Service News Agency (January 19, 2004) at <http://www.ipsnews.net/interna.asp?idnews=21991>.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

government and Endesa-España to offer a level of compensation the women would accept.²²⁹ While in the Ralco case, construction will be completed and the indigenous lands flooded behind the dam, the effectiveness of the legal remedies in securing an acceptable result to the Pehuenche women is apparent.

3) Argentina

In November, 2003, the Civil and Commercial Court of the Province of Cordoba, Argentina, approved a petition, filed by the community of Chacras de la Merced, seeking relief from a polluting sewage treatment plant.²³⁰ The court ordered local authorities to provide, within 24 hours, 200 liters of clean water per person per day to the affected families.²³¹

Wells along the river are the community's only source of water and many children and family members are suffering from gastrointestinal illnesses. Residents of Chacras de la Merced have been complaining since 1992 about a sewage treatment plant that was built in the middle of their community. The plant needs maintenance, lacks capacity, and frequently discharges effluent into the river.

C. Governments

1) Indonesia

The President of Indonesia has ordered a moratorium on the exploitation of sea sand.²³² The decree was motivated by the damage to the coastal and marine ecosystem, the hardship imposed on fishermen, and the drop of sea sand prices.²³³ The decree seeks to defend the rights of fishermen to harvest fish. Uncontrolled sand extraction has led to the disappearance of a number of small islets in Riau province.²³⁴ Enforcement of the presidential decree and other protective measures has apparently been uneven, but as of July 2003, it was reported that the Indonesian National Army-Navy was ordered to protect the Riau Islands from illegal dredging.²³⁵

2) Iraq

Efforts are underway to restore the marshes of the Tigris/Euphrates river system in Iraq, which were drained by the former dictator Saddam Hussein in an effort to control and persecute

²²⁹ Gustavo González, *Eco-Demands Give Way to Money*, INTER PRESS SERVICE NEWS AGENCY at <http://www.tierramerica.org/english/2003/0929/iacentos2.shtml>.

²³⁰ See *Victories & Steps Along the Way: U.K., Argentina, Belize and India*, ENVTL. LAW ALLIANCE WORLDWIDE, *Winter 2004*, at 2, available at <http://www.elaw.org/news/advocate/2004-winter.pdf> (visited March 10, 2004).

²³¹ *Id.*

²³² Presidential Decree No. 33/2002 dated May 23, 2002 on Control and Supervision of Exploitation of Sea Sand, at <http://www.dprin.go.id/regulasi/english%5C2002/05/PD-33.PDF>.

²³³ *Id.*

²³⁴ Bill Guerin, *The Shifting Sands of Time—and Singapore*, ASIA TIMES (July 31, 2003) at http://www.atimes.com/atimes/Southeast_Asia/EG31Ae01.html.

²³⁵ *Indonesia gets tough on sand smuggling*, DREDGING NEWS ONLINE (July 11, 2003) at http://www.sandandgravel.com/news/news/news_1114.htm.

the Ma'dan people who live there. The human rights impact of the drainage project is well documented. In March 1995, the U.N. Human Rights Commission passed a resolution calling for an end to military operations and efforts to drain the Iraqi marshes.²³⁶ One commentator believes that the destruction of the marshes could be considered genocide under international law.²³⁷ The restoration project involves the United Nations Environment Program and nations including the United States, Italy, Denmark and other countries. In addition to halting desertification and enabling the Ma'dan people to resume their way of life, the restoration project is intended to secure a supply of potable water for Iraqis.

3) Malaysia

Illegal sand dredging activities prompted the government of Malaysia to bring a claim for provisional relief against the government of Singapore before the International Tribunal for the Law of the Sea in September 2003.²³⁸ Malaysia claimed that Singapore's reclamation activities were causing irreparable damage to its marine environment, and, among other things, demanded compensation for individual Malaysians injured by Singapore's actions. In its ruling on the preliminary request, the International Tribunal directed Singapore not to conduct its land reclamation in ways that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment, taking into account the reports of the group of independent experts.²³⁹

4) Peru

On December 10, 2003, Centromin Peru, an agency of the Peruvian government, terminated a would-be mining concessionaire's option to build an open-pit gold and copper mine in Tambogrande, a town in a major mango and lime-producing region.²⁴⁰ Local farmers contended that the mine would contaminate the air and water supplies and destroy their livelihood.²⁴¹ The option was contingent on a satisfactory environmental impact statement and financial statement filed by the mining company, Manhattan Minerals Corp. Apparently, the company satisfied neither criterion.²⁴² The Peruvian environmental agency compiled some 180

²³⁶ *Situation of Human Rights in Iraq*, U.N. Human Rights Commission, 60th Sess., at ¶ 9, E/CN.4/RES/1995/76 (1995), at

<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/2f3bbb4f9f284a8b802566db005fdca1?Opendocument>.

²³⁷ James Fuller, *Legal Expert Describes Iraqi Treatment of Marsh Arabs as Genocide*, U.S. DEP'T OF STATE INTERNATIONAL INFORMATION PROGRAMS (Nov. 18, 2002) at <http://usinfo.state.gov/regional/nea/iraq/text/1118marsh.htm>.

²³⁸ Request for Provisional Measures, *In the Dispute Concerning Land Reclamation Activities by Singapore Impinging Upon Malaysia's Rights in and around the Straits of Johor (Malaysia v. Singapore)* (September 4, 2003) at http://www.itlos.org/start2_en.html.

²³⁹ *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)*, Order of October 8, 2003.

²⁴⁰ *Manhattan Minerals Plunges 55 percent after mine blocked*, GLOBE AND MAIL (December 10, 2003), at <http://www.globeandmail.com/servlet/story/RTGAM.20031212.wvanc1212/BNStory/Business/>

²⁴¹ See, e.g., *Seven Deadly Secrets: What the Export Development Canada does not want you to know*, pp.34-37 at http://www.miningwatch.ca/documents/Seven_Deadly_Secrets.pdf.

²⁴² Press Release, Manhattan Mining Company, *Centromin Peru Ruling on Tambogrande Option Agreement* (December 10, 2003), at http://www.manhattan-min.com/s/News-2003.asp?ReportID=72570&_Type=News-Releases-2003&_Title=Centromin-Peru-Ruling-on-Tambogrande-Option-Agreement.

objections to the environmental impact study.²⁴³ The Peruvian government has indicated that the strong public opposition to the project has influenced its willingness to drop the project.²⁴⁴ While a right to a healthy environment was not explicitly recognized by Peruvian officials, the process leading to termination of the option indicates a receptiveness to such a right.

5) Tanzania

The Commission for Human Rights and Good Governance enjoined all actions to persuade village residents into accepting compensation offered by the Afrika Mashariki Gold Mine, a gold mining company, for damage to their homes.²⁴⁵ The injunction issued on November 24, 2003, against three local officials in Tarime District, the Afrika Mashariki Gold Mine, and its Canadian parent company, Placer Dome.²⁴⁶ The villagers alleged that the local officials threatened to imprison them if they rejected the compensation offer.²⁴⁷ The villagers believe that the offered compensation is inadequate, given the damage anticipated by the company's proposed blasting and dumping of mine tailings.²⁴⁸

On January 20, 2004, the Commission issued an order to show cause to several local officials and to the managing director of the Afrika Mashariki Gold Mines, requiring them to explain why they should not be arrested and prosecuted for contempt of the Commission's orders.²⁴⁹ The Commission required a response to allegations that Afrika Mashariki Gold Mines had defied an order to discontinue dumping mine tailings near villagers' houses.²⁵⁰ The Commission has also required the officials and mining company executive to explain the ongoing intimidation of villagers.²⁵¹

Additionally, the Tanzania government is reported to be currently preparing a bill for legislation that would recognize the right to live in a safe environment.²⁵² The bill is known as the Bill on Principal Environmental Law. Recognition of a right to a safe environment is endorsed by the Chief Justice Barnabas Samatta of the Tanzania High Court.²⁵³

²⁴³ Jude Webber, *Decision looms for Tambogrande mine project*, Reuters (November 28, 2003) at <http://www.forbes.com/work/newswire/2003/11/28/rtr1163506.html>

²⁴⁴ *Id.*

²⁴⁵ *Nyamhanga, et al., v. Director, Afrika Mashariki Gold Mines Ltd., et al.* (Complaint No. 127/2003/2004/Madini), Order in the Human Rights and Good Governance Commission, (November 24, 2003).

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Press Release, Lawyers' Environmental Action Team, Human Rights Commission Issues Injunction Order Against Tarime Gold Mine and Four Others (November 24, 2003) at www.lead.or.tz/about/pr/2003.11.24.hrc.tarime.injunction.php

²⁴⁹ Keregero Keregero, *RPC, DC face arrest for ignoring order*, THE GUARDIAN (January 20, 2004) at www.elaw.org/news/partners/text.asp?id=2284.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Peter Tindwa, *CJ underlines rights to safe environment*, THE GUARDIAN (February 2, 2004) at <http://www.ippmedia.com/ipp/guardian/2004/02/02/4949.html>.

²⁵³ *Id.*

6) Vietnam

Three Vietnamese plaintiffs filed suit in federal district court in New York against ten U.S. chemical manufacturers on January 30, 2004, seeking damages for injuries they sustained on account of the spraying of Agent Orange by the U.S. military.²⁵⁴ Agent Orange contains dioxin, a potent carcinogen. Its application during the Vietnam war poisoned soil and water, destroyed forests, killed animals and caused human health problems. The plaintiffs explain that while the Vietnamese government has asked the United States for aid in cleaning up Agent Orange contamination and in caring for injured people, its non-confrontational approach has yielded no compensation. Vietnam's government estimates three million people suffer from the effects of Agent Orange. Observers from Columbia University estimate the number of victims at closer to five million and believe the contamination is much worse than previously thought.

The Vietnamese plaintiffs' suit was preceded by a lawsuit by U.S. veterans, who won \$180 million in a settlement in 1984.²⁵⁵ On June 9, 2003, the United States Supreme Court let stand a Court of Appeals decision that a veteran whose injuries became manifest after the settlement fund was closed in 1994 was not barred from seeking additional compensation from the chemical companies, notwithstanding the settlement.²⁵⁶ The Agent Orange-dioxin litigation has the potential to establish that a right to a healthy environment limits the kinds of damage that may permissibly be inflicted in war. The parallel lawsuits by U.S. veterans and Vietnamese citizens may help define whether a state owes foreign citizens the same level of care as to its own citizens with respect to environmental exposure.

7) United States

As of May 1, 2003, the United States Navy officially transferred land previously used for weapons testing at East Vieques, Puerto Rico, to the Department of the Interior for use as a wildlife refuge.²⁵⁷ As part of the transfer, the Navy agreed to address environmental contamination resulting from its activities. In the transfer document, the importance of transparency and public participation was expressly recognized. The Navy and the Department of the Interior stated they "recognize the importance of public involvement in the Environmental Contamination response process and in the Refuge-planning process. Information will be provided to the public, and public involvement will be sought, in accordance with existing laws, policies and procedures applicable to Navy and Interior actions"

²⁵⁴ *Three in Vietnam file Agent Orange suit*, SEATTLE TIMES, February 5, 2004 at A7.

²⁵⁵ See, e.g., *Agent Orange in Vietnam and U.S. Courts*, Pesticide Action Network North America at www.panna.org/resources/gpc/gpc_200308.13.2.11.dv.html.

²⁵⁶ *Dow Chemical v. Stephenson*, 123 S.Ct. 2161 (June 29, 2003), *affirming in part and vacating in part, Stephenson v. Dow Chemical*, 273 F.3d 249 (2d Cir. 2001). See Bill Mears, *Court Splits on Agent Orange*, CNN.com, June 9, 2003.

²⁵⁷ Memorandum of Agreement between the United States Department of the Navy and the United States Department of the Interior Concerning the Transfer of Department of Defense Properties on the Eastern End of Vieques Island to the Department of the Interior, at <http://southeast.fws.gov/vieques/ViequesFinalMOA.43003.html>.

CASE STUDIES

Around the globe in 2003, environmental harms from construction projects and dams, resource exploitation, logging activities and accidents, and privatizations 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.

Some case studies involve human rights violations that are directly related to environmental destruction (e.g., contamination of water on which people depend for life, health, means of subsistence, etc.). Other case studies, by contrast, involve human rights violations that are not strictly environmental, but arise out of natural resource extraction or other activities that have an environmental connection.

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 seldom hold any of these actors fully accountable for causing such harm. Consequently, there is a need for better enforcement of the many legal provisions and doctrines that support and contribute to 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, although not to the exclusion of other approaches, 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 are likely to result in a deprivation of human rights.

I. Africa

A. South Africa

The South African Petroleum Refinery (SAPREF) – owned and operated by Royal Dutch Shell and British Petroleum (BP) – is the largest crude oil refinery in South Africa.²⁵⁸ Since the 1960s, Shell and BP have been operating SAPREF in South Durban, Africa's busiest port and South Africa's third largest city.²⁵⁹ From the 1960s to 1980s, SAPREF conducted business with minimal environmental regulation or oversight by the South African government.²⁶⁰ Therefore, toxic chemicals, such as hydrogen sulfide, sulfur dioxide, and benzene, were emitted from

²⁵⁸ See Africa Action, *Africa: Shell and Its Neighbors*, at <http://www.africaaction.org/docs03/shel0305.htm> (last visited Apr. 24, 2003).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

SAPREF unchecked, exposing the black, Indian and mixed-race and poor South Durban community to a variety of toxic chemicals.²⁶¹

Currently, the South Durban residents' rights to life and health are being violated because they live in an area contaminated by toxic air pollution, which has caused respiratory illnesses, the exacerbation of current respiratory illnesses, general immune deficiencies, and in some cases, leukemia. In 1995, the South Durban Community Environmental Alliance (SDCEA) was created to address the public health disaster in South Durban,²⁶² and to ensure that SAPREF adheres to the South Africa's constitutional right to a healthy environment.²⁶³ In April 2003, SDCEA's chairman and other activists went to London, England, to participate in Royal Dutch Shell's annual shareholder's meeting.²⁶⁴ The activists, who each own a single share in Royal Dutch Shell, addressed the substandard environmental conditions in South Durban, and pointed out that Shell has the ability to reduce the chemical emissions from SAPREF, as evidenced by the significantly lower emissions at a similar Shell refinery in Denmark.²⁶⁵ They urged Shell to comply with the South African Constitution, which guarantees citizens "an environment that is not harmful to [their] health and well being."²⁶⁶

As a result of local advocacy efforts in South Africa and other communities around the world, Shell has sought recognition as a "compassionate corporate citizen" by vowing not to dig for oil in areas that were designated by UNESCO as "World Heritage" sites, and by giving \$140 million per year for social programs.²⁶⁷ Almost one-half of the \$140 million is now designated for use in Africa.²⁶⁸ Additionally, an air quality bill (the National Environmental Management: Air Quality Bill) has been introduced in the national Parliament.²⁶⁹ The South Durban community was allowed to attend a session before Parliament to address its concerns about this bill in early February 2004. Despite these efforts and legal actions, the current laws in South Africa have proven to be ineffective, lacking the teeth to hold Shell and BP accountable for the toxic air pollution in South Durban.²⁷⁰

²⁶¹ See Africa Action, *supra*, n. 258; Elizabeth Becker, *Shell Strives to Clean Up Its Act*, at <http://www.contracostatimes.com/mld/ctimes/business/7402118.htm> (last visited Mar. 10, 2004); see Deepa Fernandes, *A Visit to Waste-Dumping Sites Shows U.N. Conference to Be Ignoring Environmental Racism*, at <http://www.villagevoice.com/issues/0135/fernandes.php> (last visited Mar. 10, 2004).

²⁶² See GAIA Campaigner, *South Durban Community Environmental Alliance*, at <http://www.no-burn.org/campaignervol3/memfocus.html> (last visited Mar. 10, 2004).

²⁶³ *Id.*

²⁶⁴ See Brett Horner, *A Breath of Fresh Air*, at <http://www.suntimes.co.za/2003/05/25/news/durban/ndbn14.asp>, (last visited Mar. 10, 2004); see groundWork, *Shell Challenged at AGM by Community Activist Shareholders*, at http://www.groundwork.org.za/Press%20Releases/shell_challenged_at_agm.htm (last visited Mar. 10, 2004).

²⁶⁵ See Africa Action, *supra*, n. 258.

²⁶⁶ foem, *Shell Failing the Challenge: Shell Challenged by Community Activist Shareholders at its AGM*, at <http://www.melbourne.indymedia.org/print.php?id=46707> (last visited Mar. 10, 2004); groundWork, *Press Release: 23 February 2004*, at http://www.groundwork.org.za/Press%20Releases/AirSthDbn23_02_04.htm (last visited Mar. 10, 2004).

²⁶⁷ Elizabeth Becker, *supra*, n. 261.

²⁶⁸ Elizabeth Becker, *supra*, n. 261.

²⁶⁹ groundWork, *Press Release: 23 February 2004*, *supra*, n. 266.

²⁷⁰ groundWork, *Press Release: 23 February 2004*, *supra*, n. 266; Africa Action, *supra*, n. 258.

B. Chad and Cameroon Update²⁷¹

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

October 10, 2003 marked the official inauguration of the Chad-Cameroon oil pipeline. While several heads of state and industry representatives traveled to Kome, Chad to join President Idriss Deby in opening the spigot to the pipeline, those who have been left to deal with the environmental and social impacts of the project and their supporters have declared October 10 a "day of mourning." Last fall, on September 12, the Chadian government, notorious for its corruption and human rights abuses, prohibited a peaceful march organized by human rights groups against the pipeline. The same administration used the first US\$4.5 million of a signing bonus that they got from oil companies to purchase arms. The project has already caused considerable harm in the oil producing area, devastating fisheries and land, impacting food security and social tensions due to forced displacement and massive migration initiated by the project and leading to an increase in prostitution and the accelerated spread of AIDS.²⁷²

C. Nigeria Update²⁷³

In May 1999, victims of gross human rights abuses associated with ChevronTexaco's oil production activities in the Niger Delta region of Nigeria filed suit against ChevronTexaco in U.S. federal court in San Francisco.²⁷⁴ The case is based on two incidents: the shooting of peaceful protestors at ChevronTexaco's Parabe offshore platform and the destruction of two villages by soldiers in ChevronTexaco helicopters and boats.²⁷⁵ It was filed under the Alien Tort Claims Act, which permits suits in U.S. courts against individuals or corporations that commit international human rights violations anywhere in the world, if that person or corporation resides in or visits the United States.²⁷⁶ The case is an example of non-environmental human rights abuses in the context of natural resource extraction. In a major victory for the Plaintiffs, a federal judge on March 23, 2004 denied ChevronTexaco's motion for summary judgment, ruling that ChevronTexaco may be held liable for the acts of its Nigerian subsidiary, where

²⁷¹ This case study was included in the issue paper prepared for the Commission's 57th Session.

²⁷² See Project Underground, *Drillbits and Tailings: Hotspots*, at http://www.moles.org/ProjectUnderground/drillbits/8_07/hotspots.html (last visited Mar. 9, 2004).

²⁷³ This case study was included in the issue paper prepared for the Commission's 59th Session.

²⁷⁴ See Earthrights International, *Bowoto v. ChevronTexaco* (U.S. District Court for the Northern District of California, Case No. 99CV2506(SI)), at <http://www.earthrights.org/chevron/index.shtml> (visited March 26, 2004).

²⁷⁵ *Id.*

²⁷⁶ *Id.*

ChevronTexaco allowed the subsidiary to hire the notorious Nigerian military and police as a security force.²⁷⁷

II. Asia

A. Indonesia Mine Tailing Update²⁷⁸

In Indonesia, Newmont Mining Corporation runs the Minahasa Raya and Nusa Tenggara mines.²⁷⁹ At Minahasa Raya in North Sulawesi, Newmont has dumped 2.8 million tons of toxic mine waste into the coastal waters of Buyat Bay since 1996. The method of waste disposal Newmont is using is effectively banned in the United States because of the toxicity and extreme damage it does to the ocean ecosystem. As a result, the people from the villages of Ratatotok and Buyat whose economy relies on the health of Buyat Bay have found that their water is contaminated, their fisheries are collapsing, and their children are contracting skin diseases.

At Nusa Tenggara in Sumbawa, Indonesia, Newmont dumps 120,000 tons of mine waste a day in coastal waters. Local citizens say that agricultural land was taken from them without their agreement and that in some cases they were insufficiently compensated causing them to lose their source of livelihood. These environmentally destructive practices constitute serious human rights violations.

A study released by the Indonesian Forum for the Environment (Walhi) in June 2003 revealed that mine tailings from Newmont's Minahasa Raya mine contain four times the government-allowed level of cyanide. Additionally, data showed that Newmont had released over four million tons of mine tailings into Buyat Bay and the surrounding coast, further degrading the marine ecosystem and reducing the catch of local fisherman. According to the author of the study, local residents have not received any compensation for the environmental, social, and human health damages they have incurred as a result of Newmont's irresponsible and widespread tailings disposal.²⁸⁰ In response to the study's findings, the Indonesian government is sending a team to conduct an independent test of Newmont's tailings.²⁸¹

B. China, Three Gorges Dam Update²⁸²

Last year, we reported that residents in the village of Yaowan on the northern bank of the Yangtze River were dreading the arrival of demolition teams that would flatten their settlement

²⁷⁷ *Id.*

²⁷⁸ This case study was included in the issue paper prepared for the Commission's 59th Session.

²⁷⁹ See Project Underground, *Newmont Mining Corporation Under Fire for Environmental and Human Rights Abuses*, at http://moles.org/ProjectUnderground/mining/newmont/n_hr abuses0502.html (last visited Mar. 9, 2004).

²⁸⁰ See Moch N. Kurniawan, Jakarta Post, *Newmont endangers people, ecosystem* (June 19, 2003).

²⁸¹ See Moch N. Kurniawan, Jakarta Post, *Government to send team to check cyanide study on Newmont* (June 21, 2003).

²⁸² This case study was included in the issue paper prepared for the Commission's 55th and 59th Sessions.

and force them to move elsewhere.²⁸³ Many people in the reservoir area, 600km (375 miles) long, complain that the government's resettlement program is unfair and plagued by corruption, but the government does not want evacuees airing their grievances in public. Nearly 700,000 people have been resettled or forced to relocate since construction began. Among the rights implicated by this project are liberty of movement and the right to choose one's residence, the right to inviolability of the home, the right of refugees to request and receive protection and humanitarian assistance from their government, and the right to be consulted for free and informed consent prior to being displaced.

On June 1, 2003, reservoir filling of the Three Gorges dam began, and continued through mid-June. The water level rose rapidly from 80 meters to 135 meters. Despite reports and findings of widespread human rights violations and inadequate resettlement provisions, project officials continue to seek funding.²⁸⁴

C. Burma Update²⁸⁵

Since 1993, US-based Unocal and French-based Total, together with Burma's state controlled oil company, the Myanmar Oil and Gas Enterprise, have been constructing a natural gas pipeline from Burma's Yadana natural gas field to an electric power plant in Thailand. The pipeline route traverses the Tenasserim region of Burma, through a dense tropical forest and the traditional lands of the Karen, Mon and Tavoy peoples.

The environmental damage resulting from the project and the behavior of the Burmese army in enabling the project to continue violates numerous human rights of the Burmese. The Burmese government claims that any environmental consequences to the pristine forest and offshore waters will be minimal but has yet to conduct an environmental impact assessment to support its position. By not preventing the project or mitigating its impacts, the Burmese government is allowing potential environmental harm to occur that could violate the rights to life, health, humane treatment, culture, property and residence, among others, of local communities and indigenous peoples. Regarding the behavior of the Burmese military—which provides security services, has forced labor and has allegedly tortured and killed protesters and workers and deprived the latter of certain labor rights—Unocal claims it has no control over such actions. Moreover, Unocal continues to defend its participation in the project despite these consequences by claiming that it has provided much-needed employment to villagers.²⁸⁶

²⁸³ See The Economist, *Dam Shame: China's Three Gorges Dam*, at <http://irn.org/programs/threeg/index.asp?id=020711.damshame.html> (last visited Mar. 9, 2004); see also Probe International, *Three Gorges Probe*, at <http://www.probeinternational.org/pi/3g/index.cfm> (visited Mar. 9, 2004).

²⁸⁴ See International Rivers Network, *Three Gorges Campaign*, at <http://www.irn.org/programs/threeg> (last visited Mar. 9, 2004).

²⁸⁵ This case study was included in the issue paper prepared for the Commission's 57th Session.

²⁸⁶ See Dave Marash, ABC News Nightline, *Should Unocal be Held Responsible for Burmese Government's Human Rights Violations Against People Working on Natural Gas Pipeline?* (March 28, 2000); see also Amnesty International & Sierra Club, "Burma: Violence, Forced Labor and Environmental Destruction," Dec. 1999, at <http://www.amnestyusa.org/justearth/countries/burma.html> (last visited Dec. 19, 2001); Earthrights International, *Total Denial*, July 1996.

Several years ago, Burmese citizens sued the Burmese government and Unocal in US federal court for human rights abuses associated with the construction of this gas pipeline. The trial court dismissed the case, concluding that Unocal could not be held liable unless Unocal wanted the Burmese military to commit abuses, and that plaintiffs had not made this showing.²⁸⁷ Plaintiffs appealed this decision. On September 18, 2002, the United States Court of Appeals for the Ninth Circuit reversed the District Court's decision, allowing the lawsuit against Unocal to go forward. The three-judge panel held that the District Court was wrong in determining that the plaintiffs had to show that Unocal controlled the Burmese military's actions in order to establish Unocal's liability. The Ninth Circuit held that the plaintiffs need only demonstrate that Unocal knowingly assisted the military in perpetrating the abuses for Unocal to be held liable. Under this standard, the Court determined that the plaintiffs had presented enough evidence to go to trial. Most recently, in February 2003, the Ninth Circuit appeals court decided to rehear the appeal before an eleven-judge en banc panel. The en banc decision is currently pending.²⁸⁸

The same plaintiffs filed another case against Unocal in California state court, which is currently pending. On January 23, 2004, a state judge ruled that Unocal was aware that its operations in Burma were likely to result in violations of the rights of Burmese villagers who were enslaved, killed and tortured in connection with Unocal's natural gas project. The judge ruled for the defendants that Unocal's subsidiaries were separate companies from the parent company, and therefore Unocal cannot be held responsible for the abuses. However, Judge Chaney left the door open for plaintiffs to continue the trial using other legal theories.²⁸⁹

III. Europe

A. Romania

A gold mining project in Romania suffered a major setback in October 2002, when the World Bank withdrew its support for the controversial Rosia Montana project. Local residents and activists celebrated this important victory in their struggle to maintain a healthy environment and their livelihoods in Rosia Montana. Toronto-based Gabriel Resources plans to develop the valley of Rosia Montana, the oldest documented settlement in Romania, into four open-pit mines. A neighboring valley would be converted into an unlined cyanide storage pond, held back by a 180 meter high dam. This project would be the largest open-pit gold mining operation in Europe.²⁹⁰

B. Russia

The Russian military's practice of abandoning hazardous waste violates the human rights of the Russian people to a clean and healthy environment. In April 2003, residents of

²⁸⁷ See *Doe v. Unocal Corp.*, 67 F. Supp. 2d 1140 (C.D. Cal. 1999); *John Doe I v. Unocal*, 963 F. Supp. 880 (C.D. Cal. 1997).

²⁸⁸ See <http://www.earthrights.org/unocal/index.shtml> (last visited Mar. 25, 2004).

²⁸⁹ See EarthRights International, *Judge rules that Unocal Corporation knew about abuses against Burmese villagers and refuses Unocal's efforts to end human rights case*, at <http://www.earthrights.org/news/unocaljan04.shtml> (last visited Mar. 10, 2004).

²⁹⁰ See Project Underground, *Drillbits and Tailings: World Bank Pulls Out of Rosia Montana*, at http://www.moles.org/ProjectUnderground/drillbits/7_09/1.html (last visited Mar. 9, 2004).

Medvezhyegorsk, in the republic of Karelia, were poisoned by phosgene gas, the byproduct of a toxic chemical left unattended on a vacated, unguarded military installation. Further investigation revealed that significant numbers of hazardous substances had been discarded in an adjacent quarry, resulting in soil and groundwater contamination. The irresponsible disposal and abandonment of these substances deprives the residents of Medvezhyegorsk of their rights to clean air, water, and soil as well as their rights to health, well-being, and life.²⁹¹

When confronted with charges of violating Russian environmental laws, military officials threatened investigators, denied the allegations, and interfered with residents' efforts to assert their rights to information, their right to participate in decision-making and their right to redress human rights violations. The military's actions constitute a crime under Russian law and a criminal investigation is in progress. The Petrozavodsk Environmental Law Center is suing the military on behalf of the residents. A recent court decision that awarded compensation in a similar incident in Saratov Oblast offers hope, but finding proof of the military wrongdoings may be a formidable obstacle—many believe the “military has covered its tracks.”²⁹²

Recognizing the potential for transboundary contamination from such sites, the international community has responded with monetary assistance for the proper disposal of hazardous chemical wastes.²⁹³ International donors have agreed to provide 110 million Euros (approximately \$135 million) for environmental clean-up efforts in and around northern Russia.²⁹⁴

C. Azerbaijan, Georgia and Turkey

When completed in 2005,²⁹⁵ the Baku-Tbilisi-Ceyhan (BTC) pipeline will traverse 1056 miles - beginning at Baku, the capital of Azerbaijan, proceeding through T'bilisi, Georgia, and ending at Ceyhan, Turkey - carrying crude oil from the landlocked Caspian Sea to the Mediterranean Sea.²⁹⁶ On its route, it will run through subsistence farmlands,²⁹⁷ mountainous regions of seismic instability, buffer zones of a national park, a natural spring water source of the primary business in Georgia, and areas rich in cultural heritage.²⁹⁸ In addition to threatening

²⁹¹ See Aleksey Ukkone, *Military Denies Responsibility for Chemical Pollution in Karelia*, World News Connection (May 22, 2003). Inquiries may be directed to NTIS, U.S. Dept. of Commerce; see also Ren TV, “Military Claim Substance Left By Them in Russian Republic Is Not Poisonous” (BBC Monitoring, May 29, 2003) (tv broadcast) (available in 2003 WL 56032468).

²⁹² *Id.*

²⁹³ See Faversham House Group Ltd, *EUR110 Million to Clean Up Russian Nuclear Legacy and Other Waste Problems* (Dec. 7, 2002), at http://www.edie.net/gf.cfm?L=left_frame.html&R=http://www.edie.net/news/Archive/5711.cfm (last visited Feb. 28, 2004).

²⁹⁴ *Id.*

²⁹⁵ See Friends of the Earth, *Baku-Tbilisi-Ceyhan Oil Pipeline: Overview and Fact Sheet*, at <http://www.foe.org/camps/intl/bakuceyhan.html#1> (last visited Feb. 5, 2004).

²⁹⁶ *Id.*

²⁹⁷ Carol Welsh, *FoE Visits the Project of the Century*, at <http://www.foe.org/camps/intl/worldbank/BTCarticle.pdf> (last visited Mar. 12, 2004).

²⁹⁸ *Id.*

tourism and the export economy from the mineral springs,²⁹⁹ it will imperil ground water, drinking water, wetlands, bird migration areas, lakes and rivers.³⁰⁰ Exacerbating the problems, the BTC will pass through conflict-prone regions, causing international security concerns.³⁰¹ In the Turkish portion of the BTC, it will be guarded by the Gendarmerie, which was condemned by the Council of Europe in July of 2002 for continuing human rights abuses.³⁰²

The pipeline poses a major threat to the environment and human rights. The rights to unpolluted land and clean drinking water are threatened by the risk of spills, leaks and pipeline maintenance chemicals. The right to livelihood is imperiled by the destruction of farmland along the route and by jeopardizing the economic benefits of the mineral springs. The rights to maintain environmentally sensitive local and cultural artifacts are made vulnerable by the passage of the pipeline near or through the regions. The right to be free from human rights violations is threatened by the use of known human rights abusers for pipeline security.

An international group of environmental organizations (from France, Italy, Great Britain, Ireland, the Netherlands, the Kurds, the United States and Germany) has submitted complaints to the governments of Britain, France, Germany, Italy and the United State charging that the 10 participants in the BTC sponsoring consortium have breached the Organization for Economic Cooperation and Development (OECD) *Guidelines for Multinational Enterprises*.³⁰³ While the *Guidelines* are not legally enforceable, they measure corporate social responsibility.³⁰⁴ The groups allege, among other things, that the consortium has asked for or taken exemptions from environmental laws, undermined mitigation for environmental threats, and failed to involve communities affected by the construction and placement of the pipeline.³⁰⁵ The groups have requested an immediate moratorium on construction and its financial support.

D. Spain Update³⁰⁶

On November 19, 2002, the oil tanker Prestige broke in two and sank off the Spanish coast.³⁰⁷ The tanker is Liberian, registered in the Bahamas, managed in Greece, and chartered by a company in Switzerland. The vessel was carrying 77,000 tons of fuel oil. Fuel oil, a heavy, viscous blend gathered from the bottom of tanks at the end of the refining process, can be far

²⁹⁹ Carol Welsh, *Presentation to the Brookings Institution Forum on the Baku-Tbilisi-Ceyhan Oil Pipeline*, at <http://www.foe.org/camps/intl/institutions/bakuceyhan.html> (last visited Feb. 27, 2004).

³⁰⁰ See Friends of the Earth, *WWF's Position Statement in Connection with Baku-Tbilisi-Ceyhan Pipeline*, at <http://www.foe.org/camps/intl/institutions/bakuceyhan.html> (last visited Feb. 27, 2004).

³⁰¹ *Developmental, Human Rights and Environmental Impacts of the Baku-Tbilisi-Ceyhan Oil Pipeline: Memorandum from Concerned Non-Governmental Organizations to Department for International Development, Foreign and Commonwealth Office, H.M. Treasury & UK Export Credits Guarantee Department*, § 9 (Nov. 2002), at <http://www.foe.org/camps/intl/worldbank/memorandum-1102.pdf> (last visited Mar. 12, 2004).

³⁰² *Id.*

³⁰³ Friends of the Earth International, *Groups File Claim Against BP and Pipeline Partners in 5[sic] Countries: "Green" Company Violating International Norms in Controversial Caspian Oil Pipeline*, at <http://www.foei.org/media/2003/0429.html>, (last visited Feb. 4, 2004).

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ This case study was included in the issue paper prepared for the Commission's 59th Session.

³⁰⁷ See Project Underground, *Drillbits and Tailings: Oil Tanker Destroys Livelihoods in Spain*, at http://moles.org/ProjectUnderground/drillbits/7_10/2.html (last visited Mar. 9, 2004).

more toxic and difficult to clean up than crude oil. Ecologists fear that the 26-year-old Prestige is an environmental time bomb as it is now resting 130 miles (210 km) off the Spanish coast and 3.6 km (two miles) below the surface.

The scenic shores of Galicia in northwest Spain have been blackened by the oil from the vessel. Galicia, where local people depend on fishing and summer tourism for their livelihood, has an uncertain future, as its diverse reserve of fish and shellfish is under severe threat. It is the fisherpeople of Galicia who have been the main victims of the disaster. Those fisherpeople put out more boats than the rest of the EU fleet put together in an enterprise worth more than US\$300-million a year, divided among family-owned boats, whose efforts sustain entire communities along the coast. This environmental disaster has resulted in violations of the right to work and the right to sustenance.

The consequences for northwestern Spain worsened daily, as Spanish authorities extended restrictions on fishing and gathering shellfish. The ban now reaches as far south as the Portuguese border. The thick oil contaminated dozens of Spanish beaches along the coastline, and thousands of seabirds have been killed or contaminated. By December 4, 2002, two weeks after the Prestige sank, Portugal and France were on high alert after oil slicks from the tanker began encroaching on their territory. French officials said that oil-stained birds had begun washing up on the southwestern French coast. The European Union estimated the clean-up costs for the region to be \$5 million.

Six months after the Prestige hit the ocean floor, Texas attorney Anthony Buzbee filed what would become a \$300 million suit against the American Bureau of Shipping (ABS) in Houston on behalf of the oil-drenched Basque region, a Spanish province about the size of New Jersey. The Spanish government filed a similar case eight days later against ABS in New York, seeking another \$700 million. Both cases allege ABS caused the oil spill and should pay to clean it up. Three years ago, ABS performed a five-year inspection of the Prestige in China and then a year later in Dubai, but overlooked checking the ballast tanks in both inspections. It was in one of these ballast tanks that the hull of the Prestige first failed.³⁰⁸

This environmental disaster demonstrates the international human rights peril posed by an oil shipping industry, which operates largely hidden from scrutiny and regulation, trading through a bewildering chain of companies that defy attempts by governments and environmentalists to guard against such disasters.

E. Turkey, Gold Extraction Update³⁰⁹

In 1999, we reported that the people of Bergama, Turkey, had decided that they prefer their health and the health of their environment to the promised riches of gold-extraction. In 1989, Eurogold, a multinational mining company, moved into this agricultural region near the Aegean coast and began making arrangements to extract 24 tons of gold through a cyanide heap leaching process. Fearing the potential pollution of their water and soil, local residents

³⁰⁸ See Houston Press, *Ship Wrecked*, at <http://www.houstonpress.com/issues/2004-02-12/feature.html/1/index.html> (last visited Mar. 9, 2004).

³⁰⁹ This case study was included in the issue paper prepared for the Commission's 55th Session.

overwhelmingly opposed the mining and took actions to prevent Eurogold's projected eight-year mining plan from becoming a reality. In 1997, 10,000 residents and supporters from across Turkey occupied the mine site, convincing authorities to suspend Eurogold's activities for 30 days. Before the moratorium had expired, Turkey's highest court ruled on a case brought by several hundred residents and overturned the Ministry of Environment's decision to permit the mining project. The court based its judgment on the grounds that the threat posed by Eurogold's cyanide-based technology violated the people's constitutionally protected right to a healthy and intact environment and to their own physical integrity. However, the government subsequently reissued the revoked permit. In a positive turn of events, on March 6, 2002, the Izmir Third Administrative Court ordered the gold mine in Bergama closed immediately.³¹⁰

Shortly after the decision was issued in 2002, a family whose livelihoods depend on the mining operations attacked and murdered 35 year-old Turan Kilinc in his home. Turan Kilinc had been active during the ten years of resistance against the mine, protesting in solidarity with fellow community members through creative and determined acts of civil disobedience. Residents of Bergama and the 17 neighboring villages are concerned that the mine is destroying not only their lands but also their communities.³¹¹

IV. Island Nations

A. Australia

In South Australia, the byproducts of uranium mining have left aboriginal communities at risk. In 1995, Australia's federal government announced plans to bury nuclear waste from Sydney in the wild desert lands of South Australia near Woomera. A small group of aboriginal elders, supported by their local communities, have banded together to resist the proposed radioactive waste dump. They are concerned about the risk of nuclear waste contaminating the groundwater in their region of South Australia, the driest state in the country. Many of the region's water sources are unmapped and unknown by non-Aboriginal Australians, but have sustained Aboriginal people and desert wildlife for thousands of years. Despite the fact that 87% of South Australians oppose construction of the radioactive waste dump, the Australian government is moving forward with its plans to build the dump.³¹²

From February 25-26, 2004, a two-day public forum was held in Adelaide to assess the federal government's application for a license to construct and operate the dump. While key stakeholders and experts made presentations in support and opposition to the project, the Aboriginal activists present at the meeting learned of two fatal truck accidents in the Blue Mountains, one of which involved a massive chemical spill. These incidents underscored activists' fears of the government's proposal to build Australia's first nuclear waste dump.³¹³

³¹⁰ See Mines and Communities, *Press Release - Izmir Third Administrative Court Decides the Bergama Mine Should Close*, at <http://www.minesandcommunities.org/Action/press30.htm> (last visited Mar. 9, 2004).

³¹¹ See Ustun B. Reinart, *Newmont-owned illegal goldmine provokes murder*, at <http://important.as/environment> (last visited Mar. 9, 2004).

³¹² See Goldman Prize, <http://www.goldmanprize.org/recipients/recipients.html> (last visited Mar. 9, 2004).

³¹³ See Irati Wanti Campaign, *"Get your ears out of your pockets!"*, <http://iratiwanti.org/iratiwanti.php3?page=news&id=230&start=0&year=2004> (last visited Mar. 9, 2004).

V. North America

A. Greenland

International pollution contaminates the food supply of Greenland's indigenous Inuit population and jeopardizes their rights to life, health, well-being, livelihood, culture, and sustainable development. Inuit mothers' breast milk and newborns' umbilical cord blood contain PCB and mercury levels twenty to fifty times higher than those from urban areas of the United States and Europe.³¹⁴ In the northernmost villages of Greenland, one in every six adults tested has a mercury level exceeding two hundred parts per billion, a level associated with symptoms of acute mercury poisoning.³¹⁵ Mercury exposure results in high blood pressure and difficulty achieving motor skills in children.³¹⁶ Furthermore, scientists attribute impairment of Inuit infant immune systems and neurological functioning to prenatal exposure to Persistent Organic Pollutants (POPs) and ingestion of contaminated breast milk.³¹⁷ Over two hundred contaminants have been detected in Inuits.

Mercury derives from coal burning plants of Asia while PCBs originate in the cities of North America and Europe.³¹⁸ The United States is the major source of brominated flame-retardants (PBDEs).³¹⁹ These POPs are carried to Greenland by wind and water currents and are slow to degrade in the low temperature and low sunlight of the Arctic.³²⁰ They accumulate in ocean-dwelling mammals and each step up the food chain magnifies the concentration of contaminants.³²¹ Such marine mammals are the Inuit's traditional food source—a diet that has previously protected them from ailments commonly associated with industrialized nations, such as diabetes and heart disease.³²²

The United Nations' Office of the High Commissioner for Human Rights states that "indigenous peoples should be recognized as proper subjects of international law with their own collective rights" and that "the promotion and protection of rights over lands and resources of indigenous peoples are vital for [their] ... cultural survival."³²³ The Stockholm Convention on Persistent Organic Pollutants (POPs), which enters into force on May 17, 2004, will ban or severely restrict the production and use of twelve of the worst POPs, and will establish a multilateral, science-based process for identifying and adding other chemicals with POPs

³¹⁴ See Maria Cone, *Ancestral Diet Gone Toxic*, L.A. Times A1 (January 13, 2004) (citing Arctic Monitoring and Assessment Programme, Arctic Pollution 2002), at <http://www.amap.no> (last visited Feb. 4, 2004).

³¹⁵ *Id.*

³¹⁶ See The Norway Post, *Mercury Scare in the Arctic*, at http://www.norwaypost.no/content.asp?cluster_id=24434&folder_id=1 (last visited Feb. 4, 2004).

³¹⁷ See Cone, *supra* n. 314.

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ See Peopleandplanet.net, *Toxic Chemicals Threaten Arctic*, at <http://www.peopleandplant.net/doc.php?id=1765> (last visited Feb. 15, 2004).

³²¹ See Cone, *supra* n. 314.

³²² See BBC News Online, *Toxin Threat to Inuit Food*, at <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/sci/tech/2906357.stm> (last visited Feb. 15, 2004).

³²³ See Office of the High Commissioner for Human Rights, *Fact Sheet No. 9 (Rev. 1), The Rights of Indigenous Peoples*, at <http://www.unhchr.ch/html/menu6/2/fs9.htm> (last visited Feb. 29, 2004).

characteristics to the treaty. Many nations, including those generating the largest amounts of POPs, have yet to ratify the convention.

B. United States

1) Glamis

In the early 1990s, Glamis Gold, a Canadian gold mining corporation, proposed an open-pit, cyanide heap leach gold mine in the California desert. This massive mining operation would destroy a pristine area adjacent to a desert wilderness area, including 88 acres of critical desert habitat, and would consume 389 million gallons of water annually from the desert groundwater aquifer. In addition, the mining sites are located in an area near Quechan tribal lands that has been withdrawn from future mining claims to protect Native American religious and cultural values, and the proposed mine area is sacred to the Quechan Indian Nation. The mine area is also of archaeological significance, considering that it hosts 55 known historic properties eligible for federal recognition.³²⁴

In response to the potential devastating impacts of Glamis' and other open-pit mining projects, California's State Mining and Geology Board approved new regulations that require mining companies to backfill new open-pit mines and reserve funding to ensure the coverage of clean-up costs, the toughest restrictions on open-pit mining in the country. Additionally, a law was passed by the California legislature, which specifically requires the backfilling of open pit mines within one mile of sacred sites or areas of special concern.³²⁵

In July 2003, Glamis Gold initiated a claim against the United States using the investment agreement in Chapter 11 of the North American Free Trade Agreement (NAFTA). Glamis filed a Notice of Intent that it will bring a US\$50 million claim against the United States for actions taken by California intended to protect the environment and indigenous communities from the devastating impacts of open-pit mining. Although the law and regulations apply broadly to all open-pit mines and investors throughout the state, Glamis argued that California's actions violate two central rules in Chapter 11: the prohibition on expropriation and the requirement to provide "fair and equitable" treatment to foreign investors. By filing this claim to challenge a California law intended to protect sacred indigenous sites, Glamis has introduced the issue of whether investment provisions can undermine indigenous rights.³²⁶

2) Border Power Plants

In an attempt to evade clean air and water laws and expedite construction of new power plants, Sempra Energy and Intergen, two US-based energy companies, have come up with a new strategy to build power plants in Mexico and send the energy back over the border into California. In March 2002, Border Power Plant Working Group, represented by Earthjustice and Wild Earth Advocates, brought a lawsuit against the federal government challenging permits

³²⁴ See Oxfam America, *Glamis Gold: A Case Study of Investing in Destruction*, http://www.oxfamamerica.org/pdfs/glamis_en.pdf (last visited Mar. 9, 2004).

³²⁵ *Id.*

³²⁶ *Id.*

granted to two companies planning to build electrical transmission lines from Baja, Mexico into California. Operation of these new plants would significantly degrade US air and water quality and would likely harm public health and the environment in the border region of Imperial Valley, California and Mexicali, Mexico.³²⁷

In a May 2003 ruling, Judge Irma Gonzales, of the US Federal District Court for the Southern District of California, determined that the federal agencies responsible for issuing these permits violated the National Environmental Policy Act by failing to fully analyze the potentially significant environmental and human health impacts of the construction and operation of transmission lines linking power plants in Mexico to the U.S. electric grid. The government responded to the ruling, stating that it will carry out a full environmental impact statement, a comprehensive assessment of potential health and environmental impacts. In spite of the fact that the lines are already in service, the review will be conducted as if the plants did not exist. This court decision establishes an important precedent protecting human health and the environment from further border-line construction of polluting power plants that may be built to provide energy for US markets, both in Mexico and Canada.³²⁸

3) Toxic Ghost Ships

In September 2003, environmental and public interest groups on both sides of the Atlantic Ocean brought legal actions to prevent the export of toxic-laden ships from the United States to England. Two groups in the United States, Basel Action Network (BAN) and Sierra Club, filed suit in US Federal Court to stop the US Maritime Administration and the US Environmental Protection Agency from sending 13 toxic “Ghost Fleet” naval vessels from the James River in Virginia across the Atlantic Ocean to Teesside, England, for scrapping. The export of these ships is widely seen as a test-run for a larger project to export many more obsolete US vessels to developing countries where standards to protect workers and the environment from the toxic materials onboard are nearly non-existent.³²⁹

After an emergency hearing in October, the judge ordered that nine of these PCB and asbestos-laden ships could not leave until the government assessed the environmental risks associated with their export to England. The government agreed to conduct an environmental review before a second hearing, scheduled for April 2004, to determine whether the nine ships will be allowed to go. The remaining four ships were permitted to leave port in mid-October, although they have not received the appropriate permits from the British government. Following legal actions by Friends of the Earth UK, the English authorities have declared invalid the permits required to import and dismantle the ships leaving the ships in legal limbo until environmental standards are met in the US and England.³³⁰

The 13 ships are in serious states of deterioration with several of them already having leaked oil into the James River. According to the government’s own estimates the 13 vessels in

³²⁷ See Earthjustice, *Mexican Border Power Plants*, at <http://www.earthjustice.org/urgent/display.html?ID=106> (last visited Mar. 9, 2004).

³²⁸ *Id.*

³²⁹ See Earthjustice, *PCB Ghost Ships: Transfer to England Brings Challenge*, at <http://www.earthjustice.org/urgent/display.html?ID=155> (last visited Mar. 9, 2004).

³³⁰ *Id.*

this deal are contaminated with 700 tons of persistent and toxic PCBs, 1,400 tons of asbestos, and over 3,000 tons of waste fuel oils. Transporting these ships, some of which are in such bad condition that their hulls can be cracked with a hammer, presents serious risk that these materials will be released into the environment. Loud protests over the wisdom of this toxic export from an environmental and an economic standpoint have been voiced on both sides of the Atlantic.³³¹

VI. Central and South America

A. Free Trade Area of the Americas Update³³²

Plans to extend the North American Free Trade Agreement (NAFTA) south to Central and South America in the form of a proposed Free Trade Area of the Americas (FTAA) are alarming citizen organizations across the hemisphere.³³³ In the eyes of many, NAFTA has brought poverty and ruin to countless Mexican farmers, and forced them to work in low-wage factory jobs by driving down agricultural prices in the face of subsidized U.S. crops. NAFTA has also undermined governments' and citizens' rights to protect their environment. Taking this concept and forcing it on the rest of the hemisphere through the FTAA is a threat that has galvanized the highly committed and organized indigenous federations of South America.

Indigenous people stand to lose the most from the FTAA. They are generally the most impoverished and vulnerable people in the region, and face daily obstacles to true economic opportunity and social advancement, due to racial and other forms of discrimination and human rights abuses. In the face of centuries of colonialism, oppression, and poverty, indigenous people are energetic defenders of their cultures and rights, which are based on very different principles than those promoted by the modern free trade economic system. They fear that imposing a North American style economy on the region at the expense of sovereign governance will overcome their traditional ways of working, eating and living, and spell the end of their culture.

Because government representatives often fail to represent their interests, indigenous organizations fear that the secret nature of the FTAA negotiations will exclude the concerns of their members and offer little to help them. To make their concerns known to the world, hundreds of indigenous and citizen organizations gathered in Quito, Ecuador, the site of the closed-door meeting of government ministers negotiating the FTAA in late October 2002.

Another meeting was held in Miami in November 2003, at which trade ministers from the 34 negotiating countries failed to reach agreement. Although they avoided a collapse similar to the World Trade Organization's meeting two months earlier in Cancun, the countries ended the meeting a day early, concluding that there was nothing more to discuss. The countries had reduced the scope of each of the nine substantive issues and left Miami with a vague framework on which to base future negotiations.³³⁴ The next meeting was held in Puebla, Mexico, where

³³¹ *Id.*

³³² This case study was included in the issue paper prepared for the Commission's 59th Session.

³³³ See Oxfam America, *FTAA Poses Danger to Indigenous People*, at <http://www.oxfamamerica.org/advocacy/art6502.html> (last visited Mar. 9, 2004).

³³⁴ See New York Times, *U.S. and Brazil End Talks* (November 21, 2003).

differences on the contentious issue of U.S. agricultural subsidies, and their implicit implications on the rights to food and work, prevented the negotiations from moving forward.³³⁵

B. Belize

A Canadian company, Fortis Inc., plans to build a hydro-electric dam along the Macal River Valley in western Belize, which is one of the most pristine and fragile habitats in Central America. The dam would flood one of Central America's last remaining intact rainforests, destroying habitat for a number of rare and endangered species that have lost much of their habitat elsewhere in Central America. Species that would be affected include the jaguar, Scarlet Macaw, and Belize's national animal, the tapir. In addition, untouched ancient Maya monuments would be flooded. The dam would consolidate Fortis' monopoly in Belize, where Fortis charges more than three times more for electricity than the average price in Canada.

In a recent setback to environmentally related procedural rights, Belize's highest court, the British Privy Council denied a citizens appeal against the Belize government's decision to approve the dam. Although the litigants did not technically argue from a rights-based approach to environmental law, the majority opinion declared, "the question of whether or not the dam should be built raises no issue of human rights."³³⁶ The dissent, however, strongly criticized Fortis for withholding evidence and called government claims that the dam is safe "incredible."³³⁷

C. Brazil

Urban expansion, industry, roadways, and tourism have all led to the destruction of large stretches of mangrove forests in Brazil. Now, the growing presence of the shrimp aquaculture industry in the Northeast is exacerbating the situation. The result has been a decline in the wild fish and crustacean populations, loss of migratory bird habitat, and loss of traditional livelihoods for indigenous coastal communities.³³⁸

Shrimp aquaculture began in the state of Bahia in Northeastern Brazil and gradually moved farther north.³³⁹ Shrimp farming has been growing in popularity and spreading throughout the region in recent years.³⁴⁰ Many shrimp aquaculture farms are located in mangrove forests that are home to indigenous communities, including the Pataxo Ha Ha Hae in the state of Bahia and the Tremembe in the state of Ceara.³⁴¹ Mangrove forests are fragile,

³³⁵ See Associated Press, *Talks on a free trade accord of the Americas end without reaching agreement* (February 6, 2004).

³³⁶ See Privy Council Appeal No. 47 of 2003, January 29, 2004, ¶ 9, at <http://www.stopfortis.org/bacongo-adv-decision.rtf> (last visited March 12, 2004).

³³⁷ See *id.* at ¶¶ 89, 116.

³³⁸ See Mario Osava, *Shrimp: New Source of Tension With U.S.*, <http://ipsnews.net/interna.asp?idnews=21986> (last visited Feb. 20, 2004).

³³⁹ Schwab, B., M. Weber and B. Lehman, "Key Management Challenges for the Development and Growth of a Shrimp Farm in Northeast Brazil: A Case Study of Camanor Produtos Marinhos Ltda."

³⁴⁰ *Id.*

³⁴¹ See Center for World Indigenous Studies, *FWDP: Tremembe Mission, Declaration of Tlahuitoltepec*, at <http://nativenet.uthscsa.edu/archive/nl/9412/0001.html> (last visited Feb. 15, 2004).

unique ecosystems formed where the ocean and freshwater meet, and where the vegetation is ideal for the breeding of fish and crustaceans.³⁴² The presence of shrimp ponds in these fragile ecosystems leads to a variety of environmental and human rights problems.

The ponds are constructed by cutting down the forests and digging the dike ponds, which are then stocked with post larvae.³⁴³ The shrimp are fed with formulated protein pellets and supplementary artificial feeds.³⁴⁴ A number of chemical inputs such as antibiotics, pesticides and detergents are also added to prevent disease. Pumped exchanges of water to remove wastes and to add clean oxygenated water is crucial. However, this results in accumulation of wastes and degradation in the surrounding ecosystem through pollution of the neighboring surface waters.³⁴⁵ Loss of marine habitat threatens the wild fish and migratory bird populations.³⁴⁶ This loss of marine habitat is not only devastating to the environment; it devastates and displaces the poor local communities who depend on mangrove and coastal fisheries for their livelihoods, and the problem is expected to grow.³⁴⁷ This environmental problem implicates the rights to life, health, culture and livelihood.

Sadly, opposition to the shrimp industry is often met with threats, intimidation and violence.³⁴⁸ Joao Dantas Brito, an environmental investigator from the Brazilian Institute of Natural Resources and Environment, was murdered in December 2001. His death was linked to his denunciation of illegal shrimp farms in Rio Grande do Norte.³⁴⁹ Sebastian Marques de Souza, a fifty-two year old father of four, and a leader of community opposition to expanding shrimp aquaculture in Piaui state was murdered in April 2002.³⁵⁰

D. Colombia Update³⁵¹

In the fall of 2000, the United States and Colombia began an 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. Each year, the spraying campaigns have intensified. In 2001 and 2002 the governments sprayed 86,070 and 125,738 hectares respectively,³⁵² and the goal was to spray 200,000 hectares in 2003.³⁵³ Modeling of spray drift

³⁴² See Osava at 2.

³⁴³ See World Rainforest Movement, *Unsustainable versus sustainable shrimp production*, at www.wrm.org.uy/bulletin/51/production.html (last visited Feb. 15, 2004).

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ Alfredo Quarto, *Mangrove Action Project; Earth Island in the News*, 18 *Earth Island Journal* (Jan. 1, 2004).

³⁴⁷ See World Rainforest Movement, *Environmental, Social and Economic Impacts of Shrimp Farming*, at <http://www.wrm.org.uy/bulletin/51/impacts.html> (last visited Feb. 15, 2004).

³⁴⁸ See Environmental Justice Foundation, *Smash & Grab: Conflict, Corruption and Human Rights Abuses in the Shrimp Farming Industry*, at http://www.ejfoundation.org/pdfs/smash_and_grab.pdf (last visited Mar. 12, 2004).

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ This case study was included in the issue paper prepared for the Commission's 58th and 59th Sessions.

³⁵² Communication from Rebecca Brown Thompson of the US State Department to the Amazon Alliance (January 14, 2003).

³⁵³ Lisa Haugaard, The Latin American Working Group, *Blunt Instrument, The United States' Punitive Fumigation Program in Colombia*, p.10, available at <http://www.lawg.org/docs/LAWGFumigationReport.pdf> (last visited Mar. 9, 2004).

by the US EPA indicates that the Plan Colombia spraying, as currently implemented, may kill native vegetation and adjacent food croplands of an area equal to that of the drug crops sprayed.³⁵⁴

This program violates human rights of Colombian and Ecuadorian farmers, 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 food resources, contamination of 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.

In 2003, a Superior Administrative Court in Colombia declared that the aerial spraying violates the Colombian Constitutional rights to a healthy environment, security and public health because the Environmental Management Plan (EMP) – similar to an Environmental Impact Statement – has not yet been implemented. As a result, the court ordered that the aerial spraying of potent glyphosate herbicides be suspended until the government complies with the EMP. The government immediately appealed the court’s decision and is continuing its spraying program in the interim.

E. Peru

1) Tambogrande Update³⁵⁵

The proposed Tambogrande mining project in northern Peru offers a stark illustration of the problems associated with large-scale mining operations in an era of deregulation and globalization. The town of Tambogrande is poor, isolated and in the heart of Peru’s “El Niño” zone. It sits directly on a major gold, zinc and copper deposit that Manhattan Minerals, a small Canadian mining multinational, is seeking to develop into an open-pit mine. Projected impacts of the mine could be severe. Construction of the mine would require the relocation of an estimated 8,000 inhabitants of a total population of between 14,000 and 16,000 people and the diversion of a local river. The project could also have significant impacts on agricultural production in the area. Tambogrande farmers are Peru’s principal mango exporters and the area has become one of Peru’s leading agricultural centers thanks to major investment in irrigation systems, some of it financed by the World Bank.³⁵⁶

Manhattan’s operation may open the door to the exploitation of hundreds of thousands of hectares currently under concession in Piura. The impact on traditional agricultural livelihoods, from which the vast majority of Piurans draw sustenance and income, could be significant. On Sunday, June 2nd, 2002 the municipality of Tambogrande, held a referendum in which 94% of

³⁵⁴ Report from EPA Administrator Johnson to US Secretary of State (August 19, 2002), p. 51.

³⁵⁵ This case study was included in the issue paper prepared for the Commission’s 59th Session.

³⁵⁶ See Robert Moran, *An Alternative Look at a Proposed Mine in Tambogrande, Peru*, at http://www.globalminingcampaign.org/theminingnews/assets/pdf/tambogrande_eng.pdf (last visited Mar. 9, 2004); see also Amazon Financial Information Service, *Red List Risk Profile, Tambo Grande Mining Project*, at <http://www.redlisted.com/tambogrande.pdf> (last visited Mar. 9, 2004).

the people who turned out and voted in this northern agricultural town cast their vote against mining in urban and agricultural centers and surrounding areas.³⁵⁷

In December 2003, the Peruvian government rejected Manhattan's proposal, claiming that the corporation had submitted an inadequate environmental impact statement as well as insufficient proof of assets and processing criteria. Through direct, peaceful opposition, the Piurans and the Peruvian government exercised their right to information and informed consent before a multinational company could begin mining in their backyard. This case establishes an important precedent for mining communities throughout the developing world.³⁵⁸

2) Camisea Update³⁵⁹

The Camisea Gas Field Project is an effort to build an infrastructure to recover, process and transport natural gas liquids from the Camisea gas field in Peru.³⁶⁰ The field has an estimated 8.7 trillion cubic feet of gas reserves and 600 million barrels of oil and liquid gas reserves. Project plans call for production of 400 million cubic feet of gas and 20,000 barrels of liquid petroleum per day to be transported by two trans-Andes pipelines to processing plants on the Pacific Coast. The international consortium responsible for the project has a 40-year concession to exploit gas and a 30-year concession to extract Camisea oil. The lengthy duration of this project is likely to guarantee ongoing environmental damage to the delicate ecosystems of Peru. Construction of the gas pipeline was initially slated to begin in December 2003.

In addition to significant environmental damage, the project threatens the human rights of the indigenous peoples that live in the region. For example: (i) production companies may build roads into the Camisea rainforest, allowing access to outside populations into the rainforest—indigenous populations have consistently lost territory and access to important natural resources as a result of road building into rainforest areas; (ii) territorial control is necessary to the survival of Amazonian indigenous populations whose way of life and well-being are closely tied to a thriving rainforest; (iii) production companies threaten two of the world's last indigenous peoples, the Nahua and Kugapakori, with extermination by introducing life-threatening illnesses to which these indigenous populations have no immunity; and (iv) water pollution may poison the drinking water and reduce fish populations that the indigenous populations depend on for survival.³⁶¹

In June 2003, a coalition of non-profit organizations conducted a study analyzing the environmental and human health impacts associated with the Camisea project thus far. The

³⁵⁷ See Oxfam America, *Tambogrande Speaks Out*, at <http://www.oxfamamerica.org/advocacy/art2763.html> (last visited Mar. 9, 2004).

³⁵⁸ See MiningWatch Canada, *Press Release: Major Gold Project Implodes in Peru; Community Succeeds in Opposing Controversial Gold Mine*, at http://www.miningwatch.ca/publications/TG_Implodes_rls.html (last visited Mar. 9, 2004).

³⁵⁹ This case study was included in the issue paper prepared for the Commission's 59th Session.

³⁶⁰ See Planet Ark, *Peru's Camisea – Economic Boom or Environmental Bane?*, at <http://www.planetark.org/dailynewsstory.cfm/newsid/18873/story.htm> (last visited Mar. 9, 2004); see Amazon Watch, *The Camisea Natural Gas Project*, at <http://www.amazonwatch.org/amazon/PE/camisea/> (last visited Mar. 9, 2004).

³⁶¹ *Id.*

investigation and accompanying report found that the project has resulted in: severe soil erosion and landslides causing damage to freshwater ecosystems; a decline in fish stocks and water quality adversely affecting local diet and health; and inadequate compensation negotiations for affected communities. The report also documented the ways that the existing monitoring plan is ineffective, nontransparent, and ignored by the company.

Despite these findings, environmental and human rights groups celebrated a victory in August 2003, when the US Export-Import Bank voted to deny financing for the Camisea project, rejecting a \$214 million loan guarantee on the basis that Camisea did not meet the bank's environmental standards. Non-profit organizations and community organizers applauded Ex-Im Bank's decision to deny US taxpayer support of the massive overseas environmental destruction that this gas development project would cause.³⁶² However, a month later, the Inter-American Development Bank (IDB) approved financing, committing \$75 million in direct loans and \$60 million in syndicated loans for the project. By supporting Camisea, the IDB and other funders are paving the way for the destruction of one of the world's most pristine rainforests and threaten the physical survival of isolated indigenous populations.³⁶³

F. Ecuador

The Ecuadorian government has granted concessions to the Ecuadorian Compañía General de Combustibles (CGC) and US-based Burlington Resources to conduct seismic testing in search of oil reserves on land occupied by the indigenous Sarayaku. The Sarayaku oppose petroleum exploration due to its anticipated impacts on their culture and livelihood. The Sarayaku is an indigenous community of about 2,000 people in the central Ecuadorian Amazon rainforest, whose livelihood is derived from farming, ecotourism, hunting and fishing.³⁶⁴ The government has divided the Ecuadorian Amazon into blocks for the administration of petroleum exploration concessions, and the Sarayaku's territory makes up approximately 60% of Block 23.³⁶⁵ CGC and Burlington Resources each control approximately 50% of Block 23.³⁶⁶

Despite the widespread opposition from Sarayaku communities, the companies plan to explore Block 23.³⁶⁷ This has led to a series of confrontations between petroleum workers and the Sarayaku communities.³⁶⁸ The government of Ecuador has hitched the fortunes of its 13 million people to oil. The country's 4.6 billion barrels of proven reserves are among the largest in Latin America. Oil already accounts for nearly half of Ecuador's exports.³⁶⁹ A 1999 study by

³⁶² See Project Underground, *Drillbits and Tailings: Camisea Gas Project Denied Funding by US Ex-Im Bank*, at http://www.moles.org/ProjectUnderground/drillbits/8_06/2.html (last visited Mar. 9, 2004).

³⁶³ See Amazon Watch, *Inter-American Development Bank Blasted for Backing Risky Camisea Project in Peru*, at http://www.amazonwatch.org/amazon/PE/camisea/view_news.php?id=721 (last visited Mar. 9, 2004).

³⁶⁴ See EarthRights International, *Sarayaku FAQs: Protecting Indigenous Rights and the Environment in the Amazon*, at <http://www.earthrights.org/campaigns/sarakufaq.shtml#whatissarayaku> (last visited Mar. 10, 2004).

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ See Edward Hegstrom, *Ecuador faces new battle*, The Houston Chronicle (Nov. 24, 2003); see also El Comercio, *Oil company suspends drilling after problems with indigenous groups*, BBC Worldwide Monitoring (Mar. 18, 2003).

³⁶⁸ See El Comercio, *Oil company suspends drilling after problems with indigenous groups*, BBC Worldwide Monitoring (Mar. 18, 2003).

³⁶⁹ See Juan Forero, *Seeking Balance: Growth vs. Culture in Amazon*, The New York Times (Dec. 10, 2003).

the Ministry of Energy and Mines has shown that if development in the jungle moves unhindered, the Ecuadorian Amazon could yield as much as 26 billion barrels in oil reserves, enough to rival Mexico and Nigeria.³⁷⁰ Therefore, the Ecuadorian Minister of Energy and Mines has stated “the government is prepared to provide all security guarantees to CGC, so the company can continue to operate in Block 23 and fulfill the established contract.”³⁷¹

The Sarayaku are being denied the right to safety, free speech, livelihood, and education. On December 4, 2003 and en route to a march to protest the planned oil project, Sarayaku community members (including women and children) were denied their right to safety and expression when they were violently attacked by pro-oil forces with wooden clubs, stones, and machetes.³⁷² Additionally, the attack impeded the Sarayaku’s right to express discontent with the oil exploration and on their right to ensure the protection of their life, clean water, health and livelihood. The state of emergency has led to the suspension of school classes. Thus, the insurgence of the oil companies and the threat of violence by the government have deprived the Sarayaku children of their right to education.³⁷³ The Sarayaku requested that the Inter-American Commission on Human Rights issue an Order for precautionary measures to the Government of Ecuador; the Commission issued that Order on May 5th, 2003 but the Government has not complied.³⁷⁴

³⁷⁰ *Id.*

³⁷¹ See Amazon Watch, *Ecuadorian Military to Forcibly Enter Amazon Indigenous Lands, Military Invasion Expected as Early as Tomorrow*, at http://www.amazonwatch.org/view_news.php?id=757 (last visited Mar. 10, 2004).

³⁷² See Amazon Watch, *Violence Erupts Against Sarayacu*, at http://www.amazonwatch.org/view_news.php?id=745 (last visited Mar. 10, 2004).

³⁷³ See *supra*, n. 364.

³⁷⁴ *Id.*

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, “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 Constitution, as amended in 1998, 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, as amended, 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 legal limits.” Chapter 2, Part 1, Article 11.

31. East Timor

The 2002 Constitution states that “all have the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.” Title III, Article 61(1). The Constitution provides that it is the responsibility of the State to “recognize the need to preserve and rationalize natural resources.” *Id.* Article 61(2). Additionally, “the State shall promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy.”

32. 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.

33. 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.

34. Equatorial Guinea

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

35. Eritrea

The 1997 Constitution 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.*

36. 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.

37. 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).

38. 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.*

39. 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).

40. 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.

41. The Republic of Ghana

The 1992 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).

42. 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.*

43. 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.*

44. 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.*

45. 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).

46. 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.

47. 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.

48. 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.

49. 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.*

50. 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).

51. The State of Kuwait

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

52. 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).

53. 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.

54. 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.

55. 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.*

56. 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.

57. The Republic of Madagascar

The 1998 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.*

58. 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).

59. 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.*

60. Malta

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

61. 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.

62. 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.

63. 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).

64. Mongolia

The 1992 Constitution, as amended, 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).

65. 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.

66. 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.*

67. 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.

68. 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.

69. 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.

70. 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.*

71. 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.*

72. 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.

73. 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.

74. 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.”

75. 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.*

76. 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.

77. 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.

78. 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.

79. The Portuguese Republic

The 1976 Constitution, as amended, 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 (l).

80. 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).

81. 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.

82. 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.

83. 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.

84. 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).

85. The Slovak Republic

The 1992 Constitution, as amended, 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.

86. The Republic of Slovenia

The 1991 Constitution, as amended, 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.

87. The Republic of South Africa

The 1996 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).

88. 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).

89. 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).

90. 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).

91. 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).

92. 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).

93. 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.

94. 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.

95. 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.

96. The United Republic of Tanzania

The 1977 Constitution, as amended, 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).

97. 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.

98. 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.*

99. 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.*

100. Turkmenistan

The 1992 Constitution provides that the State “shall be responsible for preserving . . . the environment.” Section I, Article 10.

101. 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).

102. 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.*

103. 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.

104. 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.*

105. 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.

106. 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.

107. The Republic of Venezuela

The 1999 Constitution addresses the environmental rights of Venezuelan citizens, declaring that “[e]very person has a right to individually and collectively enjoy life and a safe,

healthy and ecologically balanced environment.” Chapter IX, Article 127. Additionally, “it is a fundamental obligation of the State . . . to guarantee that the population develops in an environment free of contamination, where the air, the water, the coasts, the climate, the ozone layer, the living species are especially protected in conformity with the law.” *Id.*

108. 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.

109. The Federal Republic of Yugoslavia (Serbia and Montenegro)

The 1992 Constitution, as amended, 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.*

110. 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.”