ENVIRONMENTAL RIGHTS REPORT
2008

HUMAN RIGHTS AND THE ENVIRONMENT
ABOUT EARTHJUSTICE

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

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

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INTRODUCTION

There should be no doubt that human activities can and do cause serious environmental problems, or that those problems, in turn, often result in grave harm to human beings. Conversely, a clean and healthy environment is essential to the realization of fundamental human rights and yields great benefits for human beings and communities.

The community of nations has not ignored the essential connection between human rights and the environment. Annually for the past sixteen years, Earthjustice has produced an Environmental Rights Report, highlighting developments in environmental rights in international, regional and domestic forums. As a sampling – but only a sampling – of situations occurring during the year 2007, this report again 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 the right to a clean and healthy environment, whether as a separately codified right or through the application of other human rights to environmental harms, is emerging as an important component of international law. Therefore, national and international governmental and non-governmental institutions dedicated to protecting human rights must recognize the connection, and they should provide mechanisms to address the human rights implications of environmental problems.

This year, Earthjustice has changed the format of the case studies portion of the report to illustrate a particular issue in the intersection of human rights and the environment – the transboundary nature of environmental problems. The case studies demonstrate how the global community is affected by environmental and human rights issues, drawing attention to the need for a holistic treatment of these issues. Environmental problems are rarely contained within political boundaries. Because we live in an increasingly globalized world, our actions have human rights and environmental implications felt across borders and around the globe. While States have a clear obligation to safeguard the rights of their own citizens, they may be unaware of the impacts that actions within their own state may have on another country’s residents, and may have conflicting incentives to control (or not to control) activities within their borders that cause harm elsewhere. The case studies – exploring international financing of development projects, depletion of a resource shared by two countries, harm caused by transnational corporations, transfer of electronic waste, the global effects of climate change, and movement of transboundary pollution – illustrate potential violations of the human right to a clean and healthy environment that can only be fully addressed by the global community.

As a world leader in the protection of human rights, the UN Human Rights Council should set the standard and the pace for such recognition and, further, guarantee the right to a clean and healthy environment.

Background

In July 1994, Ms. Fatma Zohra Ksentini (now Ms. Ouhachi-Vesely), Special Rapporteur on Human Rights and the Environment for the Sub-Commission on Prevention of Discrimination

\[1\] 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 Bevans 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.
and Protection of Minorities, issued her Final Report to the Sub-Commission. The Final Report was the culmination of a study process initiated in 1989, when several non-governmental 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. Ouhachi-Vesely, then a member of the Sub-Commission, to prepare a study on the relationship between human rights and the environment. At its next session, the Commission on Human Rights adopted a resolution (1990/41), which welcomed the Sub-Commission’s decision to have Ms. Ouhachi-Vesely prepare a note on human rights and the environment.


In her Final Report, Ms. Ouhachi-Vesely described the legal foundations for environmental human rights and related a range of examples of the interconnectedness of human rights and the environment. In May 1994, the Meeting of Experts on Human Rights and the Environment held at the United Nations in Geneva (including Ms. Ouhachi-Vesely) produced the Draft Declaration of Principles on Human Rights and the Environment. 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. Ouhachi-Vesely 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. Ouhachi-Vesely 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. Ouhachi-Vesely 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. Ouhachi-Vesely’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 monitor, receive communications, investigate and make recommendations on situations involving human rights and the environment; and to seek comments on the Draft Declaration of Principles.⁹

In that posture, the question of human rights and the environment came before the Commission at its fifty-first session in 1995. The Commission took note of Ms. Ouhachi-Vesely’s Final Report, but rather than immediately following the Special Rapporteur’s or the Sub-Commission’s recommendations, the Commission issued a call for comments on issues raised in the Final Report and continued its consideration of human rights and the environment to the next session, in 1996.¹⁰ 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.¹¹ Ms. Ouhachi-Vesely 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. Ouhachi-Vesely’s Final Report on human rights and the environment.¹² The Commission renewed its request for comments and again asked the Secretary General to prepare a report summarizing whatever comments were received.¹³ 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 the Special Rapporteur explained her mandate and reported on her plans for carrying it out.¹⁴

In advance of its 1997 session, the Commission received comments on issues raised in Ms. Ouhachi-Vesely’s final report from an additional five governments, three United Nations Departments, one regional organization and one non-governmental organization.¹⁵ At the 1997 session, the Commission adopted a Decision (1997/102) on human rights and the environment, by which it deferred action on the issue until its fifty-fifth session and invited the Secretary General to bring the Commission’s consideration of human rights and the environment to the attention of the General Assembly at its special session on Agenda 21, the Commission on Sustainable Development, the United Nations Environment Programme and other relevant bodies and organizations. The Commission further requested that the Secretary General prepare a report on the General Assembly special session and the listed international bodies and organizations.

The Commission also received the Toxics Rapporteur’s progress report, in which she

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

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

In advance of its fifty-fifth session, the Commission received a report on human rights and the environment from the Secretary-General, as the Commission had requested in 1997. The report includes a review of the General Assembly special session on Agenda 21 and it reports on comments received by the Secretary-General from the Food and Agriculture Organization. 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.

A similar recommendation was made in February 2000 by the Commission’s inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, which recommended the conversion of the mandate of the 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.’” 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 fifty-seventh session of the Commission in 2001, the Special Rapporteur presented her report on the Adverse Effects of the Illicit Dumping and Movement of Dangerous Products

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16 E/CN.4/199719.
18 E/CN.4/1999/89.
and Wastes on the Enjoyment of Human Rights.\textsuperscript{21} 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.”\textsuperscript{22} However, after the Commission took note of the Rapporteur’s report, it decided not to convert but rather to renew the existing mandate for the three years ending April 2004, and to continue consideration of this question at its fifty-eighth session.\textsuperscript{23}

Similarly, at its fifty-eighth 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 fifty-ninth session.\textsuperscript{24} At the fifty-ninth session, the Commission repeated the fifty-eighth session Resolution in its entirety.\textsuperscript{25} In April 2004, at the sixtieth session, the Commission renewed the mandate of the Special Rapporteur for an additional three years.\textsuperscript{26} In July 2004, the Commission appointed Okechukwu Ibeanu to assume the role of Special Rapporteur.

In December 2004, Mr. Ibeanu submitted his first report to the sixty-first session of the Commission on Human Rights.\textsuperscript{27} During the Commission’s sixty-first annual session between 14 March to 22 April 2005, the Commission reaffirmed the Special Rapporteur’s mandate and decided to continue consideration of the question of the mandate at its sixty-second session.\textsuperscript{28}

In March, 2006, the UN General Assembly (GA) established the new Human Rights Council as a subsidiary body of the GA to replace the Commission on Human Rights.\textsuperscript{29} On March 27, the Commission on Human Rights concluded its sixty-second and final session, before ceding responsibilities to the new Human Rights Council. During the Commission’s last session, it referred all reports, including that of the Special Rapporteur, to the newly formed Human Rights Council.\textsuperscript{30}

During its first session, the Human Rights Council extended all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the mandate of the Special Rapporteur on Toxics.\textsuperscript{31}

During the 2007 sessions of the Human Rights Council, the Special Rapporteur presented to the Council his annual report and reports of country visits. The mandate of the Special Rapporteur will be renewed in 2008, and Professor Ibeanu confirmed for a second term in this position.

\textsuperscript{21} E/CN.4/2001/55.
\textsuperscript{22} Id. at para. 104.
\textsuperscript{23} E/CN.4/Res/2001/35.
\textsuperscript{24} E/CN.4/2002/27.
\textsuperscript{25} E/CN.4/2003/20.
\textsuperscript{27} E/CN.4/2005/45.
\textsuperscript{28} E/CN.4/2005/135
\textsuperscript{29} A/RES/60/251
\textsuperscript{30} E/CN.4/2006/122
\textsuperscript{31} A/HRC/1/L.10/Add.1
DEVELOPMENTS

I. INTERNATIONAL

Actions and statements from international bodies continue to shape the emerging customary international right to a clean and healthy environment. Explicit and implicit evidence of such actions and statements can be found in international court decisions, treaties, resolutions, and reports from commissions, committees, secretariats, specialized agencies and similar entities. A review of these materials demonstrates increasing recognition that environmental harms adversely affect various individual and community rights such as the rights to life, health, water, food, work, culture, development, and 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 framework for addressing these issues. Whether explicit or implicit, the growing practice of upholding and encouraging respect for the right to a clean and healthy environment however articulated is important and should be recognized and strengthened. The following is a description of some recognized human rights affected by environmental harms – and examples of the failure of governmental and private actors to take adequate measures to protect those rights. Reference to many of these rights is made in specific case studies discussed in the second part of this Environmental Rights Report.

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 basis for their cultures and subsistence, and thereby threaten their lives.

Right to Health

The right to health, closely linked to the right to life, is implicated when environmental degradation pollutes air, land or water. For example, a poorly regulated aluminum smelter in the community of La Oroya, Peru, is causing severe lead contamination among local children, resulting in a slew of physical problems and endangering the health of local residents.

Right to Water

The right to water is intrinsically linked to the rights to life and health. Without access to clean drinking, cooking and bathing water in adequate quantities, individuals and communities worldwide suffer serious illnesses. For example, toxic oil water dumped in the Ecuadorian Amazon from 1971 to 1992, has contaminated the groundwater that residents of the Oriente region of Ecuador rely on every day, interfering with their right to water.

Right to Work

Along with deprivation of natural resources often comes deprivation of the right to work. When mangroves are destroyed due to poor shrimp farming practices in Brazil, for example, it devastates the marine environment and damages fish stocks, putting local fishermen 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. The impacts of climate change on the Arctic environment, for example, have disproportionate effects on Inuit culture, as the Inuit way of life is closely linked to environmental conditions.

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 a short-term 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. For instance, information about a chemical spill in the city of Harbin, China, was kept from residents in communities downstream, threatening their health and lives through a violation of the right to information.

Right to Participate

The right to information is itself a component of the right to public participation, which includes everything from suffrage to direct participation in planning of development activities. This right comes into play whenever a government makes an environmentally significant decision without providing meaningful opportunities for affected parties to participate. Andean citizens, for example, have been denied their right to participate in negotiations over the Andean Free Trade Agreement, which will have broad environmental impacts that may threaten their lives and well-being.

Right to Shelter and Housing

The right to shelter and adequate housing is necessarily implicated when environmental degradation displaces individuals and communities or compels them to live in unhealthy, hazardous conditions. The European Court of Human Rights, for example, recently confirmed the states’ obligation to relocate persons whose homes had been fouled by environmental pollution.

The examples of environmental aspects of recognized human rights described throughout this report reflect only a sampling of the many connections between human rights and environmental protection. Other substantive areas that combine human rights and environmental considerations include: humanitarian law, the rights of indigenous peoples, the plight of environmental refugees, and the effects of development projects funded by multilateral development banks.
A. UN Economic and Social Council

The United Nations Economic and Social Council (ECOSOC) coordinates the work of fourteen UN agencies, ten functional commissions, and five regional commissions; receives reports from eleven UN funds and programs; and issues policy recommendations to the UN system and its member states. Under the UN 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.\(^{32}\) The Economic and Social Council held its substantive session of 2007 in Geneva from July 2–27.\(^{33}\) During that session, the Council adopted resolutions and decisions and took note of a number of reports that highlight the connection between environmental protection and human rights.

Every three years the Secretary-General reports on products harmful to human health and the environment, in keeping with the requirements of General Assembly resolution 39/229 through ECOSOC.\(^{34}\) At the 2007 substantive session, the Council took note of the Secretary-General’s report entitled Products Harmful to Health and the Environment and requested that the Secretary-General and Member States continue this work.\(^{35}\) The report includes a review of the “Consolidated List of Products Whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or Not Approved by Governments.”\(^{36}\) The report urged the Council to recommend that Member States fully implement national development strategies to achieve the 2020 targets for use and production of harmful substances to minimize significant adverse effects on human health and the environment.\(^{37}\) According to the report, these provisions should include effective management strategies based on the life-cycle of chemicals.\(^{38}\) In addition, the report encourages the Council to recommend to multilateral and bilateral agencies that they strengthen capacity-building and technical assistance for activities in developing countries that reduce reliance on products harmful to human health and the environment.\(^{39}\)

The Council adopted a resolution entitled Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations.\(^{40}\) The resolution recommends that

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\(^{36}\) Id.

\(^{37}\) Id. at ¶ 53.

\(^{38}\) Id. at ¶ 52.

\(^{39}\) Id. at ¶ 55.

Member States provide emergency assistance in a manner that supports long-term development. In addition, the Council took note of the Secretary General’s report entitled, *Towards a United Nations Humanitarian Assistance Programme for Disaster Response and Reduction: Lessons Learned from the Indian Ocean Tsunami Disaster.* As stated in the report, the disastrous consequences of the tsunami in the Indian Ocean demonstrate the pressing need for growth and understanding of international guidelines on disaster relief and recovery. The report recommends that the General Assembly take a number of specific actions to improve the effectiveness of international disaster relief.

The first Annual Ministerial Review (AMR) took place during the Council’s substantive session on July 3-4, 2007. The AMR was created at the 2005 World Summit to follow up on major United Nations conferences and summits, assess progress toward meeting the Millennium Development Goals (MDGs), and coordinate roundtable gatherings to implement the UN Development Agenda. The theme of the 2007 AMR was “strengthening efforts to eradicate poverty and hunger, including through the global partnership for development.” Participants had the opportunity to learn from policy makers, practitioners, and academics through roundtable discussions, general debate, and presentations.

Two high-level roundtables touched on issues relevant to environmental rights: “ending the cycle of food crises: cultivating a home-grown green revolution in Africa” and “poverty eradication—making it happen.” The roundtable on poverty eradication focused largely on bolstering national-level capacity to reduce poverty, recommending a shift from donor-driven emphasis to national ownership and civil society participation. The African agriculture roundtable promoted the balance between accelerating agricultural output with environmental impacts and careful management of natural resources. The “issues paper” produced for the roundtable emphasizes striking a balance between protecting “seed-livestock-agro-forestry” interactions and using chemical fertilizers and promoting integrated-pest-management (IPM) approaches.

The Council adopted a supplement to the World Programme of Action for Youth (WPAY). The WPAY, created in 1995, builds upon other international agreements, and contains policy framework and guideline suggestions that countries can take to address challenges the world’s youth will face in 2000 and beyond. The program has fifteen areas of action, including environment, education, health, and hunger/poverty. The supplement highlights certain

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42 Id.
43 Id.
45 Id.
46 Id.
47 Id.
48 Id.
50 Id.
benefits of globalization, including new development opportunities, and recognizes negative impacts of globalization and rapid change, including intense poverty, lack of education, unemployment, inadequate access to information, and globalization of environmental risks. The supplement calls on governments to “anticipate and offset” globalization’s negative impacts, both social and economic, and “maximize its benefits for young people.” It also encourages governments to provide education and social services for youth so that they may “enjoy full respect of their human rights.”

B. UN Economic and Social Council Bodies

1. The Commission on Population and Development

On April 9–13, 2007, the Commission on Population and Development held its fortieth session at UN Headquarters. The theme of the meeting was “The changing age structures of population and their implications for development.” During the meeting the Commission adopted a resolution on “national, regional, and international action on the subject of changing age structures and their implications for development” that includes the reaffirmation that sustainable development including its economic, social, and environmental aspects, represents a key element of the basic framework of UN activities. The Commission encouraged governments to provide young people with opportunities for further education, skill acquisition, and participation in all aspects of society, and to provide greater employment opportunities to women, older persons, and disadvantaged groups. The Commission also urged governments to promote healthy living and recognized that developing countries' populations are aging at a much greater rate than elsewhere, giving them less time to adjust and make resources available.

2. UN Commission on Sustainable Development

The Commission on Sustainable Development (CSD) was established in 1992 by the U.N. General Assembly to follow-up on the United Nations Conference on Environment and Development (Earth Summit). The CSD reviews international progress on sustainable development in accordance with other international agreements, promotes dialogue, and establishes guidelines for future actions. The CSD focuses on specific thematic areas for two-
year cycles. For 2006/2007 the CSD’s thematic focuses were energy for sustainable development, industrial development, pollution/atmosphere, and climate change.

The fifteenth session of the CSD was held from April 30 to May 11, 2007. The CSD proposed a decision to be adopted by the Economic and Social Council reaffirming the CSD's commitment to the Rio principles, particularly Principle 7, which calls on States to “cooperate in a spirit of global partnership to conserve, protect and restore the heath and integrity of the Earth's ecosystems” and to recognize their duty to work toward sustainable development. The CSD recognized that energy and fossil fuels are vital components of sustainable development and calls on members to take actions to make cleaner, renewable energies and technologies available to developing countries and, in general, to enhance access to energy. The decision stresses the need for greater public participation in energy policy decisions and the need to integrate economic development, social development, and environmental protection as “interdependent and mutually reinforcing pillars” of sustainable development, eradication of poverty, and changing unsustainable practices of consumption. The decision encourages dialogue between the government, industry, scientific community, workers and trade unions, farmers, NGOs, indigenous people, local communities and other interested parties to facilitate sustainable consumption choices. In addition, it requests that States take action toward management of marine resources and fisheries in a more sustainable manner, giving special consideration to small island developing states. Finally, the decision calls on States to control illegal trade of polluting substances, help the agriculture industry develop biofuels, and establish air quality standards at the national and regional levels after considering the air quality guidelines of the World Health Organization.

3. UN Commission for Social Development

The Commission for Social Development is a functional commission of ECOSOC and is charged with follow-up and implementation of the Copenhagen Declaration on Social Development and Programme of Action. The Copenhagen Declaration explicitly links

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61 Id.
65 Id. at ¶ 4.
66 Id. at ¶ 23(j).
67 Id. at ¶ 23(k).
68 Id. at ¶ 27(e).
environmental concerns with economic and social development, stressing the interdependence of the sustainable use of environmental resources and sustainable development.  

During the forty-fifth session of the Commission for Social Development, held March 22, 2006 and February 7–16, 2007, members reviewed relevant UN plans and programs regarding the situation of social groups. The Commission adopted a resolution expressing concern that Africa is the only continent not currently on track to achieve any of the goals of the Millennium Declaration by 2015. The resolution emphasized that the rising poverty levels and social exclusion facing most African countries requires significant alterations in, inter alia, the development and promotion of social policy to reduce poverty, economic activity, growth and sustainable development, and protection of human rights. ECOSOC adopted this resolution on July 26, 2007.

C. United Nations General Assembly

1. 61st Session of the General Assembly

The UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples on September 13, 2007 during its 107th plenary meeting, with a vote of 143 in favor, 4 against and 11 abstentions. Article 29 of the Declaration reads:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

70 Copenhagen Declaration on Social Development, paras. 6, 8, available at http://www.visionoffice.com/socdev/wssdeo-1.htm (last visited Feb. 24, 2008). Paragraph 6 states, “We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor to utilize environmental resources sustainably is a necessary foundation for sustainable development. We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice.”


73 Id.

74 ECOSOC, supra note 35.


Through the adoption of this declaration, the UN General Assembly recognized indigenous peoples’ rights to land, health, and culture.\(^7^7\)

### 2. 62\(^{nd}\) Session of the General Assembly

The sixty-second session of the General Assembly commenced September 18, 2007 and ended mid-December.\(^7^8\) The Assembly focused on five main issues: responding to climate change, financing development, implementing the Global-Counter Terrorism Strategy, advancing United Nations reform, and following up on measures to achieve the Millennium Development Goals.\(^7^9\) A number of the General Assembly’s discussions pertained to environmental rights, emphasizing that such rights are pervasive elements of global policies.

Because the UN General Assembly must address a vast number of issues at each of its sessions, it allocates certain items to six different committees in the interest of efficiency.\(^8^0\) Each committee then considers the items assigned to it and presents draft resolutions to plenary meetings of the General Assembly.\(^8^1\) The Second Committee of the General Assembly, the Economic and Financial Committee, is responsible for addressing issues relating to sustainable development, globalisation, and eradication of poverty, among others.\(^8^2\) The Second Committee met during the 62\(^{nd}\) session of the General Assembly and the Committee adopted numerous draft resolutions affecting environmental rights for consideration by the General Assembly.

#### a. Climate Change

The theme of the Assembly’s general debate was “Responding to Climate Change.”\(^8^3\) At the close of the general debate, the General Assembly President Srgjan Kerim noted the latest reports of the accelerated melting of the Arctic and the need to stop talking about climate change and start taking action.\(^8^4\) Kerim proposed that the UN create a roadmap, outlining a vision and a strategy, for dealing with climate change as an institution and as guidance for Member States.\(^8^5\) The General Assembly considered a resolution entitled “Protection of Global Climate for Present

\(^7^7\) Id. at Annex.


\(^8^1\) Id.


\(^8^3\) Id.


\(^8^5\) Id.
and Future Generations of Mankind.”

The resolution recognizes the serious risk climate change poses to all countries and, in particular, the risks to developing countries and small island nations. The Assembly urged all States to take action to address climate change through the efforts of the United Nations Framework Convention on Climate Change (UNFCCC). The resolution recognizes the serious risk climate change poses to all countries and, in particular, the risks to developing countries and small island nations.

**b. Law of the Sea and Sustainable Fisheries**

The General Assembly emphasized overfishing as a serious and unresolved problem facing the global community - socially, economically, and environmentally. The General Assembly heard reports and considered resolutions recognizing the importance of fisheries to human populations and the need for sustainable management of fisheries in order to preserve marine ecosystems as a common heritage of mankind. The General Assembly considered a resolution pertaining to the Law of the Sea Convention (UNCLOS) recognizing that sustainable use and management of ocean resources is central to meeting development goals, while emphasizing the importance of marine science to the eradication of poverty, resource conservation, and promotion of the sustainable development of oceans and seas. The resolution calls for States to ratify the UNCLOS and encourages capacity-building and technological, financial, and expert support for the least developed countries, small-island developing States, and coastal African States.

In a report to the General Assembly on sustainable fisheries, the Secretary-General indicated that the conservation and management of fisheries are major factors in the fight for food security, poverty alleviation, economic well-being, and sustainable livelihoods. The report makes a number of recommendations, including ratification of relevant international agreements, adoption of the precautionary approach and ecosystem management, elimination of destructive fishing practices, conservation of marine biodiversity, and full recognition of the needs of developing countries.

**c. Sustainable Mountain Development**

At the 53rd session, the General Assembly adopted a resolution that announced 2002 as the International Year of Mountains in order to raise awareness to the importance of sustainable mountain development, including the protection of mountain ecosystems and improving the

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87 Id. at 7.

88 Id. at 8.

89 Id.

90 Id.


92 Id.


94 Id. at 6–7, 59.
well-being of mountain people. At the 62nd session, the Secretary General reported on the status of sustainable mountain development in accordance with resolution 60/198. The report noted the increasing awareness of mountain ecosystems and the international significance in terms of biological and cultural diversity, tourism and heritage, and noted that twelve percent of the world’s population depends directly on these ecosystems. Despite some progress, five years after the International Year of Mountains challenges still remain, including vulnerability of mountain communities to water shortages and depletion of other natural resources, effects of climate change, disproportionate incidences of conflict, and pressures from globalization, especially from mining and agricultural industries. The report calls for increased funding and investment in mountain areas as well as “enhanced coordination and collaboration, and a stronger environment with more supportive laws, policies, and institutions.”

**d. Forests**

The Second Committee adopted resolution A/C.2/62/L.5, *Non-legally Binding Instrument on all Types of Forests* and recommended its adoption to the General Assembly. The instrument recognizes the various economic, social, and environmental benefits provided by forests and trees and the contribution they provide to sustainable development and the eradication of poverty. The resolution expresses concern regarding deforestation, as well as, the slow pace of forest recovery and the “resulting impact on economies, the environment, biological diversity, and the livelihoods of at least a billion people and their cultural heritage.” It emphasizes the need for greater implementation of forest management and provides a framework with which countries can achieve internationally shared goals of sustainable forest management.

**e. Oil Slick on Lebanese Shores**

The Second Committee adopted draft resolution A/62/419 Part II, *Oil Slick on Lebanese Shores*, and requested its adoption by the General Assembly. The resolution notes with significant alarm, “the environmental disaster” in which an oil slick covered the entire Lebanese coastline, reaching all the way to Syria. In the resolution, the Committee reaffirms the UN

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96 Id.

97 Id. ¶ 6.

98 Id. at ¶ 9.

99 Id.


102 Id. at 7.

103 Id. at 8.

Conference on the Human Environment and Principle 7, which calls on all states to take every available measure in order to “prevent pollution of the seas.”\footnote{Id.} The resolution also emphasizes Principle 16 of the Rio Declaration which provides that polluters shall be liable for the cost of pollution.\footnote{Id.} The Committee noted the threat such a disaster poses to sustainable development along the Lebanese coast and the negative consequences on the livelihood of its people, biodiversity, fisheries, and human health. The resolution requests that Israel “assume responsibility for prompt and adequate compensation to the Government of Lebanon and other countries directly affected by the oil slick for the costs of repairing the environmental damage caused by the destruction, including the restoration of the marine environment” and calls for “international mobilization” to provide economic support in clean-up efforts.\footnote{Id.}

\textbf{f. Convention on Biological Diversity}

The Second Committee also adopted a draft resolution on the Convention on Biological Diversity for consideration by the General Assembly.\footnote{UN General Assembly: Second Committee, \textit{Sustainable Development: Convention on Biological Diversity}, UN Doc A/C.2/62/L.45 (Dec. 10, 2007), at \url{http://documents-dds-ny.un.org/doc/UNDOC/LTD/N07/622/86/pdf/N0762286.pdf?OpenElement}.} The resolution calls on countries to ratify the Convention on Biological Diversity if they have not yet done so, and reiterates the Convention’s importance to conservation and evenhanded distribution of natural resources. The resolution notes the incredible efforts that must be made in order to significantly reduce biological diversity loss by 2010, the International Year of Biological Diversity.\footnote{Id.} The report asks members to reexamine their relevant programs and policies and work toward providing greater economic and technical assistance to developing countries. It also asks businesses to align their practices with the goals of the Convention, in order to more effectively implement the Convention.\footnote{Id.}

\textbf{g. Protection of Global Climate for Present and Future Generations}

Draft resolution A/C.2/62/L.38, \textit{Protection of Global Climate for Present and Future Generations}, recommended for adoption by the General Assembly, notes the work of the IPCC and the significance of its scientific findings regarding the reality of climate change.\footnote{UN General Assembly: Second Committee, \textit{Protection of Global Climate for Present and Future Generations}, UN Doc A/C.2/62/L.38 (Nov. 30, 2007), at \url{http://www.un.org/ga/search/view_doc.asp?symbol=A%2F62%2F419%2FAdd.4&Submit=search&Lang=E} (last visited Feb. 26, 2007).} The resolution stresses the seriousness of this “phenomenon” and the need for collaborative efforts to reach the goals of the UNFCCC, including the need for adaptation and capacity building, especially in developing countries. The resolution emphasizes that efforts should be made in a sustainable manner and urges those countries that have not yet ratified the Kyoto Protocol to do so as soon as possible.
h. Promotion of New and Renewable Sources of Energy

The Second Committee adopted resolution A/C.2/62/L.44, *Promotion of New and Renewable Sources of Energy*, which it recommended to the General Assembly for adoption. The resolution recognizes forms of renewable energy, including wind, hydro, solar, and ocean power, as an important way to promote sustainable development and combat the ill effects of climate change. The resolution encourages efforts that seek to make sustainable energy services more affordable and available, recognizing this initiative as one means of achieving the MDGs. The resolution emphasizes the role national policies play in achieving sustainable development and calls on each country to take primary responsibility for its own development. Resolution A/C.2/62/L.44 encourages international cooperation and funding and asks the UN to continue its efforts to raise awareness of the “importance of energy for sustainable development.”

3. UN Human Rights Council

In April 2006, the Human Rights Council (HRC) was created by GA Resolution 60/251. The HRC was assigned to assume the duties of the Commission on Human Rights and, continuing to report to the Office of the UN High Commissioner for Human Rights, to review and improve procedures and complaints mechanisms for violations of human rights.

The Council convened three times during 2007.

At the fourth session of the HRC, March 12-30, 2007, the Council adopted Resolution 4/4 recognizing the right to development as a human right on par with other human rights and freedoms. The Council also adopted Resolution 4/5 on globalization’s impact on the full enjoyment of all human rights. The Council stressed that development should be at the forefront of the international agenda and work must be done to spread the benefits of globalization more evenly.

The fifth session of the HRC met June 11-18, 2007. The Council considered a report on the adverse effects of the illicit movement and dumping of toxic products on the enjoyment of
human rights prepared by the Special Rapporteur, Mr. Okechukwu Ibeanu. The report summarizes the environmental implications of the incidental and voluntary release of toxic products in armed conflict and the resulting adverse effect on human rights.

The sixth session of the HRC met September 10-28, 2007, and resumed December 10-14, 2007. The Council adopted Resolution 6/7 recognizing adequate housing as a component of the right to an adequate standard of living, deciding to focus resources on this issue over the next three years. The Council also reaffirmed previous decisions recognizing women’s equal right of access to and control over land, as well as ownership as an essential human right. Additionally, the Council expressed concern over the effect that climate change, pollution and natural disasters will have on the right to adequate housing.

4. Other United Nations General Assembly Events

a. Millennium Development Goals (MDGs)

The Millennium Development Goals, adopted in 2000 at the Millennium Summit recognize, inter alia, the right to development as a basic human right, and the need to develop in a sustainable matter to reverse the loss of environmental resources. The General Assembly considered the 2007 Millennium Development Goals Report, which analyzes progress made in achieving the MDGs. The report demonstrates that progress toward meeting the MDGs is uneven: some States have made substantial progress, while other States have progressed only slightly or not at all. The General Assembly also reviewed its implementation of the MDGs, recommitted efforts and resources to attain the goals, and urged States to take action to achieve the goals by 2015.

5. UN General Assembly Bodies

a. United Nations Environment Programme (UNEP)

The United Nations Environment Programme (UNEP), established in 1972, acts as a voice for wise use of the environment and sustainable development within the UN system.

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123 Id. at 49.
124 Id.
126 Id. at 7.
127 Id.
128 Id. at 9.
132 Id.
through advocacy, education, facilitation, and mobilization. To accomplish its goals, UNEP works with international organizations, national governments, NGOs, the private sector, and civil society, in addition to UN entities.

The Governing Council and Global Ministerial Environmental Forum (GC/GMEF) is a body of UN General Assembly-elected members that meet annually to consider recent and emerging environmental issues. The twenty-fourth session of GC/GMEF UNEP took place February 5–9, 2007 in Nairobi. Both the opening statements of the conference and the decisions adopted by the GC/GMEF repeatedly recognized the link between the environment and human rights.

In his opening statement, outgoing president of the Council/Forum, Mr. Rachmat Witoelar, noted that all national sustainable development plans must effectively incorporate environmental concerns in order to achieve the Millennium Development Goals. Secretary General Ban Ki-Moon reminded participants that despite robust efforts, the poorest countries in particular are experiencing a constant onslaught of environmental degradation, unsustainable use of valuable natural resources, and consequences of climate change. He also emphasized the need to strengthen links between environmental and economic policies in order to achieve reductions in poverty levels. Ms. Anna Tibaijuka, Executive Director of the UN Human Settlements Programme, highlighted the environmental and humanitarian consequences of hastening urbanization, noting that more than one billion people are suffering the “collective failure to provide decent housing, employment, modern energy and effective water, sanitation, and waste disposal systems.”

A number of decisions and reports touched on human health concerns and the right to a healthy environment.

i. Decision 24/2

Decision 24/2 on chemical management reaffirmed past decisions regarding the need for the development of global strategies for chemical management, recognized advances by the International Conference on Chemicals Management, and called for greater cooperation and effort. The decision acknowledged that global concern exists about the adverse human health and environmental effects of mercury. Additionally, the Decision recognizes that information is deficient concerning the effects of lead and cadmium and encourages governments and others

134 Id.
137 Id.
138 Id. at 2.
139 Id.
140 Id. at 16.
141 Id. at 17.
to minimize the risk of cadmium and lead exposure to humans and the environment throughout the chemicals’ lifecycles.\textsuperscript{142}

\textbf{ii. Decision 24/4}

Decision 24/4 calls for greater international and national effort to halt the international trade in toxic chemicals.\textsuperscript{143}

\textbf{iii. Decision 24/5}

Decision 24/5 recalls the importance of effective waste management to human health and dignity and the environment. It recognizes the synergistic role that sustainable development, environmental protection, and poverty eradication play in effectively tackling waste management problems. The Council/Forum also calls for improved coordination and cooperation among groups and organizations working on waste management issues.\textsuperscript{144}

\textbf{iv. Decision 24/6}

Decision 24/6 recognizes the vulnerability of small-island developing States (SIDS) and low-lying coastal States to the effects of global warming.\textsuperscript{145} It also calls for international cooperation to bolster the resilience of SIDS to climate change and sea-level rise. Moreover, the decision requests that the Executive Director of UNEP increase programmatic efforts to address the concerns of SIDS and strengthen relationships in this area with the UNFCCC and other related conventions.\textsuperscript{146}

\textbf{v. Decision 24/7}

Decision 24/7 notes the unparalleled environmental and social problems in Africa and emphasizes the need for UNEP to take the lead in coordinating international efforts aimed at environmental sustainability and poverty reduction in Africa.\textsuperscript{147}

\textbf{vi. Water Policy for 2007-2012}

The Council/Forum also adopted the UNEP water policy for the period 2007–2012.\textsuperscript{148} The water policy recognizes that meeting many of the Millennium Development Goals is dependent on access to freshwater because water is important to “among other things, food production and security, hygiene, sanitation and health and maintenance of ecosystem services.”\textsuperscript{149} UNEP identifies the main components of its freshwater work as assessment, management, and cooperation through the lens of integrated water resources management.\textsuperscript{150}

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.}
\item \textit{Id.} at 21–22.
\item \textit{Id.}
\item \textit{Id.} at 24.
\item \textit{Id.}
\item \textit{Id.} at 25
\item \textit{Id.} at 39.
\item \textit{Id.} at 44.
\item \textit{Id.} at 42.
\item \textit{Id.} at 39.
\end{enumerate}
\end{footnotesize}
UNEP’s water policy recognizes that sustainable management of freshwater and coastal and marine waters is particularly challenging for the poor, and there is “a growing gap between rich and poor and urban and rural populations in water and sanitation services.”\textsuperscript{151} In this context, the water policy focuses on improving assessment and awareness of water concerns, environmental management of watersheds, and cooperation among the various entities that compose the water sector.\textsuperscript{152}

\section*{vii. GEO Yearbook 2007}

The Global Environment Outlook (GEO) is a consultative, participatory, capacity-building process that serves as a practical means of implementing UNEP’s mandate to keep the global environment under review.\textsuperscript{153} The \textit{GEO Yearbook 2007} focuses on globalization and the need to shape an environmentally sensitive form of globalization in order to maximize benefits to society as a whole.\textsuperscript{154} The \textit{Yearbook} discusses the possibility of using the forces of globalization to “bring food to the undernourished and clean water to millions.”\textsuperscript{155} It also recognizes that globalization has increased access to and productivity of some ecosystem services while having negative impacts on others.\textsuperscript{156} As a special focus, the \textit{Yearbook} looked extensively at the role nanotechnology might play in the future of globalization, both in terms of positive and negative effects.\textsuperscript{157}

\section*{viii. GEO-4}

Also in 2007, UNEP released its fourth GEO Report. The GEO-4 is the result of five years of consultations and preparations with stakeholders across the globe.\textsuperscript{158} The GEO-4 highlights certain progress, such as the ninety-five percent reduction in the production of ozone-depleting substances and the rise in internationally protected terrestrial areas.\textsuperscript{159} However, the GEO-4 points out that, despite these advances, ‘persistent’ troublesome environmental problems continue to be unresolved and unaddressed.\textsuperscript{160} Older issues remain while new ones emerge—from the rapid increase of dead zones of oxygen in the oceans to the resurgence of new and old diseases linked, in part, with environmental degradation.\textsuperscript{161} The GEO-4 attributes many of these problems to the rising consumption of the rich and the desperation of the poor, which has resulted in declining fish stocks, loss of fertile land through degradation, and dwindling fresh water available for humans and other creatures to share. The GEO-4 suggests policy options to address both present and emerging environmental issues.\textsuperscript{162}

\footnotesize{
151 Id. at 44.
152 Id. at 46.
155 Id.
156 Id. at 49.
157 Id. at 62–68.
159 Id.
160 Id.
161 Id.
162 Id.
}
ix. Global Outlook for Ice and Snow

Global Outlook for Ice and Snow, another 2007 UNEP publication, provides an in depth study of the environmental trends in ice and snow covered regions and the significance of these changes to human well-being. The report discusses the sensitivity of ice and snow covered regions to climate change and the importance of the areas as indicators of climate change effects. The report recognizes that rising seawater from melting ice sheets may affect millions of people on islands and coastal areas. The report also discusses the effect climate change has already had and will potentially have in Arctic communities: loss of access to subsistence resources for indigenous communities, expansion of shipping and gas development, and damage to coastal infrastructure from melting permafrost.

b. United Nations Development Programme

The United Nations Development Programme (UNDP) acts as the UN’s global development network, “connecting countries to knowledge, experience and resources to help build a better life.” UNDP works on the ground in 166 countries, helping them address development challenges.

The 2007 UNDP annual report “Making Globalization Work for All,” addresses the disparity between States in terms of social welfare and economic growth as a result of globalization. These disparities produce economic inefficiencies that maximize short-term gains through exploitation of natural resources, even when the long-term consequences are devastating for livelihoods and the environment. In part due to this cycle, the poor disproportionately suffer the consequences of poor land, water, and fuel quality, as well as deficient quantities of land, water, and other natural resources. The report stresses the need for coordination among the various UN bodies to address these disparities, and notes that the $700 million contribution to the UNDP from Spain in early 2007 will go to the development of the UNDP-Spain Millennium Development Goal Achievement Fund. The fund will be used to further the achievement of the Millennium Development Goals, including environmental sustainability.

UNDP also published the Human Development Report 2007/2008, “Fighting Climate Change: Human Solidarity in a Divided World.” The report stresses the need to consider the

164 Id. at 8.
165 Id.
166 Id. at 17.
168 Id.
170 Id. at 3.
171 Id. at 4.
172 Id.
173 Id.
development impacts of climate change, which could reverse advances in poverty reduction, nutrition, health, and education. The report notes that climate change will have massive consequences for human development and that already the poorest and most vulnerable communities are affected by climate change.

c. The UN Security Council

In April 2007, the Security Council, responsible for maintaining international peace and security, held its first ever debate on the impact of climate change and its effects on global security. Some delegates expressed doubts as to the appropriateness of the Council discussing the relationship between energy, security, and climate, while others praised such efforts. The British Foreign Secretary stated that climate change is about the world’s “collective security in a fragile and increasingly interdependent world.” The representative from Pakistan, who spoke on behalf of developing countries, felt that the Council was not the appropriate forum for such a debate, as its principal mission is to maintain global peace and security. The representative of Papua New Guinea spoke as a representative of the Pacific Islands Forum, stating that the impact of climate change is “no less threatening than the dangers guns and bombs posed to large nations.” He noted that many Pacific islands are likely to confront widespread displacement of their people, similar to that which occurs during periods of conflict as well as the “resentment, hatred, and alienation” that is likely to result from a refugee crisis due to climate change’s impacts. Although the Council took no action the meeting, it is an important indication of the widespread implications of climate change on environmental and human rights.

d. United Nations Human Settlements Programme (UN-HABITAT)


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176 Id. at 3.
178 Id.
179 Id.
180 Id.
areas, including natural disasters, and the policies and best practices needed to address these threats.\textsuperscript{184}

i. Resolution 21/4

The Governing Council adopted Resolution 21/4, which encourages governments to develop policies and strengthen legal frameworks to meet the goal of delivering basic services to all.\textsuperscript{185} These services include access to safe drinking water and the capacity to establish “basic infrastructure and urban services including adequate sanitation.”\textsuperscript{186}

ii. Resolution 21/5

In Resolution 21/5, the Council recognized that communities in Arctic regions have “special needs” because of the extreme weather conditions, low carrying capacity of the environment, inability to resist pollution, and burden imposed by the degradation of natural resources, and that Arctic communities must address these needs in order to be sustainable.\textsuperscript{187}

iii. Resolution 2/16

In addition, the Council adopted Resolution 2/16 – Urban Youth Development, which recognizes the importance of working with the world’s youth in order to more effectively combat the problems of unemployment and unsustainable urban development.\textsuperscript{188} The resolution requests that the Executive Director create a fund within the Settlements Program, entitled \textit{Opportunities Fund for Urban Youth-led Development}, to enhance youth-related policy information and target young people in “vulnerable urban slums.”\textsuperscript{189}

iv. Resolution 21/7

Resolution 21/7 calls upon states to revitalize housing markets to provide resources to fund affordable housing projects and to adopt policies and legislation that facilitate private-sector participation to assist in affordable housing projects.\textsuperscript{190}

e. Food and Agriculture Organization

The Food and Agriculture Organization’s (FAO) primary goal is food security for all. In that vein, its mandate is fourfold: (1) increase agricultural productivity, (2) raise nutrition levels around the world, (3) contribute to the betterment of rural livelihoods, and (4) positively affect

\begin{flushleft}
\textsuperscript{185} \textit{Id.} at 14.
\textsuperscript{186} \textit{Id.}
\textsuperscript{187} \textit{Id.} at 15.
\textsuperscript{188} \textit{Id.} at 17.
\textsuperscript{189} \textit{Id.}
\textsuperscript{190} \textit{Id.} at 19.
\end{flushleft}
the world economy. Through this activity, FAO focuses its attention on developing countries, assisting them to modernize and improve agriculture, forestry, and fishery practices.

In 2007, 119 countries attended FAO’s Committee on Fisheries in Rome and agreed on a proposal to develop a new, legally binding instrument to combat illegal, unreported and unregulated fishing. Such practices cause severe economic, social, biological, and environmental damage, undermining the effectiveness of international conservation and management practices. The agreement, to be presented at the next committee meeting in 2009, will include checking document and cargo, training of inspectors and improving information sharing.

Between January 2006 and February 2007, the Emergency Relief and Rehabilitation Program of the FAO spent US $25 million on projects in Iraq. These projects aimed to help Iraqis “rebuild their lives in the midst of ongoing conflict” and included the creation of new drainage and pumping systems, seed distribution, and trainings in food safety testing. The Organization spent US $241 million on relief worldwide. Projects in Sudan and the Congo educated local workers in animal health care and taught farmers new agriculture techniques.

In May 2007, FAO hosted the International Conference on Organic Agriculture and Food Security. The report from the Conference recognizes that organic agriculture contributes substantially to food availability in a large number of countries and highlights the role that organic agriculture plays in food security planning, while also recognizing that conversion to organic farming is not always beneficial in terms of production costs. The report notes that “organic agriculture improves food access by increasing productivity, diversity, and conservation of natural resources, and by raising incomes and by reducing risks for farmers.” It also suggests that increasing organic agricultural production has implications for a number of MDGs, particularly those pertaining to decreasing hunger and poverty, environmental sustainability, and global partnerships. The report calls for a strengthening of production and the market at both the public and private levels, in order to increase impact on food availability by, inter alia, creating awareness, increasing transparency, and developing domestic markets.

f. Small-Island Developing Nations

Created in 1995, the Small-Island Developing States Unit (SIDS Unit) facilitates the implementation of the Barbados Programme of Action for sustainable development of island...
The SIDS Unit held a plenary meeting at the Intergovernmental Preparatory Meeting for the 15th session of the Commission on Sustainable Development February 26, 2007 in New York. The plenary meeting comprised a number of panels with topics pertinent to the environmental rights of SIDS populations, including SIDS’ vulnerability to climate change and air pollution, encouraging industrial development, and energy procurement for sustainable development.

D. Other International Bodies

1. The World Bank

a. Reports and Publications

The World Bank publishes a number of annual reports and documents that showcase the intrinsic relationship between environmental rights and development activities.

i. World Development Reports

The core of the 2008 World Development Report, “Agriculture and Development,” published in 2007, promotes agricultural development as a key instrument of economic growth in developing countries. The report states that agriculture continues to be a fundamental means to achieve sustainable development and poverty reduction in the 21st century. It states that promoting agriculture is essential to meet the MDG of cutting poverty and hunger in half by 2015. The report states that the solution is to seek more sustainable production through, inter alia, “strengthening poverty rights and removing subsidies that encourage degradation of natural resources.” In addition, it recognizes that agricultural development has the potential for environmental harm, including intense pressure on water resources, agrochemical pollution, soil exhaustion, and climate change, but it has many benefits as well, including sequestration of carbon, preservation of biodiversity, and watershed management. The report stresses the importance of making the farming systems of the poor less vulnerable to climate change.

ii. The World Bank Annual Report

The 2007 annual report of the World Bank highlights numerous areas in which the World Bank focused during the past fiscal year. Its new strategy for health and nutrition aims to help developing countries strengthen their health systems by establishing priority programs for HIV/AIDS, malaria, tuberculosis, nutrition, and reproductive health. The Bank increased its

204. Id.
205. Id.
207. Id.
208. Id. at 2.
209. Id.
210. Id.
investment in building infrastructure by 24% in 2007, with fifty percent of investments going to the transportation sector, while the remaining funding went to clean energy, water supply and sanitation, urban services and land use management. The Bank is currently developing a Clean Energy Investment Framework, which seeks to increase supplies of clean energy development and improve access to affordable energy for the poor, especially in Africa, promote the transition to a low-carbon economy and assist developing countries in their adaptation to the inevitable impacts of climate change.

b. The World Bank Inspection Panel

The World Bank Inspection Panel was established in 1993 with the primary purpose of addressing the concerns of people who may be affected by World Bank projects and ensuring that the Bank adheres to its operational policies and procedures in each of its projects. In response to a complaint, the Panel may recommend to the World Bank Board of Executive Directors that the Panel investigate a project’s compliance with Bank policy and procedures. The Panel then reports to the Board on its findings, and the Board decides what actions the Bank should take in response to the findings.

i. Uttaranchal Decentralized Watershed Development (India)

On March 7, 2007, the Panel received a request for inspection of the Uttaranchal Decentralized Watershed Development Project. The submission alleged that, despite the stated goal of the project to increase the income of rural peoples through environmentally sustainable means, the poorest and most vulnerable groups were not allowed to participate in the decision-making process regarding watershed management. In addition, the submitters assert that access to water channels is not provided on an equitable basis to all stakeholders. Bank Management contested the validity of some of the Requester’s claims and stated that the physical implementation of sub-projects is in the beginning stages. Management also stated that potential environmental and social impacts of the project may arise because of certain realities such as “intensive agriculture, fragile catchments, pressure on water bodies, increasing grazing pressure and dependency on biomass-based resources from the forest.” Requesters and Management are engaged in a discussion regarding how to solve potential negative impacts of the project, and the Panel is withholding its recommendation until the cooperative process has been concluded.

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212 Id. at 18.
213 Id. at 20.
215 See id. (follow “panel process” hyperlink).
217 Id. at ¶ 16–18.
218 Id. at ¶ 27–29.
219 Id. at ¶ 32.
220 Id. at ¶ 54.
ii. Integrated Coastal Zone Management and Clean-Up (Albania)

On July 30, 2007, the Inspection Panel received a request for inspection on the Albania Integrated Coastal Zone Management and Clean-Up Project from residents of Jal, a subsection of the village Vuno, Himare. The stated goals of the Project are to create an “integrated approach to coastal zone management through policy reform, institutional development and investments to protect coastal resources and promote sustainable development.” Requesters state that the police demolished their permanent residences either totally or partially because they lacked building permits, while a summer resort and other houses were left intact. Requesters also state that approximately 100 percent of construction in Albania lack such permits, and that while they had applied for building permits in the past, their applications were denied because the area is so small and isolated that it lacked an urban plan. The Requesters allege “human rights violations, inhumane actions, including violence by the police, and a complete lack of information and transparency regarding any projects or future plans for the area.” Management’s response states that the transition to a market economy has seen the widespread increase in movement of the population, and that the illegal construction and settlements along the coastline by the urban poor pose a serious problem. The Panel recommended investigation into this matter.

iii. Second Urban Environmental Sanitation Project (Ghana)

The Second Urban Environmental Sanitation Project (Project) seeks to improve urban living conditions in Accra, Kumasi, Sekondi-Takoradi, Tamale, and Tema in regard to inter alia, sanitation, drainage, sustainable solid waste management, and environmental health, with a special emphasis on the poor. The Panel received a request on August 16, 2007 by the Centre on Housing Rights and Evictions on behalf of the Agyemankata Community living in the Ga District of Ghana. The Requesters claim they were not meaningfully consulted during the development phase of the Project. They state the proposed sanitary landfill funded by the Project will have a detrimental effect on their community, including the involuntary displacement of community members, possible pollution of the water supply, and negative health effects. The placement of the landfill is based on 1990 UNDP development plans that the
Requesters claim are outdated. Management’s response states that the Project has been rated as “unsatisfactory” because of the “lack of progress in the solid waste management component” with the landfill component being the most delayed, and the Bank has been in constant dialogue with the government to get the Project back on track. The Panel recommended further investigation into the Project.

iv. Power Sector Generation and Restructuring Project (Albania)

The stated objective of the Albania Power Sector Generation and Restructuring Project is to “achieve significant improvement in power system performance through: (a) priority investments to increase domestic thermal generation, and (b) measures to implement sector reforms and institutional strengthening.” On April 30, 2007, the Civil Alliance for the Protection of the Bay of Vlora submitted a request for review to the Inspection Panel. The request claims that, if built, the power plant “will destroy environment, tourism, safe fisheries, natural habitat, ecosystem, coral colonies, as well as the unique historical and cultural significance of the entire Vlora Bay and Narta Lagoon”, and that the Environmental Impact Assessment considered the plant’s output at 100MW and failed to account for the design that enables it to reach 300 MW. According to the Request, procedural aspects of the project were found to be in violation of Article 6 of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The Requesters contacted Bank Management on several occasions and contend that Management failed to consider that the Project is based on a material misrepresentation of the site and the “Bank’s procedure leading to the project is in violation of Albania’s laws on environment, public participation, cultural heritage and [EIA].” The Panel recommended investigation into the Project.

2. World Health Organization

The World Health Organization (WHO) is charged with “providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries and monitoring and assessing health trends.”

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232 Id. at ¶ 9.
233 Id. at ¶ 19.
234 Id. at ¶ 29, 58.
236 Id.
237 Id. at ¶ 9.
238 Id. at ¶ 10.
239 Id. at ¶ 11.
240 Id. at ¶ 67.
The sixtyeth session of the World Health Assembly met in Geneva, Switzerland May 14–23, 2007. The assembly noted “health promotion is essential for meeting the targets of the internationally agreed health-related development goals, including those contained in the Millennium Declaration.” The Assembly recognized the importance of improving environmental conditions and increasing access to basic health services in order to reduce the transmission of malaria, and also established World Malaria Day to occur annually on April 25th. The Assembly encouraged Member States to incorporate “workers’ health in national and sectoral policies for sustainable development, poverty reduction, employment, trade, environmental protection, and education.”

The WHO released its annual World Health Report, *World Health Report 2007: A Safer Future*. The report recognizes the increasing risk of disease outbreaks and natural disasters that “can rapidly become threats to global public health security.” The report emphasizes the need for an international response not only to infectious diseases but also to diseases that may arise from acute environmental or climatic changes, industrial pollution and accidents. The report noted the increasing severity of extreme weather and the potential human health effects of natural environmental disasters, including the threat of infectious diseases, acute malnutrition, population displacement, and acute mental illness. The report concludes with a series of recommendations for building global health security, including sharing of knowledge so that public health security is available to all, increasing global cooperation for surveillance and response to threats to human health, and global responsibility for building public health infrastructure in all countries.

The theme for World Health Day 2007 was International Health Security. UN Secretary-General Ban Ki Moon’s message for the day noted that “[t]he spread of diseases, natural disasters, environmental change, bioterrorism or chemical spills can all have a major impact on people, their societies and economies around the world.”

### 3. The Global Environmental Facility (GEF)

The GEF is an international financing body devoted to addressing global environmental issues in a manner that supports sustainable development. GEF provides grants in developing

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247 *Id.* at xii.
248 *Id.* at xxi.
249 *Id.* at xxiii.
countries to projects addressing biodiversity, climate change, international waters, land degradation, ozone layer, and/or persistent organic pollutants.\footnote{Global Environmental Facility [GEF], About the GEF, \url{http://www.gefweb.org/interior.aspx?id=50} (last visited Feb. 26, 2008).}

In September 2007, the GEF Council approved the International Waters focal strategy and strategic programming for GEF-4 (2007-2010).\footnote{GEF, \textit{International Waters Focal Area Strategy and Strategic Programming for GEF-4}, 1 (Oct. 2007), at \url{http://www.gefweb.org/uploadedFiles/Focal_Areas/International_Waters/GEF-4%20strategy%20IW%20Oct%202007.pdf}.} The strategy builds on previous GEF achievements and seeks to address transboundary and international water issues.\footnote{\textit{Id}. at 1.} The focal strategy comprises four strategic programs: (1) rehabilitation and maintenance of fish stocks and attendant biological diversity; (2) reduction of over-nutrification and oxygen depletion caused by land-based pollution; (3) effective management of transboundary water basins; and (4) minimizing contamination from persistent toxic substances and studying adaptive management methods for water bodies with melting ice.\footnote{\textit{Id}. at 2.}

The Council also approved the Ozone Layer Depletion focal area strategy and strategic programming for GEF-4 (2007–2010).\footnote{GEF, \textit{Ozone Layer Depletion Focal Area Strategy and Strategic Programming for GEF-4}, 1 (Oct. 2007), at \url{http://www.gefweb.org/uploadedFiles/Focal_Areas/Ozone_Depletion/GEF-4%20strategy%20ODS%20Oct%202007.pdf}.} GEF’s goal is to protect human health and the environment by helping countries phase out consumption and production of ozone depleting pollution in accordance with their commitments under the Montreal Protocol on Substances that Deplete the Ozone Layer.\footnote{\textit{Id}.} The GEF will contribute to capacity development for the sound management of ozone-depleting chemicals.\footnote{\textit{Id}.}

The GEF Evaluation Office produced a 2007 report evaluating the impacts of specific protected area projects.\footnote{GEF Evaluation Office, \textit{GEF Annual Report on Impact 2007: Executive Version}, at 1, GEF/ME/C.32/4 (Oct. 15, 2007), available at \url{http://www.gefweb.org/uploadedFiles/Documents/Council_Documents_(PDF_DOC)/GEF-C32/GEFME.C32-4.pdf}.} It investigated three projects in East Africa and concluded that one project improved the status of two threatened species, mountain gorillas and black rhinos, while the other two projects helped limit threats to conservation targets.\footnote{\textit{Id}. at 1.} The report also notes that one project has not adequately resolved negative effects on local communities of indigenous people, because of “failure to grant the communities access and controlled use rights of forest products, which they traditionally used.”\footnote{\textit{Id}. at 6.} The GEF Council took note of the report’s conclusions and requested that the GEF Secretariat integrate its recommendation into the Biodiversity Strategy and Tracking Tools or to develop a system to ensure adequate monitoring of progress.\footnote{\textit{Id}. at Recommended Council Decision.}

\section*{4. The International Labour Organization}

The International Labour Organization (ILO) is a specialized agency within the United
Nations, the mission of which is to promote social justice, human rights, and labor rights.\textsuperscript{262} Founded in 1919 as part of the League of Nations, the ILO became the first specialized agency of the UN in 1946.\textsuperscript{263} The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) examines ILO member nations’ adherence to their obligations under ILO conventions.\textsuperscript{264} Among these conventions is the 1989 convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169),\textsuperscript{265} which the UN Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous People cites as an “ineluctable international standard for the protection and promotion of these people’s human rights.”\textsuperscript{266} Convention 169 has been ratified by 17 ILO member states, including many Latin American nations.\textsuperscript{267} The Committee of Experts can receive complaints directly, and the Special Rapporteur notes that the procedure enables indigenous groups to participate directly by lodging complaints for violations of rights guaranteed in the convention.\textsuperscript{268}

In the 2007 report, the CAECR noted that Argentina has been largely successful in registering indigenous communities in the Province of Rio Negro but urged them to continue to promote registration of indigenous communities giving them legal personality.\textsuperscript{269} The CAECR reported that in Columbia, palm-growing enterprises are dispossessing significant amounts of the Curbaradó and Jiguamiandó communities’ land and cutting down forests.\textsuperscript{270} The Committee recommended that the government give full effect to the Convention, demarcating lands for these communities, and consult with the communities prior to authorization or concessions that threaten their land.\textsuperscript{271} The report also states that in Ecuador, oil exploration contracts were granted to individual contractors on the Shuar community’s land without proper consultation of the community.\textsuperscript{272} The Committee requested detailed information on the consultation procedures employed by the government, the involvement of the community in ensuring the conservation of their resources, and any compensation paid to the community for environmental damage.\textsuperscript{273} Finally, the CAECR reported that the Guatemalan government granted mining concessions without consultation of the indigenous communities that occupied the land.\textsuperscript{274}

\textsuperscript{263} See id.
\textsuperscript{264} See ILO, Committee of Experts on the Application of Conventions and Recommendations, available at \url{http://www.ilo.org/public/english/standards/norm/applying/committee.htm}.
\textsuperscript{267} See id.
\textsuperscript{268} See id.
\textsuperscript{270} Id. at 551.
\textsuperscript{271} Id.
\textsuperscript{272} Id. at 552.
\textsuperscript{273} Id.
\textsuperscript{274} Id.
The 96th session of the International Labor Conference met in Geneva, Switzerland from May 30 - June 15, 2007. At this meeting, the ILO Committee on Sustainable Enterprises presented a report that concluded “[a]n environment conducive to the creation and growth or transformation of enterprises on a sustainable basis combines the legitimate quest for profit—one of the key drivers of economic growth—with the need for development that respects human dignity, environmental sustainability and decent work.” The report set forth criteria and recommendations for governments to promote sustainable enterprises, including promoting socially and environmentally responsible lending, encouraging sustainable production and consumption patterns, and investing in human capital through education.

5. The Group of Eight

The members of the Group of Eight are Canada, France, Germany, Italy, Japan, the United Kingdom, the United States, and Russia—the largest industrialized democracies. The leaders of these countries have met each year since 1975 to discuss major economic and political issues, although Russia did not join the group until 1994. These annual meetings, called Summits, serve as a forum for the Heads of State and government leaders to discuss and seek consensus on major national and international economic and political actions.

At the 2007 Summit, held in Heiligendamm, Germany, the G8 countries agreed on an accelerated process that could eventually lead to “substantial cuts in emissions that contribute to global warming.” The leaders called on countries that use large amounts of energy and emit large amounts of greenhouse gases to establish a global framework for reducing emissions by 2008, focusing on energy security, economic growth, and sustainable development. The Group also met with leaders of various African nations to determine how the G8 could contribute to peace and security, sustainable investment, and the improvement of health care systems. G8 leaders decided to initiate a dialogue between the G8 and the emerging economies of Brazil, China, India, Mexico, and South Africa, called the “Heiligendamm Process.” This dialogue will focus on energy efficiency, innovation, freedom of investment, and development in Africa.

6. The Organisation for Economic Cooperation and Development

The OECD is a group of thirty member-countries whose mandate is to promote democratic government and a market economy. It has active relationships with seventy other

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276 *Id.* at 15/102
278 *Id.*
279 *Id.*
282 *Id.*
283 *Id.*
countries, non-governmental organizations and civil society groups. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practices and coordinate domestic and international policies.

The OECD’s 2007 Annual Report discusses the environmental problems facing China. Notably, the OECD undertook an environmental performance review of China and found that rapid economic development and industrialization have put growing pressure on the environment and resulted in damage to human health and natural resources. The review highlights the severity of air and water pollution and resulting human illness, and recommends that Chinese authorities strengthen and enforce environmental regulations, mobilize financing for environmental infrastructure, and incorporate environmental concerns into agricultural, energy, and industrial policies. The annual report also recognizes the importance of environmental conditions to human health, and reports that the OECD is working to promote policies that recognize the vulnerabilities of children to adverse environmental conditions.

The OECD held its annual Forum in Paris May 14–15, 2007 in conjunction with the OECD Ministerial Council meeting. The Forum’s theme considered the global interactions and complexities relating to innovation, growth, and equity. The panel on climate change acknowledged that water, food, and energy security underlie any climate change dialogue because of shifting climate patterns, particularly in developing countries. A panel on water scarcity and security suggested that water availability had been taken for granted for far too long and noted that solving the water crises requires innovative policies and technological advances.

E. International Treaties, Treaty Bodies and International Conferences

1. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of the United Nations Economic Commission for Europe (UNECE) was adopted on June 25, 1998 in Aarhus, Denmark. It was

284 The Organisation of Economic Cooperation and Development [OECD], About OECD, http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html (last visited Feb. 28, 2008).
285 OECD, The OECD: What is it?, http://www.oecd.org/document/18/0,2340,en_2649_201185_2068050_1_1_1_1,00.html#what (last visited Feb. 28, 2008).
287 Id.
288 Id.
289 Id. at 48.
290 OECD, Meeting of the OECD Council at Ministerial Level 2007, at http://www.oecd.org/site/0,3407,en_21571361_38379933_1_1_1_1_1,00.html (last visited Feb. 26, 2008).
292 Id.
signed by 35 countries and the European Community, and it entered into force on October 30, 2001.\textsuperscript{294} Although regional in scope, the Aarhus Convention has global significance. It is the first multi-national treaty on the public’s right to access to information and to participation in environmental decision-making. The Preamble to the Convention states that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”\textsuperscript{295} The Convention establishes basic rules to encourage citizen involvement in environmental matters, provide public access to environmental information, and ensure public participation in environmental decision-making.\textsuperscript{296} It also improves enforcement and allows the public to seek judicial redress when environmental laws are violated.\textsuperscript{297} It thus gives citizens access to information about government activity that may violate their environmental rights, and it recognizes their right to challenge those activities.

The Protocol on Pollutant Release and Transfer Registers (PRTR Protocol) was adopted at an extraordinary meeting of the Parties to the Aarhus Convention on May 21, 2003.\textsuperscript{298} Signed by thirty-six countries and the European Community, the objective of the protocol is to “enhance public access to information on the environment, to facilitate public participation, and to contribute to pollution prevention and reduction” by establishing coherent and integrated pollutant release and transfer registers.\textsuperscript{299} In November 2007, the UNECE produced a guidance document designed to help Parties to the PRTR Protocol interpret and fulfill their obligations and to help potential users in both comprehending and taking advantage of PRTR systems.\textsuperscript{300} The guidance document reviews the key issues each country should address in its institutional and legislative implementation of the Protocol, specific activities and substances covered in the Protocol, and requirements for public awareness, including areas of international cooperation.\textsuperscript{301}

The Compliance Committee meets regularly and reviews submissions by both Parties and members of the public. At its 16\textsuperscript{th} meeting, the Compliance Committee discussed a submission concerning allegations that Lithuanian authorities failed to provide participation opportunities in decisions locating and configuring a landfill constructed in Kazokiskes, Lithuania.\textsuperscript{302} The

\textsuperscript{294} UN Econ. Comm’n for Europe, Participants, \url{http://www.unece.org/env/pp/ctreaty.htm} (last visited Feb. 26, 2008).
\textsuperscript{297} Id.
\textsuperscript{299} Id.
\textsuperscript{300} Id.
\textsuperscript{301} Id. at 5.
submission also alleged that the public lacked opportunity to challenge the decision, in part, because information and relevant agency decisions were not made public.  


The Basel Convention was adopted March 22, 1989 in response to the mismanagement of internationally traded hazardous wastes. The Convention aims to “protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes.” Currently, 170 States are party to the Convention.

The sixth session of the Open-Ended Working Group of the Basel Convention took place from September 3–7, 2007 in Geneva. The Working Group adopted Decision VI/5, asserting that technical guidelines should be improved for environmentally sound management of persistent organic pollutants where they pose high risks to human health and the environment through accumulation in soil and in the food chain.

The Secretariat of the Basel Convention undertook numerous activities in 2007 in Asia to promote the implementation of the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships. The Secretariat engaged in a training program to help shipyards identify current practices that pose risks to human health and the environment and ways to mitigate these harms.

3. The Stockholm Convention on Persistent Organic Pollutants

The Stockholm Convention, which entered into force on May 17, 2004, is a global treaty to protect human health and the environment from persistent organic pollutants (POPs). It sets an initial goal of ending the use and release of the twelve most dangerous POPs. It aims to eliminate or restrict the production and use of all intentionally produced POPs (i.e., industrial chemicals and pesticides) and seeks to continually minimize or eliminate releases of POPs such as dioxins and furans. Additionally, the Stockholm Convention requires that stockpiles be managed and disposed of in an environmentally sound manner.

The third meeting of the Conference of the Parties (COP) to the Stockholm Convention was held April 30–May 4, 2007 in Dakar, Senegal. At the meeting, the COP adopted decision

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303 Id.
305 Id.
306 Id.
308 Id. at 32 (decision OEWG-VI/5).
310 Id.
312 Id.
SC-3/2 on DDT. During discussions, many representatives emphasized that DDT remains a crucial means of controlling disease and some stated they were considering resuming its use, suggesting that climate change could increase DDT reliance by contributing to the spread of malaria. All Parties agreed that efforts should be made to eliminate use of DDT in the long term due to significant concerns as to its dangerous effect on human health and the environment. The resulting decision includes a “revised process for DDT reporting, assessment and evaluation” and a “revised format and questionnaire for Parties to report on the production and use of DDT and its alternatives for disease vector control.” The decision also requests the Secretariat continue efforts to strengthen countries’ abilities to report on the production and use of DDT in conjunction with the World Health Organization, and stresses the need to address national implementation plans for those countries that plan to, or still do, use DDT. The COP also adopted Decisions SC-3/7 and SC-3/8 dealing with measures to reduce or eliminate releases from wastes and national implementation plans that seek to address environmental management of releases from persistent organic pollutants, respectively. The COP also adopted SC-3/11, which calls for technical assistance to many developing countries that lack the infrastructure to implement the convention and/or meet many of its targets.

4. The Convention on Biological Diversity and the Cartagena Protocol on Biosafety

Signed by 150 government leaders at the 1992 Rio Earth Summit, the Convention on Biological Diversity (CBD) is dedicated to promoting sustainable development. Conceived as a practical tool for translating the principles of Agenda 21 into reality, the CBD recognizes that, beyond plants, animals, and micro-organisms and their ecosystems, biological diversity concerns people and their need for food security, medicine, fresh air and water, shelter, and a clean and healthy environment.

On January 29, 2000, the COP to the CBD adopted the Cartagena Protocol on Biosafety (Protocol). The Protocol seeks to protect biological diversity from potential risks posed by living modified organisms (LMOs) resulting from modern biotechnology. Article 27 of the Protocol calls on the COP to adopt a process regarding international rules and procedures for liability and redress for damage resulting from transboundary movements of LMOs. Accordingly, the COP established a working group of Legal and Technical Experts on Liability and Redress. The Working Group held its third meeting in February 2007. At the meeting,

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314 Id. at SC-3/2: DDT ¶ 3.
315 Id. at ¶ 4.
316 Id. at ¶ 6–8.
317 Id. at 8.
318 Id. at 11.
UNEP pledged its full support, recognizing modern biotechnology’s “great potential for human-well being” but also recognizing that it must be developed with adequate safety measures in order to protect the environment and human health.  

5. The Inter-Parliamentary Union

The Inter-Parliamentary Union is an international organization of parliaments of sovereign states. Established in 1889, it is the focal point for worldwide dialogue on the parliamentary level and seeks peace and cooperation among peoples and the establishment of representative democracies. On November 21, 2007, the IPU and UNDP signed a memorandum of understanding to enhance and expand cooperation between the two organizations, in support of democratic governance around the world. Specifically, it seeks to focus future cooperation on a number of key areas including actions to advance the MDGs, implementation of major UN treaties and conventions, strategies to reduce poverty, and political empowerment of women.

6. United Nations Framework Convention on Climate Change and the Kyoto Protocol

The 13th session of the COP to the UNFCCC took place in Bali, Indonesia from December 3–14, 2007, as did the Meeting of the Parties to the Kyoto Protocol. The COP adopted the “Bali Roadmap,” setting out the negotiation process that will give rise to a post-2012 international agreement. The roadmap recognizes the need to formulate adaptation plans for communities vulnerable to the environmental risks posed by climate change, including developing small-island nations and countries in Africa affected by drought.

The COP also adopted a decision on deforestation in developing countries, recognizing that the needs of local and indigenous communities should be addressed before making decisions affecting the forests in which they live. The COP recognized the importance of supporting technology transfer to developing countries for climate change mitigation and adaptation.

Ms. Kyung-wha Kang, the Deputy High Commissioner for Human Rights, addressed the COP to the UNFCCC in Bali. She stressed the human impact of global warming and called on the COP to recognize the challenges it raises in regards to “equality, non-discrimination, access

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322 Id.
324 Id.
326 Id.
328 Id.
to information, access to justice and other core principles of human rights.” She highlighted the detrimental effects of climate change including hunger, malnutrition, floods, droughts, heat stress, loss of livelihoods and permanent displacement, stating that many throughout the world have already experienced these effects which are enhanced by poverty, inequality, and unequal power relationships.

In 2007 UNFCCC published *Climate Change: Impacts, Vulnerability and Adaptation in Developing Countries*, about the “concerns and needs of developing countries in adapting to the effects of climate change.” The publication notes the UNFCCC provisions calling for support for adaptation in developing countries and addresses the specific vulnerabilities of developing countries. The publication discusses water scarcity issues likely to arise in Africa, the loss of productive agricultural land, and the resulting water conflicts that may follow.

7. **The United Nations Convention to Combat Desertification**

The United Nations Convention to Combat Desertification was adopted in Paris, France on June 17, 1994 and entered into force on December 26, 1999. The Convention recognizes desertification as a major economic, social, and environmental problem in many countries across all regions of the world and acknowledges its contribution to food insecurity, famine, and poverty, as well as its contribution to the social, economic, and political tensions that can result from the violation of the rights to life, water, and health, among others. The Convention is the only international legally binding instrument that addresses land degradation in dry-land rural areas.

The eighth session of the Conference of the Parties took place in Madrid, Spain from September 3–14, 2007. The COP recognized that the Convention has not been implemented to its full potential and attributed this to insufficient financing, weak scientific basis, and inadequate advocacy and awareness, as well as difficulties in reaching consensus among Parties. The COP adopted Decision 3/COP.8, the Ten-year Strategic Plan and Framework to Enhance the Implementation of the Convention (2008-2019). The Strategy seeks to “forge a global partnership to reverse and prevent desertification/land degradation and to mitigate the effects of drought in affected areas in order to support poverty reduction and environmental sustainability.” Strategic objectives will guide the actions of Parties and include improving

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333 Id.


335 Id. at 5.

336 Id. at 20.


338 Id.

339 Id.


341 Id. at 8.

342 Id. at 16.
the living conditions of affected populations and ecosystems, generating global benefits through
effective implementation of the Convention, and mobilizing resources to support implementation
of the Convention through effective partnerships and capacity building.\(^{343}\)

8. The Convention on Wetlands of International Importance

The Convention on Wetlands of International Importance (Ramsar Convention) was
adopted in Ramsar, Iran in 1971 with the aim of conservation and wise use of wetlands.\(^{344}\) The
Convention recognizes the importance of wetlands “for the well-being of human communities”
and “provides a framework for international cooperation on the conservation and wise use of
wetlands and their resources.”\(^{345}\) Currently, 157 countries are party to the Convention, and 1,708
wetland sites are designated for protection under the convention.\(^{346}\)

The Steering Committee of the Convention had its thirty-fifth meeting in February 2007.
At the meeting, the Committee issued decision SC35-27, which requests that the Secretariat
develop a draft Resolution for the tenth COP providing more specific guidance on wetlands and
poverty reduction.\(^{347}\) On December 14, 2007, the Secretary-General of the Ramsar Convention,
Mr. Anada Tiega, addressed the ministerial segment of the 13\(^{\text{th}}\) COP of the UNFCCC.\(^{348}\) In his
address, Mr. Tiega noted the effect that climate change may have on wetlands and the
 corresponding effect this will have on water access for poor and vulnerable communities.\(^{349}\) Mr.
Tiega also spoke about the important role that wetlands play as carbon sinks and urged the
UNFCCC to take measures to protect wetlands both for their carbon sequestering capabilities
and for the ecosystem services they provide to humans.\(^{350}\)

An expert meeting on peatlands in 2007 organized by the Ramsar Convention and
Convention on Biological Diversity concluded that investments in peatland conservation and
restoration can be up to 100 times more cost-effective than other forms of carbon
sequestration.\(^{351}\) Participants lamented that peatland fires in Southeast Asia had blanketed the
region in smoke, with significant negative impacts on human health and livelihood. They also
noted that peatland destruction threatens the water and food supply for large rural and urban
populations. Wetlands International and BioX Group signed an agreement to develop a Global
Peatland Fund that will fund restoration and conservation projects in degraded tropical peat
swamp forests to prevent further greenhouse gas emissions.\(^{352}\)

\(^{343}\) Id. at 16–17.

\(^{344}\) Ramsar Convention on Wetlands, Ramsar Information Paper No. 2; What is the Ramsar Convention on


\(^{346}\) Id.

\(^{347}\) Ramsar Convention, 35\(^{\text{th}}\) Meeting of the Ramsar Standing Committee, http://ramsar.org/sc/35/key_sc35_decisions_e.htm (last visited Feb. 29, 2008).

\(^{348}\) The Secretary General of the Ramsar Convention, Ramsar Address to the 13th COP of the Global Climate

\(^{349}\) Id.

\(^{350}\) Id.

\(^{351}\) Press Release, UNEP, Peatlands are Quick and Cost-Effective Measure to Reduce 10% of Global Greenhouse

\(^{352}\) Id.
9. World Heritage Committee

The thirty-first conference of the World Heritage Committee of the United Nations Educational, Scientific and Cultural Organization (UNESCO) convened June 23–July 2, 2007 in Christchurch, New Zealand. The Committee encouraged parties to actively participate in United Nations climate change conferences and recognized the need for the Committee to work more closely with the UNFCCC to address the effect of climate change on World Heritage Sites.\(^{353}\) The Committee requested that the World Heritage Centre, in consultation with States Parties, develop “criteria for the inclusion of those properties which are most threatened by climate change on the List of the World Heritage in Danger, for use in prioritizing vulnerability assessment, mitigation and adaptation activities.”\(^{354}\)

During the meeting, the World Heritage Committee considered a petition to list La Amistad National Park as a World Heritage Site in Danger, in part due to a number of extensive hydroelectric dam projects in the area. The petition expressed concern that hydroelectric development would affect the livelihoods of the Naso and Ngobe indigenous groups as well as the biodiversity of the park.\(^{355}\) According the petition, the project is likely to flood several villages along the Changuinola River, displacing several hundred indigenous peoples.\(^{356}\) In response to the petition, the Committee requested the State Parties of Panama and Costa Rica to invite a World Heritage Centre/IUCN monitoring mission to the property in 2008.\(^{357}\) The Committee noted their disappointment with the Panama for failing to report the project to the World Heritage Centre and requested a report from Panama and Costa Rica about the implications of the proposed hydroelectric project on the biodiversity of the watershed.\(^{358}\)

Additionally, the World Heritage Committee commissioned two documents for general distribution regarding climate change on World Heritage sites: "Climate Change and World Heritage: Report on Predicting and Managing the Impacts of Climate Change on World Heritage and Strategy to Assist States Parties to Implement Appropriate Management Responses"\(^{359}\) and "Case Studies on Climate Change and World Heritage."\(^{360}\) The former report recognizes climate change as one of the most significant challenges facing humanity and the environment today, and describes climate change’s current and predicted effects on World Heritage cultural and natural sites, as well as effects on the communities dependent on the sites. It also provides strategies for dealing with the effects of climate change through improving


\(^{354}\) Id. at 5.


\(^{356}\) Id.

\(^{357}\) Id. at 69.

\(^{358}\) Id.


monitoring, updating management plans, implementing adaptation projects, mitigating at sites, preparing risk measures, and sharing knowledge between stakeholders.  

*Case Studies on Climate Change and World Heritage* highlights the effects of climate change on twenty-six World Heritage glacial, marine, terrestrial, archaeological, and historic city sites. The document recognizes that climate change’s effects on World Heritage sites will negatively impact indigenous and local communities. One case study about Nepal notes that the water supply enjoyed by one third of the world’s population is in jeopardy due to impacts of warming on the Himalayan glaciers.  

II. REGIONAL  

A. Africa  

1. African Commission on Human and Peoples’ Rights  

The African Commission on Human and Peoples’ Rights (ACHPR) passed a resolution on November 28, 2007, welcoming the adoption by the United Nations General Assembly of the UN Declaration on the Rights of Indigenous Peoples. The ACHPR’s resolution involved the adoption of a communiqué to be read out during the Closing Ceremony of the 42nd Ordinary Session, stating in part: “The African Commission is confident that the Declaration will become a very valuable tool and a point of reference for the African Commission’s efforts to ensure the promotion and protection of indigenous peoples’ rights on the African continent.”

2. UNEP Regional Office for Africa  

On June 22, 2007, UNEP released a report on the impact of environmental degradation on peace and security in Sudan. The Post-Conflict Environmental Assessment of Sudan cited the decline of environmental services as one of the root causes of the continuing conflict in the Darfur region. In particular the report noted problems related to overgrazing, land degradation, deforestation and desertification. It emphasized the need for urgent action to address “widespread and rapidly accelerating environmental degradation” and stated that investment in environmental management was vital. Climate change is also expected to aggravate environmental conditions. The report raised concerns about potential riverbank erosion as a result of deforestation and overgrazing, projected shortages of wood fuel and charcoal, sedimentation of dams, and blockage of fish migrations, and noted that environmental degradation was a key driver in population displacement.

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361 *Id.*  
362 *Id.*  
363 African Commission on Human and Peoples’ Rights Res. 121 (XXXXII), ACHPR Doc. ACHPR/Res.121 (Nov. 28, 2007).  
364 *Id.*  
367 *Id.*  
368 *Id.*  
369 *Id.*  
370 *Id.*
B. Asia

1. Asia Pacific Forum

The Advisory Council of Jurists (“ACJ”) of the Asia Pacific Forum (“APF”) delivered its observations and recommendations on human rights and the environment at the 12th Annual Meeting of the APF, held in Sydney, Australia, on September 24-27, 2007.\(^{371}\) The ACJ considered eight key questions on the human rights dimensions of the environment, analyzing existing international laws, standards and principles. Given the urgency of global environmental degradation, the ACJ argued that a healthy environment should no longer be viewed as simply an “add-on” to the right to life or health, but should be understood as a stand-alone human right and that it should be protected as such.\(^{372}\)

In particular, the ACJ said that a specific right to the environment should include a right of “all persons, communities and peoples […] to a safe, secure, healthy and ecologically sound environment that is protected, preserved and improved for the benefit of present and future generations.”\(^{373}\) It emphasized that the state is obligated to protect the environment to meet the environmental and developmental needs of present and future generations.\(^{374}\) The ACJ also stressed that all individuals, communities, peoples and other non-state actors should have the right to full environmental information, the right to participate in decision-making processes and the right to remedies, all of which should be enforced by the state.\(^{375}\)

Among its recommendations, the ACJ urged specific safeguards of “the right to the environment in relation to particular groups including indigenous people, women and children, castes, vulnerable groups and minority groups” as well as “groups that are disproportionately affected by environmental harms, and groups, which have a special cultural connection with the environment.”\(^{376}\) It said that “to the extent possible, there should be a protection against displacement, and a preservation of traditional means of livelihood and culture.”\(^{377}\) Specific protection should be rendered to “environmentally displaced and affected persons, including a guarantee of their resettlement in a manner that enables the continuation of their culture, traditional means of livelihood and a guarantee of their human rights.”\(^{378}\)

2. Asian Development Bank

In 2007, the Asian Development Bank (“ADB”) completed a special evaluation study on its 1998 Policy on Indigenous Peoples.\(^{379}\) The 1998 Indigenous Peoples Policy requires that in preparing and implementing ADB-supported projects in areas with indigenous peoples, it should be ensured that development interventions are compatible in substance and structure with the


\(^{372}\) Id. at 6, 13.

\(^{373}\) Id. at 13.

\(^{374}\) Id.

\(^{375}\) Id.

\(^{376}\) Id.

\(^{377}\) Id. at 13-14.

\(^{378}\) Id.

affected indigenous peoples’ social, cultural, and economic institutions, and that the affected populations are at least as well-off as they would have been without development interventions.\textsuperscript{380}

The evaluation study reviewed 31 Indigenous Peoples Development Plans (IPDPs) for projects approved by ADB from 1998 to 2005. Seven case studies of ongoing and completed projects with IPDPs were conducted in China, India, Philippines, and Vietnam. The study found that in infrastructure sectors and forestry sectors, there were some cases where ADB-supported projects caused harm to indigenous peoples, which were largely related to livelihood, resettlement, and environmental change. Among the ADB-supported projects that affected indigenous peoples, only a small portion prepared IPDPs, of which about 1/3 did not identify any risk mitigation measures.\textsuperscript{381} In addition, few IPDPs fully documented the consultation process. It was not always clear to what extent the indigenous peoples supported the project and how their opinions influenced the project design.\textsuperscript{382} The study recommended that specific criteria be developed regarding the adequacy of consultation, communication, and mitigation measures, and that consultation process during the project preparation and implementation be clearly documented.\textsuperscript{383}

3. Asia-Pacific Economic Cooperation (“APEC”)

The 2007 APEC Economic Leaders’ Meeting concluded on September 9, 2007, with the release of the Sydney APEC Leaders’ Declaration on Climate Change, Energy and Clean Development. In the Declaration, the APEC members recognized that a great challenge for APEC, with 41\% of the world’s population, “is to chart new pathways for clean and sustainable development.”\textsuperscript{384} For this purpose, the APEC economic leaders announced an Action Agenda, which aims to achieve APEC-wide regional goals of reducing “energy intensity of at least 25\% by 2030 (with 2005 as the base year)” and “increasing forest cover in the region by at least 20 million hectares of all types of forests by 2020 - a goal which if achieved would store approximately 1.4 billion tonnes of carbon, equivalent to around 11\% of annual global emissions (in 2004).”\textsuperscript{385}

To achieve these goals, the APEC members established a voluntary Energy Peer Review Mechanism to review the process, with a report expected in 2010.\textsuperscript{386} They also agreed “to promote policies that advance the deployment of low and zero emission energy uses, in particular in the field of clean coal use and carbon capture and storage” and “to establish the Asia-Pacific Network for Energy Technology (APNet) to strengthen collaboration on energy research in the region.”\textsuperscript{387} With particular concern about greenhouse gas emissions from

\textsuperscript{380} Id. at 15.
\textsuperscript{382} Id. at 30-31.
\textsuperscript{383} Id. at 66.
\textsuperscript{385} Id. at 3.
\textsuperscript{386} Id. at 4.
\textsuperscript{387} Id. at 5.
aircrafts, the members decided to convene in early 2008 to “advance work in key areas such as air traffic management systems, aircraft design and alternative fuels.”

C. Central Asia & the Middle East

1. Arab Forum for Environment and Development (AFED)

The Arab Forum for Environment and Development, an NGO endorsed by UNEP and the League of Arab States, was founded June 17, 2006. AFED’s first substantive initiative was to organize the Arab Corporate Responsibility Summit, held on November 27, 2007, and hosted by Environment Agency – Abu Dhabi in Beirut. Over 120 business leaders from the region attended the Summit, and contributed to the Abu Dhabi Declaration on Corporate Responsibility and Cleaner Production.

The Declaration signatories commit to “adopting innovative solutions that shift the priority from end-of-pipe to preventive strategies and supporting the provision of products and services that meet environmental and health standards.” The business leaders also requested assistance from UNEP, the World Business Council for Sustainable Development (WBCSD) and the Arab Forum for Environment and Development (AFED) for “training and relevant information relating to best practices in achieving corporate environmental responsibility.” By signing the Declaration, parties pledged to work toward eco-efficiency and energy and water reduction; comply with national and international regulations; and report on their internal environmental reviews.

The Declaration was endorsed by UNEP and the WBCSD, and unanimously approved by the Council of Arab Ministers Responsible for the Environment (CAMRE) during the 19th session of the League of Arab States on December 6, 2007.

D. Central & South America

1. Central American Free Trade Agreement (CAFTA)

The Central American Free Trade Agreement (CAFTA) between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, was scheduled to enter into force on January 1, 2006. However, Central American countries have...
been slow in making the changes to domestic laws that are necessary to implement the agreement. Therefore, implementation of the agreement will occur on a rolling basis as the U.S. Trade Representative determines that each country is ready.

CAFTA was implemented in El Salvador, Guatemala, Nicaragua, and Honduras in 2006. The agreement was implemented in the Dominican Republic on March 1, 2007. Costa Rica remains the only partnering country in which CAFTA has not yet entered into force. In October 2007, Costa Ricans voted to ratify the agreement, but as of January 2008, the Legislative Assembly had not passed the corresponding legislation for the agreement to enter into force.

The agreement lowers trade barriers between party nations, and many environmental and human rights activists are concerned about its implications. Of particular concern is the lack of effective legislation protecting the rights of workers, the environment, and sovereignty over natural resources and the economy. Although Central American environmental standards vary widely, CAFTA does not require any country to maintain or enforce basic environmental laws and regulations. The agreement may therefore provide an incentive to foreign investors to seek out and exploit the nation or region with the weakest standards.

2. Inter-American Court of Human Rights

a. Saramaka People v. Suriname

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397 Id.

398 Id.


On November 28, 2007, the Inter-American Court of Human Rights held that the state of Suriname violated the Saramaka people’s right to property.\footnote{Saramaka People v. Suriname, Case 2007 Inter-Am. C.H.R. (ser. C) No. 172, at 60-61 (Nov. 28, 2007).} The Samaka are a tribal people whose rights to lands and territory, and political and cultural autonomy, were recognized in treaties with the Dutch colonial government in 1762 and 1835.\footnote{Forest Peoples Programme, \textit{Free, Prior and Informed Consent: Two Cases from Suriname} at 6 (2007), available at \url{http://www.forestpeoples.org/documents/law_hr/fpic_suriname_mar07_eng.pdf}.} Their lands and resources have been degraded by logging concessions that were granted by the state without any prior notice to the affected Saramaka communities. The construction of the Afobaka dam has further degraded the land and caused flooding that forced displacement of Saramaka communities.\footnote{Id. at 7.} The dam reduced subsistence resources, destroyed sacred sites, and disrespected the interred remains of deceased Saramakas.\footnote{Saramaka People v. Suriname, \textit{supra} note 407.}

The Inter-American Court held that the Saramaka have a right to their communal territory because of their traditional use and occupation of the land and resources which are necessary to their physical and cultural survival.\footnote{Id. at 28.} The Court ruled that the state must recognize, respect, protect, and guarantee this communal property right.\footnote{Id.} The Court stipulated that Suriname must grant collective title over the territory of the members of the Saramaka people and legally recognize their collective juridical capacity.\footnote{Id. at 56.} Furthermore, the state must remove or amend legal provisions that impede protection of the right to property of the members of the Saramaka people, and adopt measures to 1) recognize and protect the right to hold collective title of their traditional territory, and 2) ensure the Saramaka’s right to be effectively consulted in accordance with their traditions and customs, or the right to give or withhold their consent with regard to development or investment projects that may affect their territory.\footnote{Id. at 57.} Environmental and social impact assessments must be conducted prior to awarding a concession for any development or investment project within the Saramaka territory and safeguards implemented to minimize the damaging effects the projects may have on the social, economic, and cultural survival of the Saramaka people.\footnote{Id.} Suriname must also adopt measures to provide the Saramaka people with recourses against acts that violate their right to and use and enjoyment of property in accordance with their communal land tenure system.\footnote{Id. at 58.} Finally, the state must pay monetary damages for timber extraction and destruction of land with subsistence and spiritual importance.\footnote{Id. at 58.}

b. La Oroya

In August 2007 the Inter-American Commission on Human Rights asked the government of Peru to begin immediately protecting the health of residents of La Oroya, Peru who have suffered severe health impacts from a polluting smelter.\footnote{Press Release, AIDA, CEMDA, and Earthjustice, \textit{Human Rights Body Calls on Peru to Protect Citizens from Contamination by American-owned Smelter} (Sept. 5, 2007), available at \url{http://www.business-humanrights.org/Documents/LA-OROYA-IACHR-CALL-URGENT-MEASURES.doc}.} The Doe Run Peru smelter emits...
lead, arsenic, cadmium, sulfur dioxide and other pollutants. The government of Peru has known since 1999 that almost all of the children living near the smelter suffer from lead poisoning, but has failed to address the situation. Ninety-nine percent of the local children tested in March 2005 had blood lead levels far exceeding the safe limits established by US EPA and the World Health Organization.

The Commission directed the state to adopt urgent measures to address the health of La Oroya residents, including providing comprehensive medical testing and treatment for those whose examinations reveal serious results.

The Commission’s request recognizes the right to a healthy environment.

3. Initiative for the Integration of Regional Infrastructure in Latin America (IIRSA)

In September 2000, the twelve South American Presidents established the Initiative for the Integration of Regional Infrastructure in South America (IIRSA). IIRSA attempts to connect the infrastructure of the twelve countries of South America to help stimulate regional economic growth and integration. The project is based on nine “integration axes” or development hubs that transect the continent laterally and horizontally and eight “sector integration processes” including highways, dams, electrical systems, communications and energy projects. At the end of 2007, 10 projects were being executed at a cost of over US $3.6 billion. The Inter-American Development Bank (IDB), the Andean Development Corporation (CAF), and the Financial Fund for the Development of the River Plata Basin (FONPLATA) are the primary financers and comprise the Technical Coordinating Committee (CCT) for the IIRSA. The CCT provides technical and financial support to countries for all IIRSA-related topics.

419 Id.
420 Id.
421 Id.
423 AIDA, supra note 418.
426 Id. at 3.
428 Id. at 3-4; see also IIRSA, How is it Organized, http://www.iirsa.org/BancoConocimiento/F/fm_corno_esta_organizada/fm_corno_esta_organizada_ENG.asp?CodIdioma=ENG.

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In 2007, a number of new projects were initiated, including rehabilitation and paving of the Pehuenche pass between Argentina and Chile,\textsuperscript{430} the Caranavi-Quiquibey-Yucumo road project in Bolivia,\textsuperscript{431} studies for the improvement of roads between Georgetown and Lethem in Guyana,\textsuperscript{432} construction of the Manta-Manaus highway corridor to link Ecuador and Brazil,\textsuperscript{433} and an upgrade of the road connection between Suriname and Guyana.\textsuperscript{434}

Conservation International released a 2007 study exploring the environmental and social impacts of IIRSA projects. The report noted that while the financial institutions involved in IIRSA have relatively high standards for environmental and social evaluation, environmental assessments are linked to individual projects and do not consider the cumulative impact of multiple projects.\textsuperscript{435} The report theorized that while IIRSA projects will reduce the isolation of rural communities and promote economic growth, these benefits will likely not be evenly distributed and may further marginalize the rural poor. For example, new highways will stimulate mass migration, creating competition for resources with traditional communities.\textsuperscript{436} These traditional communities rely on their environment for food, fiber, timber, and other resources as part of subsistence lifestyles, and most have never experienced competition with new migrants.\textsuperscript{437}

Discussion of the impacts of IIRSA projects monopolized the agenda at the Second Latin American Congress on National Parks and Other Protected Areas, which garnered over 2,000 academics, environmentalists and government delegates from September 30 through October 6, 2007. Participants expressed concerns about the social and environmental impacts of projects such as highways that will cross protected areas.\textsuperscript{438}

In June 2007, IIRSA released a proposed methodology for assessing the environmental and social impacts of projects. The goals of the methodology are to better understand project areas so as to promote sustainable development; identify vulnerable areas and development opportunities; establish management and investment guidelines that will promote sustainable development; and promote dialogue among governments and impacted communities.\textsuperscript{439} The impact of the methodology remains to be seen.

\begin{itemize}
\item \textsuperscript{430} Govt Signs $80USmn CAF Loan for Pehuenche Pass Works, BUS. NEWS AM., Dec. 13, 2007.
\item \textsuperscript{431} IADB Approves $1.2 Mln Loan for IIRSA Road Project in Bolivia, LATIN AM. NEWS DIG., Aug. 13, 2007.
\item \textsuperscript{432} IADB to Support Road Project in Guyana, CARIBBEAN MEDIA CORP., Aug. 10, 2007.
\item \textsuperscript{433} Govts Sign Manta-Manaus Hwy Construction Agreement, BUS. NEWS AM., Aug. 1, 2007.
\item \textsuperscript{434} Marion Barbel, Suriname to Upgrade Road Connection with Neighbouring Guyana, GLOBAL INSIGHT, Apr. 23, 2007.
\item \textsuperscript{435} Timothy J. Killeen., \textit{A Perfect Storm in the Amazon Wilderness: Development and Conservation in the Context of the Initiative for the Integration of the Regional Infrastructure of South America (IIRSA)}, at 8, CONSERVATION INTERNATIONAL (2007).
\item \textsuperscript{436} Id. at 9.
\item \textsuperscript{437} Id. at 64.
\item \textsuperscript{438} Marcela Valente, \textit{Infrastructure Works Endangers Protected Areas; Latin America: Nine Roads Through the Virgin Wilderness}, IPS (Latin Am.), Oct. 4, 2007.
\end{itemize}
4. Free Trade Agreements (FTAs)

On April 12, 2006, the United States and Peru signed a bilateral free trade agreement and on November 8, 2007 the Peru Free Trade Agreement was passed in the U.S. Congress. A free trade agreement was also signed between the U.S. and Panama on June 28, 2007.

The U.S. Trade Representative (USTR) asserts that the Peru agreement will eliminate tariffs and other barriers to trade in goods and services, expand trade between the United States and Peru, and increase Peru’s access to U.S. markets, bringing Peru significant opportunities for economic growth and development. The finalized U.S.-Peru FTA contains some important environmental concessions, including measures to stop the flow of illegally logged timber from Peru, a major cause of deforestation; requirements for countries to fulfill obligations under Multilateral Environmental Agreements; and parity of enforcement between the environmental and commercial provisions. Supporters of the agreement maintain that these provisions can improve environmental protection in Peru. For example, Peru abandoned a plan in October 2007 to open 209,000 acres of the Bahuaja Sonene National Park to oil and gas exploration after U.S. Congressman Blumenauer reminded the Peruvian Ambassador to the U.S. that the then-pending trade agreement prohibited weakening environmental protections to attract trade or investment.

However, the free trade agreements threaten numerous environmental and human rights, including the rights to a healthy environment and to culture. The United States acknowledges that increased economic development has many negative environmental impacts, including deforestation, loss of migratory bird habitat, increased illegal trade of endangered species, desertification, and transboundary air and water pollution. Also, concerns remain over provisions that allow corporations and foreign investors to challenge environmental and public health laws before unaccountable international tribunals. Additionally, the right to work could be heavily impacted by the effects of U.S. agricultural subsidies on markets in South American countries that will not be able to compete with lower U.S. prices. For example, the elimination of tariffs on staple food crops could allow large agricultural companies to import

440 U.S. Peru Sign FTA, Portman Hopes for Passage Before Summer Recess, INSIDE U.S. TRADE 24(15), April 14, 2006, at 1.
447 Sierra Club, supra note 444.
448 For example, Peru’s internationally competitive sugar industry fears that the national market will be flooded by cheap, highly subsidized high fructose corn syrup from the U.S. Todd Tucker & Daniel McCarthy, The U.S. Andean Free Trade Agreement Chokes Along, GLOBAL POLICY FORUM, http://www.globalpolicy.org/socecon/trade/2004/1102afta.htm (last visited Jan. 29, 2008).
cheap products into Peru below the cost of production, displacing farmers from their local markets and encouraging a mass migration from the rural countryside. Both of Peru’s labor federations, its major indigenous people’s organization, and its archbishop opposed the deal because of its potential damage to Peru’s small farmers and the environment.  

Parallel environmental and human rights concerns exist about Columbia and Panama free trade agreements, which have not been approved by the U.S. Congress as of January 2008.

5. Organization of American States (OAS)

On June 5, 2007, the OAS adopted a Declaration on Energy for Sustainable Development recognizing the importance of developing sustainable energy sources that avoid negative environmental and social impacts. The declaration acknowledges the link between environmental quality and access to clean water, land and air by recognizing “the need to obtain and use all forms of energy that are in harmony with life and nature, preserving air, water, and land, which provide indispensable food and habitat for all living beings, and to foster access for the more vulnerable populations, consistent with social and environmental sensitivity.” The declaration recognizes the right to civic involvement by resolving to “underscore that democratic governance, strong democratic institutions, the rule of law, and respect for human rights and fundamental freedoms are essential elements in advancing the energy and sustainable development goals of member states and the region, combating social exclusion, and fostering the public good.”

Finally, the declaration acknowledges the link between energy production, the environment, and the right to a healthy workplace by recognizing the importance of ensuring “compatibility among the production of all energy sources, agricultural production, preservation of the environment, and the promotion and defense of decent social and labor conditions, ensuring the role of the Americas as an efficient energy producer.”

The OAS also held two seminars in November 2007 on the effects of environmental degradation and its impact on human health. The first, “From mandates to actions: Advancing Payments for Ecological Services in the Americas” examined new financing opportunities for developing countries to help address poverty, environmental degradation, and climate change. The second, “Innovations in Avian Influenza Preparedness” facilitated regional dialogue and

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453 Id. at 3.
454 Id.
455 Id.
cooperation to promote and protect human health and the environment. The workshops recognized the link between the environment and rights to economic advancement and health.

E. Europe

1. European Commission

a. Directives

i. Industrial Emissions

On December 12, 2007, the European Commission approved legislation that strengthened industrial emissions provisions to reduce water, air and soil pollution throughout the European Union. According to the Commission, “[t]he directive is expected to provide significant benefits for the environment and human health” and is expected to reduce premature death from emissions from large combustion plants. The European Commission will work with member states to recommend action and improve implementation.

b. Actions Against Member States

i. Legal Action Against 12 Member States Over Emergency Plans for Chemical Plants

The European Commission sent final written warnings to 12 European Union states – Austria, Cyprus, the Czech Republic, France, Germany, Ireland, Italy, Luxembourg, Malta, the Netherlands, Spain, and Sweden – for failing to comply with the directive on the control of major accidents involving dangerous substances. The Commission estimates that about half of the 8,000 facilities that have very large quantities of dangerous chemical substances do not have the required external emergency plans. The Commission notes that “[e]xternal emergency plans cover measures that should be taken outside installations during a major accident or emergency. The plans must contain on-site and off-site mitigation actions and also provide the public with specific information relating to the accident.” The Commission may bring the cases to the European Court of Justice.

458 Id.
460 Id.
461 Id.
462 Id.
ii. Legal Action Against 14 Member States Over Landfill Directive\textsuperscript{463}

On March 22, 2007, the European Commission began legal proceedings against Cyprus, Czech Republic, Denmark, Estonia, Finland, Ireland, Lithuania, Malta, Poland, Slovakia, Slovenia, Spain, Sweden, and the UK for failing to enact national legislation to comply with the Commission’s Directive on landfill waste.\textsuperscript{464} The Directive specifically requires that member states implement strategies to reduce water, soil, and air pollution; to reduce emissions of methane; and to reduce the amount of biodegradable waste to 35% of 1995 levels.\textsuperscript{465} This Directive is a measure to protect human health and the environment from potential hazards from waste.\textsuperscript{466}

iii. Italy

The Commission brought Italy to the European Court of Justice for alleged failure to ensure that landfills meet certain rules to protect human health and the environment. On April 26, 2007 the Court found the Italian Republic failed to fulfill its obligations, in part because it failed to take all necessary measures to ensure that “waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and to prohibit the abandonment, dumping or uncontrolled disposal of waste.”\textsuperscript{467}

iv. Ireland

In March 2007 the Republic of Ireland faced action from the European Commission for failure to implement directives pertaining to clean drinking water and citizens’ rights in relation to environmental regulation.\textsuperscript{468} Specifically, the European Commission has issued a final written warning to the Irish government for failure to comply with a 2000 directive requiring EU member states to prevent entry of E. coli bacteria into supplies of drinking water.\textsuperscript{469} Additionally, the Commission has warned Ireland for failure to comply with a 2005 ruling by the European Court of Justice on requirements for controls on polluting discharges to surface water. In the event of its inadequate response to these warnings, Ireland could face financial penalties from the European Court of Justice. Ireland has already been referred to the Court for giving inadequate rights to its citizens to “legally challenge decisions in cases involving environmental

\textsuperscript{463} The European Commission took the same action against seven Member States in December of 2006, which was reported in the issue paper presented to the 5th Session of the Human Rights Council in 2007.


\textsuperscript{465} Id.

\textsuperscript{466} Id.

\textsuperscript{467} Case C-135/05, Comm’n of the European Communities v. Italian Republic, 2007 E.C.R. C 96/11.


\textsuperscript{469} Id.
impact assessments and integrated pollution prevention and control.”

2. European Parliament

a. Air quality

In December 2007 the European Parliament passed legislation requiring European Union states to “monitor and measure levels of dust particulates and introduce limits for air quality,” and set binding targets by the year 2015. This action comes in response to Members’ recognition of the link between particulate matter in the air and human health. Citing a World Health Organization report, the Parliament noted, “long-term exposure to current ambient PM concentrations may lead to a marked reduction in life expectancy due to increased cardiopulmonary and lung cancer mortality.”

F. Island Nations

1. Alliance of Small Island States (AOSIS)

Representatives of the Small Island Developing States adopted the Male’ Declaration on the Human Dimension of Climate Change on November 14, 2007. Among other things, the Declaration recognizes “that the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights is recognized, in varying formulations, in the constitutions of over one hundred states and directly or indirectly in several international instruments;” states that the nations are “Concerned that climate change has clear and immediate implications for the full enjoyment of human rights including inter alia the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health;” and acknowledges the relationship between global warming and human rights. It called for the international community to take urgent action at the UNFCCC in Bali to protect people, the planet, and prosperity.

2. Pacific Islands Forum

The Pacific Islands Forum met in Nuku'alofa, Tonga from October 16-17, 2007. Issues addressed included fisheries, climate change, energy, transport, and regional assistance. Regarding climate change, the leaders “reiterated their deep concern over the serious and growing threat posed by climate change to the economic, social and environmental well being of

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470 Id.
472 Id.
474 Id.
475 Id.
Pacific Island Countries, their communities, peoples and cultures.” The leaders also addressed the situation in Marshall Islands and called on the United States to fairly compensate the displaced populations as a result of the U.S.’s nuclear testing. In addition, the Forum adopted the Vava’u Declaration on Pacific Fisheries Management titled “Our Fish Our Future” which calls for sustainable fisheries management “to support food security, sustainable livelihoods and economic growth for current and future generations of Pacific people.”

G. North America

1. North American Commission for Environmental Cooperation (NACEC)

The North American Commission on Environmental Cooperation (NACEC), established pursuant to the “environmental side agreement” to the North American Free Trade Agreement. The NAAEC allows citizen submissions for review of cases in which the Government of Canada, Mexico or the United States fails to “effectively enforce its environmental laws.”

At the environmental minister’s annual meeting of 2007, the NACEC applauded Mexico’s first publication of Registro de Emisiones y Transferencia de Contaminantes (RETC), an industrial pollutant emission and transfer data registration, calling it “the achievement of the first truly North American register of pollution releases and transfers, a milestone for environmental management and public access to information in each of our countries.”

a. Coronado Islands

Shortly after NACEC’s January 2007 request for a factual record, ChevronTexaco terminated its plans to build a Liquid Natural Gas terminal off the shore of Baja California near the Coronado Islands. In response, on March 26, 2007, NACEC withdrew its request for a factual record and terminated the Coronado Islands submission.
b. Environmental Pollution in Hermosillo II

On April 4, 2007, the Secretariat of the NACEC recommended that the Council of the Commission for Environmental Cooperation develop a factual record in regards to the Environmental Pollution in Hermosillo II submission. This submission, filed in August of 2005, asserts that Mexican federal, state and local agencies failed to take action to prevent, monitor and control air pollution in Hermosillo in the state of Sonora, in violation of the Mexican Constitution and the General Law of Ecological Balance and Environmental Protection. In its February 2006 response, Mexico denied the claim and argued that the submission should have been dismissed for failure meet procedural requirements. Mexico also cited the measures it has taken and mechanisms in place to prevent, monitor and control pollution.

c. Hacienda El Hospital

On January 10, 2007, Mexico filed its response to a July 2006 submission alleging that Mexico failed to act upon learning about contamination from a BASF pigment manufacturing plant. In its response, Mexico argues for dismissal of the submission, asserting that “it ordered soil assessment and restoration actions, and it applied to sanctions to BASF, and ordered the closing of the building occupied by the company,” and that it adequately responded to citizen complaints. The Secretariat is determining whether to seek a factual record to pursue the case further.

d. Drilling Waste in Cunduacán

The Tabasco Human Rights Committee, the Asociación Ecológica Santo Tomás, and the community of Los Aguilares filed a submission to the NACEC on July 26, 2007, claiming that the government has not adequately responded to their complaints of harm to the environment and human health caused by a drilling waste disposal project in Cunduacán, Tabasco. The
submitters assert that the company Consorcio de Arquitectura y Ecología dumped (and continues to dump) drilling sludge within meters of homes although the environmental impact statement and hazardous waste management authorizations have not been approved. The Tabasco Human Rights Committee and the Asociación Ecológica Santo Tomás filed a revised submission on October 4, 2007, after the NACEC determined that the original submission did not meet submission criteria. In December, 2007, the Commission requested that Mexico respond to the revised submission.

e. Minera San Xavier

NACEC received a submission from the Asociación Pro San Luis Ecológico on February 5, 2007, alleging Mexico’s failure to enforce its environmental laws and a 2000 court ruling when authorizing an open-pit gold and silver mine, to be operated by Minera San Xavier near Cerro de San Pedro, San Luis Potosí. A revised submission was filed on May 4, 2007, which projected negative consequences to local water and air quality from the mine. Pursuant to a June 29, 2007 request from the Commission, Mexico submitted a response on September 25, 2007, asserting “that an administrative tribunal determined that Semarnat’s authorization was compliant with the court order” and “that the project is conditional to the implementation of environmental impact mitigation programs.” Additionally, Mexico argues that they do not have to adhere to the precautionary principle because it has not been adopted into Mexico’s General Ecological Balance and Environmental Act. NACEC is considering whether to request a factual record.

III. DOMESTIC

A. COURTS

1. Ivory Coast

In January 2007 a lawsuit was launched in Britain against a Dutch-based oil-trader, Trafigura, for illegal dumping of waste in the Ivory Coast in August 2006. At least fifteen people died and about 95,000 were poisoned after over 600 tonnes of caustic soda and petroleum

497 See CEC requests Mexico's response to submission on drilling waste in Tabasco, supra note 133.
498 Id.
502 Id.
503 Id.
504 Id.
505 See Minera San Xavier, supra note 499.
residues were dumped in sixteen open-air sites in Abidjan, Ivory Coast.\(^{507}\) The waste had been transported to the Ivory Coast in the Probo Koala, a tanker chartered by Trafigura, and dumped in the sites by a local firm.\(^{508}\)

In February 2007, the Senior Master of the Queen's Bench Division of the High Court in London ruled that the claims of all plaintiffs against Trafigura in this case would be brought under the Group Litigation system.\(^{509}\) The Group Action by thousands of Ivorian plaintiffs is ongoing.\(^{510}\)

Meanwhile, Trafigura and Ivory Coast authorities reached an out-of-court settlement of about 100 million pounds in February 2007 “for damages sustained and the repayment of pollution cleaning costs.”\(^{511}\) In June 2007 the Ivorian government announced that the settlement would be distributed among over 100,000 victims of the toxic dump.\(^{512}\)

2. South Africa

a. Construction in an Ecologically Sensitive Area

The decision of *Khabisi NO & Another v. Aquarella Investment 83 (Pty) Ltd & Others* granted applicants a final interdict against respondents undertaking construction in an ecologically sensitive area.\(^{513}\) The interdict enforced compliance with the Environmental Management Act 107 of 1998 and the Environment Conservation Act 73 of 1989.\(^{514}\) The Court’s decision stated in part: “I am satisfied that given the activities already undertaken by the respondents, that the applicants have no alternative remedy but to seek an interdict to restrain the respondents from proceeding with the development which threatens environmental health, ecology and biodiversity and for, which the respondents did not receive the applicants’ authorization. Needless to state that the resultant damage and harm to the environment would have far-reaching and irreversible consequences for the broader society which would nullify the government lofty ideals encapsulated in the Constitution of a healthy environment for everyone.”\(^{515}\)

b. Proposed Filing Station

*Fuel Retailers Association of Southern Africa v. Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Others* raised the question of whether environmental authorities should consider the


\(^{508}\) Id.


\(^{511}\) Id.

\(^{512}\) Id.

\(^{513}\) *Khabisi NO & Another v. Aquarella Investment 83 (Pty) Ltd & Others* 2007 (11) BCLR 1243 (T) (S. Afr.).

\(^{514}\) Id.

\(^{515}\) Id. at 37-38.
social, environmental and economic sustainability of a proposed filling station. The court noted the interrelationship between the protection of the environment and socio-economic development, “The importance of the protection of the environment cannot be gainsaid. Its protection is vital to the enjoyment of the other rights contained in the Bill of Rights; indeed, it is vital to life itself. It must therefore be protected for the benefit of the present and future generations. The present generation holds the earth in trust for the next generation. This trusteeship position carries with it the responsibility to look after the environment. It is the duty of the court to ensure that this responsibility is carried out.”

3. **India**

On November 26, 2007, the Supreme Court of India issued an order calling off a British company’s bauxite mining project in eastern India’s forested Niyamgiri hills. The British mining giant, Vedanta Resources Plc, planned a £470m open-cast mining project in the Niyamgiri hills in Orissa to feed an aluminum refinery it had already built in the area. The hilly areas in southern Orissa are one of the most undeveloped regions of India and contain many endangered animals. The mountains are also home to about 8,000 Dongria Kondhs, one of India’s most distinctive aboriginal peoples, whose livelihoods are based on farming millet, hunting and collecting fruits and spices from the forests. The mining project, if implemented, could displace the Dongria Kondhs tribal community from their ancestral land and their livelihoods, in addition to risking the destruction of the rich biodiversity of the area and disruption of key water sources that feed two rivers. Since the opening of Vedanta’s refinery, tribal members who live nearby have already been affected by water contamination, for which Vedanta was ordered to clean up a waste pond and stop runoff into streams.

To stop the mining project, opponents brought the lawsuit against Vedanta based on Article 21 of the Indian Constitution, which guarantees all citizens the right to life and personal liberty. Ruling in favor of the opponents, the Supreme Court said in its opinion: “adherence to sustainable development is a constitutional requirement. We cannot risk handing over this important national asset to a company.” The Supreme Court refused to let the project go ahead in its present form on the grounds that it could affect sustainable development and asked Vedanta to come back with a new plan. The court said Vedanta would have to give money for forest destruction, wildlife management and tribal development.

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516 Fuel Retailers Association of Southern Africa v. Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Others 2007 (10) BCLR 1059 (CC) (S. Afr.).
517 Id. at 95-96.
519 Id.
520 Id.
521 Id.
522 Id.
523 Id.
handing over 5% of pretax profits annually from its mining projects across India to the Orissa government.\footnote{Id.}

4. Japan

a. Tokyo Air Pollution Lawsuit

In July 2007, an air pollution lawsuit that has been in Tokyo courts for the past 11 years came to an end after the parties accepted a court-proposed settlement plan.\footnote{Id.} The suit was filed in May 1996 by more than five hundred asthma patients who named the national government, the Metropolitan Expressway Public Corp., the Tokyo metropolitan government, as well as seven auto manufacturers including Toyota, Nissan, Mitsubishi and Mazda as defendants.\footnote{Id.} The plaintiffs demanded that air pollution caused by emissions from diesel-powered motor vehicles in Tokyo be halted and sought a compensation of 14.8 billion yen from the defendants.\footnote{Id.} The final settlement, which was proposed by the Tokyo High Court, requires the automakers to pay a combined 1.2 billion yen to the plaintiffs. As a result of the settlement, the national government and the Tokyo Metropolitan Government will each contribute 6 billion yen to a financial assistance program to shoulder the medical costs of asthma patients. The automakers agreed to pay 3.3 billion yen and the Metropolitan Expressway agreed to pay 500 million yen to the program. In addition, the governments are required to take measures and policies to tackle air pollution, including reducing traffic congestion and strengthening air pollution monitoring.\footnote{Id.}

b. Second Eigenji Dam on Echigawa River

On October 11, 2007, the Supreme Court of Japan rejected an appeal by the Ministry of Agriculture, Forestry and Fisheries (“Ministry”) against a ruling by the Osaka High Court, which deemed illegal the Second Eigenji Dam construction project on the Echigawa River in Higashi-Omi, Shiga Prefecture.\footnote{Id.} As part of the New National Plan of Land Improvement (“Plan”) adopted by the Ministry in 1994, the 90-metre-high dam was expected to be built in an upstream portion of the Echigawa River to provide water for agriculture use.\footnote{Id.} The project was opposed by the local residents, who filed the lawsuit against the Ministry claiming that the dam was unnecessary and seriously flawed.\footnote{Id.} In December 2005, the Osaka High Court ruled in favor of the plaintiffs, which found that the government failed to conduct adequate geographical survey of the site where the reservoir was to be located and that the scale of the dam was erroneously

\textit{Tokyo Pollution Victims Accept Brokered deal}, THE JAPAN TIMES, July 1, 2007, \url{http://www.japantimes.co.jp/cgi-bin/nn20070701a4.html}.


\textit{Despite Legal Victory, Villagers Bent on Stopping Dam}, ASIA WATER WIRE, Dec. 2007, \url{http://www.asiawaterwire.net/node/135}.
measured. For the first time in Japan’s environmental law history, the Osaka High Court held that the government does not have discretion to construct a project, of which the costs would exceed its benefits. With the Supreme Court’s dismissal of the final appeal by the Ministry, the government must comply with the opinion of the Osaka High Court and reconsider the project.

5. Philippines

a. Relocation of Pandacan Oil Depot

On March 7, 2007, the Philippines Supreme Court ordered the enforcement of Manila City Ordinance 8027, which forces the relocation of Pandacan Oil Depot located in Metro Manila, for the “protection of the residents of Manila from catastrophic devastation.” The Court upheld the validity of Ordinance 8027 passed in 2001, which re-classified the land where the depot sits from industrial to commercial zoning, which forbids its current use. However, instead of outright removal, Manila City Government and the Department of Energy entered into a memorandum of understanding with the oil companies agreeing to a “scaling down of operations.” The Pandacan Oil Depot is owned by Pilipinas Shell Petroleum Corporation, Caltex (Philippines) Inc. and Petron Corporation. It is located in an area in Manila with a population of 84,000 people. In the past years, hundreds of people have been hospitalized due to instances of oil and chemical leakage from the depot. Local residents exposed to the odors and fumes emanating from the oil depot which contain harmful toxins have suffered respiratory and skin diseases. In its opinion, the Supreme Court said that the ordinance is within the delegated police power of local government “to promote the order, safety, and health, morals, and general welfare of the society,” and the mayor has a duty to enforce the ordinance as long as it is not repealed. With the Supreme Court’s decision, the Manila City Government will now have to enforce Ordinance 8027 which gave the depot six months to close down.

b. Designation of Environmental Courts

The Supreme Court has designated 117 trial courts as “environmental courts” to hear cases involving violations of laws protecting the country’s natural resources and to speed up their

533 The court opinion can be found at http://www.courts.go.jp/search/jhsp0030?action_id=dspDetail&hanreiSrchKbn=05&hanreiNo=33199&hanreiKbn=04.
534 Id.
536 Id.
538 Id.
540 Id.
541 Id.
542 Social Justice Center v. Atienza, supra note 535.
In a resolution in November 2007, the Supreme Court approved the recommendation of the Philippine Judicial Academy to designate specialized courts for improving environmental adjudication in the country. Of the 117 environmental courts, 84 are regional courts and 33 are trial courts. These courts will handle all types of environmental cases, including violations of the Revised Forestry Code, Marine Pollution Act, Toxic Substances and Hazardous Waste Act, Philippine Mining Act, Indigenous People’s Rights Act, Clean Air Act, and Clean Water Act.

In recent years, courts in Philippines have witnessed an increased number of environmental cases as a direct result of rapid urbanization and industrialization. According to the court records, there were 2,353 environmental cases pending before Philippine courts as of December 2006. It was also reported that by October 2007 the number of environmental cases increased to 3,102, including 109 filed more than a decade ago. It is hoped that the designation of specialized courts will help expedite the adjudication of environmental cases and strengthen the enforcement of environmental laws in the Philippines.

6. Argentina

On April 17, 2007, Argentina’s Supreme Court turned down an appeal by U.S.-based Meridian Gold subsidiary Minera El Desquite over the ban on its exploration work in Chubut province. The provincial court suspended prospecting at an open-pit gold mine in 2003 following protests by local residents concerned that the mine would harm the environment and the region’s tourist industry. Meridian argued that it acted in compliance with federal legislation, which was less stringent than the provincial laws. The Supreme Court held that the federal standards set out minimum protection standards, and that the provinces were free to supplement them with more stringent requirements. The decision recognizes the right of provincial governments to impose more stringent environmental regulations than the federal government, which as in this case, may reflect strong civil society sentiments about environmental protection. The decision thus protects the right to public participation.

7. Belize

The Supreme Court of Belize ruled that the national government must recognize the indigenous Mayans’ customary territory and refrain from acts that infringe on their right to the use and enjoyment of this land. The plaintiff Mayans claimed that the government had issued or threatened to issue leases, grants, and concessions to these lands without respecting their traditional land tenure, and that this violated their rights to property, life, liberty, security, and protection of the law as provided by the Belize Constitution. The Mayans rely on their lands

544 Id.
545 Id.
546 Id.
547 Id.
549 Id.
550 Id.
551 Id.
552 Cal v. Attorney General, 171 Supreme Court of Belize 2007, ¶ 136.
553 Id. at ¶¶ 6-7.
to farm, hunt, fish, collect medicinal plants, harvest construction materials and other resources. They maintain that these customs are critical to their physical and cultural survival.

This is the first judgment that references the United Nations Declaration on the Rights of Indigenous Peoples (DRIP), which was adopted by the UN General Assembly on September 13, 2007.

8. Chile

a. Compensation for Toxic Waste Exposure

In June 2007 Chile’s Supreme Court ruled that the state must compensate 356 residents in the mining city of Arica for health problems caused by years of exposure to open deposits of toxic waste. The waste was abandoned by a Swedish company, Promel, which no longer exists. The court is holding the state liable because the Ministry of Health failed to adopt measures to protect the residents from the 20,000 tons of toxic materials it allowed the company to store in the area in 1984. The Ministry violated the Sanitary Code, the General Law on Environmental Areas, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The waste includes lead, arsenic, zinc, cadmium, mercury, and copper. Testing revealed the presence of lead and arsenic in many surrounding homes and blood tests revealed that thousands of residents have high levels of lead in their blood. Residents suffered hair loss, fainting, vomiting, diarrhea, nausea, head pain, rashes, and mental problems. The decision recognizes citizens’ right to a healthy environment free of pollution. The ruling awards US $16,000 to each affected resident, but a community representative argued that the amount is insufficient to cover the costly testing and monitoring of blood lead levels.

b. Stopping Toxic Emissions

In August of 2007 the Chilean Supreme Court ordered la Empresa de Servicios Sanitarios de Los Lagos (ESSAL) to immediately curb the toxic emissions from a waste water treatment plant. Noxious odors from the plant have caused vomiting, stomach pains, and nausea among

554 Id. at ¶ 8.
555 Id.
558 Id.
559 Id.
560 Id.
561 Id.
562 Id.
563 Id.
the nearby residents of Calbuco, including hundreds of school children, since 2004. The court declared that the poor management of the plant violated the right to life (as protected by Article 19, Number 1 of the Constitution) and the right to live in an environment free of pollution (protected by Article 19, Number 8 of the Bill of Rights (Carta Fundamental)).

9. Colombia

On May 24, 2007 a Colombian state court ruled that the city of Bogota must compensate thousands of residents injured by a 1997 landfill collapse. The collapse of the Dona Juana landfill resulted in the release of noxious odors and in water and air pollution in the surrounding areas. Material from the collapse also blocked a river, resulting in flooding. The court found that Bogota did not adequately supervise the landfill operation. The city must pay damages to people who live within 5,000 meters of the landfill and to people who had to enter the area to work or attend school. The decision protects the right to clean air and water.

10. Israel

On January 29, 2007, four companies were fined for violating the Water Law of 1959 and polluting the Na’aman river, located in Israel’s Milouot industrial area. Israel’s Water Law, establishes that “all sources of water in Israel are public property and that every person is entitled to use water, as long as that use does not cause the salination or depletion of the water resource.”

The companies, Milouot Haifa Bay Settlements Development (a wastewater treatment plant), Milomor Oil Industries, Milouban Cotton Linters Pulp and Milouf Poultry Processing, were charged with releasing paint and wastewater with high organic load, solids, oils and brines into the river in 2003 and 2004. The Krayot Magistrate's Court fined the four companies 1,100,000 shekels total, and the wastewater treatment plant has been shut down.

11. United States

a. Greenhouse Gases Regulations

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567 Poder Judicial, supra note 565.
568 Mike Ceaser, Columbian State Court Requires Capital City to Compensate Victims of Landfill Collapse, 30 Int’l Env’t Rep. 464 (2007).
569 Id.
570 Id.
571 Id.
572 Id.
575 Id.
576 Id.
The U.S. Supreme Court ruled that carbon dioxide and other greenhouse gases are air pollutants under Section 302(g) of the Clean Air Act in the decision of Massachusetts, et al. v. EPA, et al. on April 2, 2007. The Court identified carbon dioxide as a pollutant that can be “reasonably be anticipated to endanger public health or welfare” and ruled that the EPA must regulate greenhouse gases from motor vehicles.\(^{577}\)

Following that decision, President Bush issued an Executive Order requiring the Department of Transportation, Department of Energy, and the EPA to work together to protect the environment from greenhouse gas emissions from mobile engine sources.\(^{578}\)

b. **Dole Food Company Inc.**

Twelve Nicaraguan men sued Dole Food Company for exposure in the 1970s to dibromochloropropane (DBCP), a pesticide that was banned in most countries in the late 1970s.\(^{579}\) On November 5, 2007, a Los Angeles County Superior Court determined that of the twelve plaintiffs, six were sterile due to contact with DBCP in soil, and awarded $3.3 million in compensatory damages.\(^{580}\) The court awarded an additional $2.5 million in punitive damages to five of the plaintiffs on November 16, 2007,\(^{581}\) which was reduced to $1.58 million by the Los Angeles Superior Court on March 11, 2008.\(^{582}\) This order was the first decision regarding DBCP exposure, but there are thousands of pending claims against companies in U.S. courts for toxic pesticide exposure suffered in other countries.\(^{583}\)

c. **Forest Management**

On March 30, 2007, a federal court overturned rules issued by the George W. Bush Administration in 2005 governing the management of the country's 191-million-acre National Forest system. The 2005 rules eliminated protections for wildlife and clean water and removed provisions requiring environmental review and public participation.\(^{584}\) The Court held that “[t]he irreparable harm in this case stems from the agency’s failure to follow the statutes’ procedural mandates, which required it to undertake an evaluation of the environmental impacts of the 2005 Rule, and also to open the rule up to public notice and comment.”\(^{585}\) This decision safeguards the right to participation in federal environmental decision-making.

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\(^{579}\) See Dole Must Pay Workers Additional $2.5 Million, 30 Int'l Env't Rep. 955 (2007).

\(^{580}\) Id.

\(^{581}\) Id.

\(^{582}\) Id., see also Dole Must Pay Workers Additional $2.5 Million, supra note 579.


12. **Canada**

On September 25, 2007, a Canadian federal court ruled in favor of MiningWatch Canada in *MiningWatch Canada v. Minister of Fisheries and Oceans, et al.*[^586] The order overturned all federal permits for this proposed copper and gold mine in British Columbia, on the basis that the Canadian public was not consulted during environmental assessment and that the Department of Fisheries and Oceans and Natural Resources Canada failed to perform a comprehensive study prior to giving permits to the Red Chris Development Company Ltd. According to the Court, the right to participate in environmental assessments of large mines is protected in the Canadian Environmental Assessment Act Amendment of 2003.[^585]

**B. GOVERNMENTS**

1. **Uganda**

On December 3, 2007, Uganda’s government announced plans to increase Uganda’s forest cover from 20 percent to 30 percent in the next five years. In addition to the tree-planting campaign, the government’s environmental conservation program will include improved weather reporting information systems, the promotion of sustainable fishing and fish farming, wetland protection, and a nationwide review of laws and policies on environmental management. The tree planting project will be integrated in the national poverty eradication action plan.[^588]

2. **Liberia**

The Liberia Environmental Protection Agency (EPA) began an educational campaign in May 2007 to discourage the dumping of garbage in wetlands.[^589] The Executive Director of the EPA, Mr. Ben Turtur Donnie, stated that dumping of wastes in wetlands would damage the ecosystem and threaten the health of Liberians.[^590] Thirty-two inspectors were trained to monitor wetlands in Monrovia, with illegal dumpers subject to a fine of 5,000 Liberian dollars or jail.[^591] The Ministries of Justice, Public Works and the EPA signed a memorandum of understanding to cooperate in avoiding damage to wetlands.[^592]

3. **China**

   a. **Xiamen Paraxylene Project**

Surrendering to the actions of scientists and public protests, the Chinese government decided to relocate a controversial billion-dollar chemical plant away from the scenic coastal city

[^587]: Id.
[^590]: Id.
[^591]: Id.
[^592]: Id.
of Xiamen in southeast China. The project is set to produce 800,000 tons of paraxylene ("PX") annually, a hazardous petrochemical that can cause cancer and fetus abnormalities. Construction of the plant started in November 2006 in Xiamen’s Haicang District, 16 km from the city center. More than 100,000 people live within a 5-km range of the plant, including two boarding schools. With concern of poisonous emissions and explosions posed by the chemical plant, residents of Xiamen led by Zhao Yufen, a chemical professor and member of the Chinese Academy of Science, raised strong opposition to the project, claiming that there was not large enough buffer zone between the chemical plant and the residential areas. In March 2007, during the annual session of the Chinese People's Political Consultative Conference (CPPCC), Zhao introduced a proposal recommending relocation of the Xiamen PX project, which was signed by 105 CPPCC members. On May 30, 2007, Xiamen Government announced its decision to put the chemical project on hold, saying that the city government will commission a new research organization to conduct a more comprehensive environment impact study. In the meantime, thousands of Xiamen residents took to the streets in a protest march to demonstrate against the plant.

In November 2007, the Chinese Research Academy of Environmental Sciences completed the environmental assessment report, which criticized the local government for setting two conflicting goals for Haicang by designing the area for both industrial and residential use. The government of Xiamen subsequently published the report on its website, inviting the public to submit their opinions. In December, the government held a two-day public hearing to debate the project. The 100 people who spoke at the hearing were selected by lottery to represent Xiamen residents. They questioned the government’s decision to develop an industrial area in Xiamen, which has long been known for its beautiful scenery and for being one of the most livable cities in China. All participants except 15 voted against the PX project.

The controversy over the PX project finally settled as the government agreed to move the chemical plant to Gulei Peninsula, far from Xiamen. It is hoped that the Xiamen PX Project

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594 Id.
595 Id.
596 Id.
597 Id.
600 Id.
602 Id.
603 Id.
604 Id.
605 Id.
will set an example for public participation in the environmental impact assessment as well as government decision-making process in China.\textsuperscript{606}

\textbf{b. Interim Measure on Disclosure of Environmental Information}

On April 11, 2007, the State Environmental Protection Administration of China (\textquotedblleft SEPA	extquotedblright) issued an \textit{Interim Measure on Disclosure of Environmental Information} (the \textquotedblleft Measure	extquotedblright) to take effect on May 1, 2008.\textsuperscript{607} The Measure imposes disclosure requirements on both the government and private enterprises regarding environmental information. Under the Measure, SEPA and local environmental protection agencies are responsible for collecting environmental information and making it publicly accessible, including applicable laws and regulations, environmental protection plans and programs, environmental quality statistics, emergency response plans, pollutant discharge licensing and monitoring status, quantities of solid wastes in major cities, and approval of environmental impact assessment of construction projects.\textsuperscript{608} The government is also required to publish the names of enterprises whose discharge of pollutants exceeds the applicable standards and enterprises causing serious polluting accidents.\textsuperscript{609} The Measure encourages enterprises to voluntarily disclose information regarding their environment protection goals, plans and measures, resource consumption, types and quantities of pollutants, construction and operation of environmental protection facilities, and waste treatment and recycling etc.\textsuperscript{610} However, for enterprises failing to meet applicable environmental standards, they must make public information regarding the types, quantities, and discharge manner of the pollutants, the construction and operation of their environmental protection facilities, and their pollution emergency response plans.\textsuperscript{611} Such enterprises may not withhold environmental information at the excuse of protecting business secrets.\textsuperscript{612}

\textbf{c. Anti-Pollution Measures}

According to a World Bank report, entitled \textit{Cost of Pollution in China – Economic Estimates of Physical Damages}, the combined health and non-health cost of air and water pollution in China comes to around US $100 billion a year.\textsuperscript{613} Pollution has caused severe health impacts and exacerbated China’s water scarcity problems.\textsuperscript{614}

In 2007, China has strengthened its efforts to fight against its serious pollution problems resulting from industrialization, upon recognition by President Hu Jintao that 

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\textsuperscript{608} Id., Article 11.  

\textsuperscript{609} Id.  

\textsuperscript{610} Id.  

\textsuperscript{611} Id., Article 20.  

\textsuperscript{612} Id.  


\textsuperscript{614} Id.  

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economic growth is realized at an excessively high cost of resources and the environment.”

In the first ten months of the year, the State Environmental Protection Administration (“SEPA”), the central government agency that handles the environmental impact assessments filed by companies as part of the approval process for major investments, rejected 187 of the projects submitted for its review, compared to only 2 projects rejected by SEPA during the 10-year period from 1995 to 2005. In addition, SEPA has increased the penalties imposed on polluters by resorting to market-based methods and financial tools. For instance, because of collaboration between the government’s environmental-enforcement arm and other agencies overseeing economic activities, a new “green credit” policy was announced, which restricts granting loans to polluting enterprises. Companies who plan to raise capital from the securities market are also required to pass an environmental audit. Furthermore, manufacturers failing to meet applicable environmental standards will be banned from exporting for 1-3 years.

4. Pakistan

Ten years after the enactment of the Pakistan Environmental Protection Act 1997 (“PEPA”), the environmental impact assessment (“EIA”) and public participation requirements of the law are finally being enforced. Under the PEPA, no project proponent may commence construction or operation unless an EIA is filed with and approved by the government; and the review of an EIA shall be carried out with public participation. Several high-profile hearings to review the EIAs of the proposed public development projects were held. For example, in March 2007, the Environmental Protection Department held an EIA hearing on the Lahore Canal Remodeling Project proposed by the Traffic Engineering and Planning Agency. Hundreds of citizens turned out to participate in the hearing and raised objections to the project. In April, a public hearing on the EIA for the construction of a 25-km long Karachi Elevated Expressway was conducted by the Sindh Environmental Protection Agency. Citizen groups were active in raising environmental awareness about the proposed overhead expressway. Furthermore, in Islamabad, pressures from the civil society forced the Federal Environmental Protection Agency to hold – albeit after the project had commenced – an EIA hearing on the $350 million Centaurus Development Project. Civil society activism in Pakistan has raised the importance of the EIA process. However, in the years to come, environmental groups still face the tasks of improving

616 Id.
622 Id.
623 Id.
624 Id.
625 Minutes of the hearing can be found at http://www.environment.gov.pk/Announces/PHP-Centurus.doc.
the quality of EIA reports and making sure that due account will be given to the public opinions expressed in the hearings.626

5. Thailand

a. 2007 Constitution

On August 19, 2007, a new Constitution of the Kingdom of Thailand was adopted. The 2007 Constitution upholds the rights of communities to “conserve or restore their customs, local knowledge, good arts and culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources, the environment and the biological diversity in a balanced and sustainable fashion.”627 Section 67 of the Constitution requires an assessment of the impacts of any project that may seriously affect the environment, natural resources and health.628 Before such project can be implemented, its impacts on the environment and public health must be evaluated, with a public hearing being held for affected people and opinions being sought from experts in private organizations and high educational institutions.629 The Constitution explicitly confirms the right of people to sue the government if the government fails to perform its duties with respect to environmental impact assessments.630

b. National Health Act

The 2007 National Health Act of Thailand (the “Act”) was enacted and took effect in March 2007.631 Section 5 of the Act upholds the right of people to live in a healthy environment.632 Section 11 provides for the right of people to request and to participate in an assessment of the health impacts of a public policy.633 Any individual or a group of people have the right “to acquire information, explanation and underlying reasons from a state agency” and “to express [their] opinions” before any project that may affect public health is approved.634 The new National Health Act represents a change from the old mindset dominating Thailand’s healthcare policy, which failed to recognize the relationship between health problems and other issues such as environmental degradation, industrialization and urbanization.635 The comprehensive approach embodied in the new legislation will take into account all factors that

626 For example, the PEPA does not, at the moment, require EIA reports to cover the social or intangible effects of development. Nor is there minimum criterion set out for different project proponents to follow in conducting the EIA.
628 Id., § 67(2).
629 Id.
630 Id., § 67(3).
632 Id., § 5.
633 Id., § 11.
634 Id.
contribute to the health problems and take preventative measures that will promote cleaner industry and better urban planning to tackle the root problem.636

6. Argentina

In November 2007 Argentina passed a forestry law to slow the rapid loss of native forests.637 In the past century, Argentina has lost over two thirds of its native forests.638 The new law requires the definition of conservation zones and regulation of activities that result in deforestation.639 In addition to attempting to control forest loss, the law aims to protect forested lands relied upon by rural and indigenous communities.640 The law includes a provision requiring projects to recognize and respect the rights of indigenous communities that have traditionally occupied forested lands.641 Environmental impact evaluations are mandatory for clearing projects, and must address the project’s potential impact on resettlement of communities or significant alterations to ways of life or customs.642 These provisions implicitly recognize rural and indigenous communities’ right to cultural and economic survival.

7. Chile

At the end of 2007 Chile passed the Native Forest Recovery and Forestry Development Act. The law, which took fifteen years to work its way through Congress, aims to conserve native forests643 through forest management plans, norms for environmental protection, conservation funds, restoration, sustainable management incentives, and resources for further research.644 It is hoped that the law will address rural communities’ right to rely on a healthy environment for subsistence and economic survival. The law will provide $8 million annually in incentives for small landowners and big businesses to better manage native forests.645 Small landowners’ ability to manage their own forests may help reverse the deterioration of living conditions for people in rural areas and prevent mass migration to urban areas.646 Chile’s indigenous Mapuche population has been particularly impacted by seizure of lands for forestry.647 The law is scheduled to go into effect in late 2008.648

636 Id.
637 Avina, Argentina Ya Tiene Ley de Bosques (Nov. 2007), http://www.avina.net/web/siteavina.nsf/NoticiasCat/B61295842E76CFA5032573A3005F86FA?OpenDocument&idioma=spa&sistema=1
639 Id.
640 Avina, supra note 637.
642 Id. at art. 22.
645 Id.
646 Id.
647 Id.
8. **Colombia**

Colombia created a new national park to protect one of the largest areas of biodiversity in the country and the territory of indigenous communities.\(^{649}\) The park covers 375 square miles, stretching from the lowlands of the Amazon Basin and to the slopes of the Andean Mountains.\(^{650}\) Several indigenous communities are present in the area, and the creation of the park recognizes their right to continue living in voluntary isolation from modern societies.\(^{651}\)

9. **Ecuador**

a. **The Intangible Zone**

Ecuador declared a two million acre zone in the Amazon off-limits to oil development and logging in order to protect indigenous groups who voluntarily isolate themselves from the modern world.\(^{652}\) The Presidential Decree, which created the “Intangible Zone”, is intended to protect the territory of the Tagaeri and the Taromenane peoples who have been known to have violent conflicts with invading oil company workers, loggers, and colonists.\(^{653}\) The groups maintain no contact with the outside world and are completely dependent on the rainforest for survival.\(^{654}\)

b. **Public Participation in Environmental Decisions**

A new law in Ecuador requires the government to consult citizens on environmental matters.\(^{655}\) The country has weak environmental laws and few opportunities for citizens to participate in decisions about the country’s natural resources as the result of political instability.\(^{656}\) The law protects the rights to public participation, access to environmental information, and justice.

10. **Guyana**

In 2007 Guyana’s National Assembly passed the Pesticides and Toxic Chemicals Control (Amendment) Bill,\(^{657}\) which governs the use of certain hazardous chemicals.\(^{658}\) The new law satisfies the basic requirements for Guyana to accede to the Rotterdam Convention, which

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\(^{650}\) *Id.*

\(^{651}\) *Id.*


\(^{653}\) *Id.*

\(^{654}\) *Id.*


\(^{656}\) *Id.*


governs hazardous chemicals and pesticides in international trade. The government recognized the need to join the Convention in order to “save lives and protect the environment from the adverse effects of toxic pesticides and other chemicals.” This law connects the regulation of an environmental pollutant with the goal of protecting the right to a healthy and clean environment.

11. Honduras

On September 13, 2007 Honduras passed a forestry management law that contains measures for reforestation, forest and watershed protection, the establishment of tree farms, multiple use zones, and responsible forest management. The new law addresses the right to public participation and includes provisions for community participation in forestry consultative councils and demarcation of areas for community management. As of late 2007, the law had yet to be codified in the country’s official gazette.

12. Greece

The Greek Environmental Ministry fined 20 industrial plants operating in central Greece for dumping toxic waste into the Asopos River through unapproved drainage systems. On November 8, 2007 the plants were collectively fined US $2 million. Drinking water from the Asopos River was tested in August 2007 and showed high levels of depleted chromium, a known carcinogen from plants’ aluminum-related activity. The Environment Minister stated that if the companies failed to pay fines or continued to illegally discharge waste, they would be prosecuted in a criminal court and the plants would be shut down.

CASE STUDIES

I. Transnational Corporations: La Oroya Lead Smelter

In August, 2003, the United Nations Sub-Commission on the Promotion and Protection of Rights approved a resolution addressing Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. The norms noted that:


660 Id.


663 Id.


665 Id.

666 Id.

Transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth as well as the capacity to cause harmful impacts on the human rights and lives of individuals through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities.⁶⁶⁸

This important recognition of the power of transnational corporations (TNCs) amidst the phenomenon of globalization has arisen concurrently with an increase in awareness of the negative impacts of TNCs. A number of factors contribute to the proliferation of harmful practices by TNCs. First, human rights obligations have traditionally been imposed upon state actors, and only indirectly on private actors, including TNCs, whose actions cause the harm. Traditional international human rights norms have emphasized the responsibility of the state to protect human rights by preventing or punishing violations by private actors within the state’s jurisdiction.⁶⁶⁹ Because TNCs often fall within the jurisdiction of more than one state—including the state of incorporation and the state where they conduct their activities, among others—they have posed challenges for traditional human rights institutions. Second, states often have unclear or conflicting incentives to police the actions of TNCs. The country of incorporation, whose private actors are successfully operating overseas, receive an economic boost from the success of those actors. Meanwhile, an imbalance of power between the TNC and the state in which the TNC is acting may increase the reluctance of those states, especially in developing countries, to enforce standards. Third, some human rights violations caused by the activities of TNCs, such as those brought about by environmental degradation, look less like traditional violations of human rights.⁶⁷⁰ In cases involving direct violence, violations of the right to life are more easily attributable, but environmental rights violations are often more complex. For example, abnormally high blood lead levels in children is a clear indication of a violation of their rights to health and to life. But if environmental degradation is responsible for those violations, it must be traced back to emissions of pollutants from a particular operation. This complexity can introduce additional uncertainty into states’ enforcement of human rights standards against TNCs.

All of these factors contribute to a reduced emphasis on the protection of the human rights of citizens threatened by the environmental impacts of TNCs, and neglected or delayed enforcement of environmental norms that protect human health and life. The action of one TNC, the Doe Run Corporation, in the Peruvian community of La Oroya, demonstrates many of these difficulties in holding the perpetrators responsible for human rights violations.

The Doe Run Corporation, a U.S.-based company, has operated an eighty year old copper and lead smelter in the Andean community of La Oroya since 1997. The smelter’s emissions, which contain lead, arsenic, cadmium, and sulfur dioxide (among other contaminants), threaten the right to life, livelihood, health, and a healthy environment of the 30,000 members of this community.⁶⁶⁸

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⁶⁶⁸ Id.
⁶⁷⁰ Id.
⁶⁷¹ Id.
Peruvian community. Sulfur dioxide emissions are causing widespread respiratory problems, while the inhalation, ingestion and absorption of lead and heavy metals are impacting the kidneys, gastrointestinal systems, reproductive systems, and nervous systems of community members, particularly children. A March 2005 study by researchers from St. Louis University with assistance from the U.S. Centers for Disease Control showed that 99 percent of the children tested in La Oroya had blood lead levels vastly exceeding the limits established as safe by the U.S. EPA and the World Health Organization, with one child testing at nine times the acceptable standard. Forty four percent of children under five in the neighborhood were found to have mental or motor deficiencies, and nearly 10 percent of children under seven had enough lead in their blood to warrant medical treatment.

The controversy surrounding the smelter is also the cause of social turmoil and community unrest and health workers have been attacked and threatened during attempts to document the health issues and address them. Disputes between local community members and company workers about what actions Doe Run is taking to improve the environment and public health of La Oroya have resulted in demonstrations by company employees and community members in support of the smelter, as well as assertions by members of local churches and grassroots organizations that the company has tried to coerce community members with gifts to encourage support of the smelter.

The community has made numerous requests for legal relief from the human rights violations caused by Doe Run’s activities. Although various domestic and international tribunals have recognized the community’s human rights and environmental claims, Doe Run continues to operate the smelter. In April, 2005, a Lima civil court ordered the Peruvian State to take measures to protect the population of La Oroya, ruling that government agencies have failed to carry out the government’s duty to protect the population of La Oroya, but the court order was reversed by Lima’s Superior Court of Justice on appeal. On June 27, 2006, Peru’s highest court recognized the environmental and human health impacts of the smelter when it ordered state health officials to take emergency measures to protect the health of the population in La Oroya, including implementing a “public health emergency plan.” At the international level, in November of 2005, a coalition of environmental groups submitted a request for precautionary

676 On August 15, 2005, a St. Louis University team doing an environmental health study was attacked by groups of citizens opposed to the study. In September, 2006, officers from the Ministry of Health were threatened after making plans to hold a meeting to discuss the implementation of measures to improve public participation.
678 Id.
679 Id.
measures to the Inter-American Commission on Human Rights on behalf of a group of La Oroya citizens. In September, 2007, the Commission granted the precautionary measures, ordering Peru to conduct comprehensive medical examinations to determine the extent of the injury to local people and to provide medical treatment to those who need it.

The legal victories achieved at both the domestic and international levels highlight the valuable role that courts and international legal institutions must play in drawing the link between human rights and environmental degradation. However, many of the limitations discussed earlier have hindered the enforcement of standards to protect the human rights of the community of La Oroya. The remedies have all, thus far, been imposed on the Peruvian state, requiring the government, but not Doe Run directly, to compose a remedy. Also, demonstrating the human rights violations has been complex and expensive. Outside researchers have had to verify the abnormally high blood lead levels in the community, and it is only after multiple studies have confirmed that the threats to life and health are caused by the smelter’s emissions that the state has begun to acknowledge and address the human rights violations.

II. Transnational Waste Transfer: Cote d’Ivoire Toxic Sludge Dumping

Hazardous sludge, ships laden with toxic substances, and electrical and electronic waste (“e-waste”) are being transported to developing countries in huge numbers, generally to be scrapped or “recycled” under conditions harmful to workers and the environment. Many different materials present in exported e-wastes are toxic and known to cause health ailments such as respiratory problems, birth defects, loss of functional agriculture land, unhealthy living conditions, and contaminated drinking water. Exported hazardous materials like e-waste contribute to and form large toxic waste dumps which can damage soil, air and water resources.

The high costs of disposing of toxic wastes in many developed countries, coupled with the demand in many less developed countries for the scrapped and recycled materials, compels countries heavy with such waste to look to poorer countries that will accept the waste for processing under less expensive and often less stringent standards. When these wastes reach the intended country, however, the receiving country’s government is often ill-equipped to enforce standards for safe disposal of the toxic or hazardous materials, threatening the health, lives and environment of those exposed to the exported substances.

The scale of the problem of hazardous waste export is colossal. The United Nations Environment Programme (UNEP) reported that between twenty and fifty million tons of e-waste

681 Id.
682 AIDA, supra note 418.
685 Id.
686 Id.
alone is generated yearly.\textsuperscript{687} E-waste is estimated to make up five percent of all the municipal solid waste worldwide.\textsuperscript{688}

To address this issue, the international community adopted the Basel Convention in 1989, aimed at minimizing the transport of hazardous waste, controlling transboundary movement of the waste, and developing criteria for “environmentally sound management.”\textsuperscript{689} Many African states felt that the Basel Convention did not adequately address the needs of African countries, and therefore, the Bamako Convention was adopted with the aims of banning the importation of hazardous waste into Africa and imposing stricter standards on the transboundary movement of waste on that continent.\textsuperscript{690}

The adoption of both the Basel and the Bamako Conventions helped bring international attention to the problem of illegal dumping, and as a result reports of illegal dumping declined worldwide. A 2006 tragedy in the Cote d’Ivoire, however, demonstrated how, despite the international ban on toxic waste dumping, companies find ways to continue exporting hazardous waste, perpetuating further violations of human rights around the globe.

In August, 2006, at least fifteen people died and tens of thousands sought medical help following the illegal dumping of 500 tons of toxic sludge at various locations around the city of Abidjan.\textsuperscript{691} The waste was shipped by Trafigura, a Netherlands-based global commodities trading company. Initially workers in Amsterdam were assigned to unload sludge from the ship in the Netherlands; however, the ship was emitting such a stench that workers alerted Trafigura. Trafigura declined to pay for the processing of the waste and contracted the task to an Ivoirien company. The company was unequipped to deal with the toxic waste and instead dumped the waste in at least eighteen sites around Abidjan.\textsuperscript{692} More than a year after the dumping, about a quarter of the contaminated area has yet to be cleaned up,\textsuperscript{693} and the waste continues to endanger the rights to health and life of those forced to live next to and among it.

An Ivoirien government investigation found that the Ivoiren company responsible for dealing with the toxic waste only came into being after the ship left Holland, and “had all the

\begin{itemize}
  \item Id.
  \item Bryant, Dec. 15, 2007.
\end{itemize}
appearances of a shell company created for the circumstances.” Tredi, a French company, was charged with shipping the waste back to France for treatment and disposal, and claims that much of the area has been cleaned up. Yet 3,500 tons of poisonous soil remain untreated around Abidjan, as Tredi waits to receive new orders from the Ivorian government to clean up the rest. Ivorian authorities, meanwhile, want Trafigura to pay more cleanup money, but the company insists it has fulfilled its agreement with the country.

In response to the disaster, on October 26, 2007, the European Parliament issued a resolution calling for stronger laws to prevent disasters relating to the export of hazardous waste and calling for investigations of the parties responsible for illegally dumping waste in developing countries. The Resolution noted the difficulties of enforcing environmental infractions when multiple nations are involved in a single, polluting, business venture, and stated that “such sharing of responsibilities creates a systematic and unacceptable problem with regard to the enforcement of Community legislation.

While the European Resolution is an important acknowledgement of the systemic problem of hazardous waste export and dumping, lack of enforcement capabilities by the European system in this case has compelled the African victims to look elsewhere for reparations. Continuing health problems resulting from the disaster have motivated more than 200 Ivoiriens to join a lawsuit against Trafigura in Britain for effects from the aftermath of the dumping. The lawsuit will seek acknowledgement and reparations by the exporters for the effects of the dump, but some have noted the lack of enforcement mechanisms on the importing or accepting country’s side. Without viable and effective international mechanisms for protecting the health and environment, the Ivoirien disaster has become a gross example of communities and individuals suffering the effects of the toxics trade.

III. Transboundary Pollution: Teck Cominco Lead-Zinc Smelter

Under the well-established principles of customary international environmental law, countries have an obligation not to cause transboundary environmental harm. Principle 21 of the 1972 Stockholm Declaration and Principle 2 of the 1992 Rio Declaration both clearly state that countries’ sovereign right to exploit their natural resources is conditioned on an equal responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states. It is generally accepted that a source state should be

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694 Polgreen, Nov. 24, 2006.
697 Id.
698 Id.
700 Id.
responsible for transboundary pollution generated within its jurisdiction. However, because under the traditional view of public international law, private citizens do not have standing to press a claim or trigger a compliance or remediation process against a state, the only recourse for individual pollution victims to enforce the state responsibility is to persuade their government to take up their cause. In practice, states have typically resolved disputes arising from transboundary pollution through diplomatic channels or by referring the dispute to an arbitral or judicial process upon consent by the relevant countries. If a state decides not to pursue any actions against another state or if the states cannot agree to submit to a tribunal, individual pollution victims may be left without relief. Historically, international adjudications enforcing state responsibility for transboundary pollution have been very rare, suggesting that transboundary pollution has not been subject to effective regulation at the international level.  

Transboundary pollution has also been dealt with through domestic remedies. In theory, pollution victims may initiate legal proceedings in the country where the pollution originated or in the country where the damage occurred. Domestic regulatory bodies and courts have clear authority over assets and persons, which is essential for successful enforcement. In addition to ordering monetary damages, they can issue injunctions, which may even prevent environmental harm before it occurs. However, the reality is that transboundary pollution is very difficult for any single country to regulate effectively. Whereas the source state may have little interest in protecting citizens of another country from environmental hazards, the affected state may not have jurisdiction over the polluter in the source state, or even with jurisdiction, may not be able to enforce its order against the polluter. The following Teck Cominco case has developed against this background, which involved a citizen suit in the U.S. courts to resolve cross-border water pollution. Although it represents a victory for the affected communities, Teck Cominco demonstrates the inherent difficulties in regulating transboundary pollution and demonstrates the need for an effective international legal regime based on collective actions to bring justice and relief to pollution victims.

Teck Cominco Metals Ltd, a Canadian corporation, owns and operates one of the world’s largest integrated lead-zinc smelting and refining complex (the “Trail Smelter”) in British Columbia, Canada, located near the international border with the U.S. State of Washington. From 1906 to 1995, the Trail Smelter generated and dumped up to 145,000 tons/year of wastes, known as “slag,” into the Columbia River. The slag contained the heavy metals arsenic, cadmium, copper, mercury, lead, zinc and other hazardous materials.

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702 See DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY at 424-26 (2nd ed. 2002).
703 Id. at 493. However, an enforcement role for individuals is provided by several treaties establishing international rules on civil liability. In addition, under some regional human rights treaties, individual victims may bring complaints directly to an international body.
704 Id. at 491-92.
706 Hunter, supra note 702, at 487.
707 Id.
708 Id.
710 In 1999, the Colville Tribe, one of the Native American tribes bordering the Columbia River in Washington State, petitioned the U.S. Environmental Protection Agency (“EPA”) to conduct an assessment of hazardous substance contamination in and along the Columbia River. The EPA began the site assessment in October 1999 and
The Columbia River carried the slag downstream, across the U.S.-Canada border, into Washington State where the Columbia River flows into Lake Roosevelt. Lake Roosevelt is a national recreation area, which attracts more than a million visitors each year who come to boat, swim and fish in the lake. The Upper Columbia River basin is also the home of several Native American Tribes, whose members have relied on as many as 40 species of fish in Lake Roosevelt for food and the economic opportunities brought by the tourism business. The slag containing various metals eventually built up along the shorelines of the lake and contaminated the ground and surface water. Technical evidence showed that the widespread contamination present in lake and river sediments throughout the Upper Columbia River have caused both chemical and physical damages to the environment, including increased level of heavy metals in fish, impairment to tissues of aquatic organisms, and smothering of habitats and food sources. Human health was at risk due to exposure to slag on the beaches and contaminated sediments through skin contact, ingestion of sediments, or inhalation of airborne sediment particles. There was also a concern of human exposure from drinking lake or river water or consuming fish, aquatic resources, or plants in the area. The investigation by the U.S. Environmental Protection Agency (the “EPA”) confirmed that the Trail Smelter was the predominant source of contamination at the Upper Columbia River and Lake Roosevelt. The EPA concluded that the contaminated area qualified for the Superfund “National Priorities List,” which is a U.S. program to finance clean-up of the nation’s uncontrolled hazardous waste sites.

In 2003, the EPA issued a unilateral administrative order under the U.S. Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), directing Teck Cominco, through its U.S. subsidiary, to conduct a remedial investigation and feasibility study of the pollution. While Teck Cominco was willing to perform a limited-scope study on human health, it refused to submit to the U.S. legal process and did not comply with the EPA’s order. In July 2004, members of one of the affected Native American Tribes brought a citizen suite against Teck Cominco at the U.S. District Court seeking court enforcement of EPA’s order and civil penalties against Teck Cominco. It was undisputed in this case that the predominant source of the contaminants was Teck Cominco’s Trail Smelter. The main issue, however, was how the transboundary pollution should be handled, as the Canadian company had a provincial permit to dump wastes into the river, but the wastes ended up resting in the U.S. and the victims wanted a clean-up under the U.S. law. Teck Cominco moved to dismiss the case on the grounds that CERCLA, a U.S. environmental law, cannot be applied to a foreign company who

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711 Id.
712 Id. §7.1.
713 Id.
714 Id. §8.1.
715 Id.
716 Id.
718 Id.
720 Id.
discharges wastes in another country pursuant to a foreign law.\footnote{\textit{Id.}} The District Court denied Teck Cominco’s motion to dismiss.\footnote{\textit{Id.}} After the case was appealed to the Ninth Circuit Court, the Circuit Court upheld the District Court’s decision and rejected Teck Cominco’s arguments that it was not liable under CERCLA for slag discharged from its Canadian facility which entered into the U.S. territory.\footnote{\textit{Id.}} In so holding, the Circuit Court reasoned that applying CERCLA is a domestic application of the law, because CERCLA is only concerned with clean-up of hazardous sites in the United States, but does not interfere with Canada’s authority to regulate disposal activities within its territory.\footnote{\textit{Id.}} In January 2008, the U.S. Supreme Court declined to review the holding of the Ninth Circuit Court, putting an end to the dispute.\footnote{\textit{Id.}}

The \textit{Teck Cominco} case illustrates that the domestic-based legal strategies may provide a possible venue to address transboundary pollution. It remains to be seen, however, how the EPA will eventually compel Teck Cominco to comply with its order. What is even less clear, given the complex and uncertain interaction between domestic laws of different countries, is whether the victory in \textit{Teck Cominco} may be replicated in a different case. Contrary to the legal promise of state responsibility, pollution victims often find that their legitimate interests are suffocated under the claim of sovereign authority of another state. Therefore, there is still a long way to go for the international community to put in place some effective enforcement mechanisms that allow private citizens suffering from transboundary environmental harms to get a relief.

\section*{IV. International Financing Activities: Merowe Dam Project}

International donors, including multilateral development banks and individual donor countries acting through their export credit agencies (\textit{“ECAs”}),\footnote{ECAs are public financial agencies that provide government-backed loans, guarantees, credits and insurance to corporations from their home country for business and investment activities overseas, particularly in developing countries. An ECA, which is usually an official or quasi-official branch of their government, serves a key objective of promoting exports and trade of their respective country. \textit{See} Export Credit Agencies Explained, \texttt{http://www.eca-watch.org/eca/ecas_explained.html}.} can have significant impacts on international human rights and the environment. Through project financing and official assistance programs, international donors have promoted investment and economic growth in developing countries, but have also contributed to a large number of projects with serious adverse environmental and social consequences. These projects, mostly large infrastructure projects, are often associated with depletion of natural resources, destruction of the ecosystem, forced relocation, suppression of public participation, as well as excessive debt burdens that harm the long-term economic well-being of developing countries.

Since the 1980s, under the mounting pressure from civil society, the World Bank has engaged in a series of reforms to integrate environmental and social considerations into its operations.\footnote{DAVID HUNTER ET AL., \textit{INTERNATIONAL ENVIRONMENTAL LAW AND POLICY} at 1476 (2\textsuperscript{nd} ed. 2002).} The Bank determined not to finance projects that “cause severe or irreversible environmental deterioration,” “unduly compromise the public’s health and safety,” or “displace people or seriously disadvantage certain vulnerable groups without undertaking mitigatory
measures.” Through a series of Operational Directives and Banks Procedures, the World Bank requires that, among other things, all World Bank-financed projects undertake an environmental assessment in a standardized procedure, take into account the views of affected groups and local NGOs in the preparation of the environmental assessment, and avoid involuntary resettlement where possible. In addition, specific covenants relating to environmental protection have been added to the World Bank’s loan agreements.

Although the World Bank’s reforms have been followed by a number of regional development banks and the ECAs from the OECD countries, others have adhered to little environmental or social standards for the projects they finance. Moreover, it is still an open question whether the standards are strictly enforced in the practice. As the ECAs’ financing activities are driven by their national interests, they compete intensively to help corporations from their home countries expand into emerging markets. This competition creates a race to the bottom, encouraging the ECAs to support projects with the least environmental and social safeguards.

Many of the harmful impacts of international financing activities are reflected in China’s practices. China is a major financer of infrastructure projects in Africa. Over the past decade, China’s investment and aid activities in Africa have been growing rapidly. China’s export credit agency, the China Exim Bank, has played an important role in promoting the rapid expansion of Chinese trade and investment in Africa. The China Exim Bank, founded in 1994, is currently the world’s third largest export credit agency. By the end of 2005, China Exim’s

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728 id. at 1481-82, see the discussion of the World Bank’s Operational Manual Statement 2.36 (1984) on Environmental Aspects of Bank Work (“OMS 2.36”). Although OMS 2.36 has been replaced by other documents, it continues to provide guidance to and influence subsequent World Bank Operational Directives.


731 Hunter, supra note 727, at 1483-84.


733 Most ECAs only recently adopted environmental policies that benchmark against those of the World Bank and regional development banks. These policies resulted from a set of recommendations agreed upon by members of the Organization for Economic Cooperation and Development in France. See Recommendation on Common Approaches on Environment and Officially Supported Export Credits, formally adopted by the OECD Council on December 18, 2003, available at http://www.oecd.org/dataoecd/26/33/21684464.pdf.

734 Export Credit Agencies Explained, supra note 726.


loan approvals for projects in Africa reached $6.5 billion. By September 2006, China Exim had 259 projects in African countries, most of which were infrastructure projects, such as railways in Angola and Sudan; hydropower dams in Sudan, Congo, Ethiopia, Mozambique and Zambia; and copper mines in Congo and Zambia. China Exim’s loans are often part of larger political and economic cooperative arrangements between China and African countries, and are popular because they have few political strings attached. China is not a member of the Organization for Economic Cooperation and Development (OECD), and has not signed on to the Recommendation on Common Approaches to the Environment and Officially Supported Export Credits, which is followed by most ECAs of the OECD countries. There is no question that, like those of other international donors, China’s projects have potentially massive environmental and social impacts. The Merowe Dam Project in Sudan is good example.

The Merowe Dam Project, currently under construction, is the largest contemporary hydropower project in Africa. It involves building a 67-meter high dam on the River Nile in North Sudan and creating a reservoir with a length of 174 kilometers and a surface area of 476 square kilometers. The project has received US$1.39 billion in outside funding, including a loan of US$520 million from the Government of China (the project’s largest single source of foreign funds), and a group of Arabian countries contributed the remaining funds needed to build the dam. A Chinese consortium, consisting of the China National Water Resources and Hydropower Engineering Corporation and the China International Water and Electric Company, has won a US$660 million civil-engineering contract to construct the dam.

According to research by the Swiss Federal Institute of Aquatic Science and Technology (EAWAG), the dam operation will result in strong fluctuation of water levels, which will destroy natural habitats for aquatic species and make it difficult for local people to fish and collect water. The sediment in the reservoir will increase by 130 million tons a year, seriously diminishing the capacity of the project to generate electricity. In addition, the presence of a large area of standing waters due to dam construction may “create perfect breeding conditions for mosquitoes, vectors of malaria and yellow fever and the water flea,” exposing the local population to serious risks of water-borne deceases. The water quality of the reservoir will also deteriorate as a result of pollution and less dilution and become unsafe for human consumption. However, none of these environmental and public health concerns was addressed in the original environmental impact assessment report for the project prepared by

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737 Bosshard, supra note 735, at 2.
738 Id. at 2-3.
739 Id. at 4.
740 Id. at 6-7.
742 See the official website of the Merowe Dam, http://www.merowedam.gov.sd/en/funding.html#.
745 Id. at 69-70.
746 Id. at 74.
747 Id.
Lahmeyer International, a German engineering firm. In addition, the report was not submitted to Sudan’s Ministry of Environment for review before construction started, in violation of Sudan’s domestic environmental law.

Human rights violations surrounding the Merowe Dam Project have been prevalent since its start. The project expects to displace approximately 50,000 people of three ethnic groups from the fertile Nile Valley to the Nubian Desert where there is little cultivable land and infrastructure. Yet the dam authority ignored the opinions of the affected communities in the decision-making process and issued a series of decrees on compensation and resettlement despite their objections. Under the government plan, the number of people affected by the project has been underestimated; and even with compensation, the people would not be paid for the full value of their loss. Moreover, the promises in the resettlement plan that services (such as water and electricity) would be provided for free during the transitional period have not been kept. The authority has also used violent repression to force the affected communities to accept the resettlement plan. Since 2003, a number of community leaders have been put in jail and have even become targets of attempted assassination. In April 2006, a militia employed by the dam authority opened fire on a group of villagers who held a peaceful gathering at a school near the dam, killing three people and injuring 47. In August 2006, families who still lived in the reservoir area were flooded out by rising waters after the authority began filling the reservoir without giving prior warning.

The numerous human rights violations surrounding the Merowe Dam Project led the United Nations Special Rapporteur on Adequate Housing to issue a statement in August 2007, calling for a suspension of dam construction until there is an independent assessment of the dam’s impacts on people in the area. In particular, the statement urged China and other countries involved “to ensure that the implementation of the projects does not lead to violations of human rights including the right to adequate housing of the affected communities” and “ensure that the work of their national companies does not – directly or indirectly – negatively impact the human rights of the affected people.”

748 Id. at 75-76.
749 Bosshard and Hildyard, supra note 741, at 4.
751 Bosshard and Hildyard, supra note 741, at 9-10.
752 Id. at 7.
753 Id. at 8.
754 Reports on many of the violent incidents can be found at http://www.sudantribune.com/spip.php?mot9#pagination_article_un.
756 Id.
759 Id.
The Merowe Dam Project is an example of the numerous projects currently under construction or in planning, not only in Africa but also in Asia and Latin America, funded by international donors. Because of high risks of detrimental environmental and social impacts, most of these projects would not come into being without international financing. As the linchpin in the development of projects, financial institutions share a responsibility for the environmental and human rights impacts of the projects they finance. Therefore, all financial institutions should be required to adopt binding standards that safeguard the protection of the environment and the interests of people affected by projects. Where such standards are adopted, monitoring mechanisms need to be established to ensure compliance with the standards. But ultimately, it is important for the entire international community to be aware of and to address the low-price development model that comes at a very high cost.

V. Climate Change: Human Rights Implications on Vulnerable Populations

According to the Intergovernmental Panel on Climate Change (“IPCC”), “[w]arming of the climate system is unequivocal, as is now evident from observations of increases in global air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.”760 The negative effects of climate change – sea level rise, heat waves, water pattern changes, greater severity of natural disasters, biodiversity loss, land degradation, and spread of disease, among others761 – are largely due to the consumptive patterns of the wealthy and are often felt most strongly by poor and minority communities. Since 1800, industrialized countries have been responsible for roughly 80 percent of the rise in global greenhouse emissions. Currently, industrialized countries are responsible for 50 percent of emissions, even though the population of industrialized countries only accounts for 25 percent of the global population.762 However, it is the countries without the means or infrastructure to adapt, and people in the weakest economic position, that are most threatened by climate change.763

Though climate change is a global problem, in few places has it had as severe an impact as in the Arctic region.764 Average Arctic temperatures are increasing more than twice as fast as anywhere else in the world, transfiguring the landscape.765 The Arctic Climate Impact Assessment of 2004 confirmed the extreme vulnerability of the region to dramatic shifts in climate, and concluded that “[o]ver the next 100 years, climate change is expected to accelerate,
contributing to major physical, ecological, social, and economic changes, many of which have already begun.\footnote{Id. at 10.}

The Inuit people live in coastal Arctic regions of Alaska, Canada, Greenland, and Russia. The Inuit’s rights to culture, health, life and development (among others), have been threatened by the changes in ice, land, water, and wildlife – phenomena that fall outside their extensive traditional knowledge.\footnote{Id. at 5.} Changes in sea ice are affecting travel routes and hunting practices, with experienced hunters falling through weakened ice and animal behavior becoming less predictable.\footnote{Emily Gertz, The Snow Must Go On, GRIST MAGAZINE, July 26, 2005, http://www.grist.org/news/maindish/2005/07/26/gertz-inuit/} Previously frozen coastlines are eroding, causing damage to Inuit homes.\footnote{Id.} New species are appearing in the Inuit landscape that have never been there before, attracted to the warmer weather, and other species are becoming less accessible to the Inuit because the animals are moving to new locations.\footnote{Id. See also Inuit Petition, supra note 764.} Finally, Inuit health is being directly affected by changes in diet, and increased sun and heat exposure.\footnote{IPCC SYNTHESIS REPORT, supra note 761, § 3.}

Other particularly vulnerable populations include the residents of small island nations and Africa because they have high exposure to changes and low adaptive capability.\footnote{Id. at § 3.} Island and African nations are tremendously susceptible to the effects of sea level rise.\footnote{Id. at § 5.} According to the IPCC, “[s]ea level rise is expected to exacerbate inundation, storm surge, erosion and other coastal hazards, thus threatening vital infrastructure, settlements and facilities that support the livelihood of island communities.”\footnote{IPCC SYNTHESIS REPORT, supra note 761, § 3.} Large populations living in Africa’s low-lying coastal regions face loss of land, and the rise in sea level will likely affect the salinity of Africa’s mega-deltas that many residents rely upon.\footnote{Id.} As a result of these effects, communities are at risk of losing their culture, work, food, water, and shelter, among other rights, as nations arrange resettlement plans. In addition, the annual waterfall in Africa is expected to drop rapidly due to global warming. It is predicted that a decrease in water availability will occur in a quarter of the continent’s land, and that in northern Africa, rivers could decrease to 50 percent of normal flows.\footnote{Adrienne Appel, Global Warming May Dry Up Africa’s Rivers, Study Suggests, NATIONAL GEOGRAPHIC NEWS, Mar. 3, 2006, available at http://news.nationalgeographic.com/news/2006/03/0303_060303_africa.html?fs=www3.nationalgeographic.com&fs=plasma.nationalgeographic.com.} As a result, by 2020, between 75 and 250 million people will be exposed to water stress as a result of climate change.\footnote{IPCC SYNTHESIS REPORT, supra note 761, § 3.} This water shortage, coupled with its affects on crops and food availability, threaten many Africans’ rights to life, health, food and means of subsistence.

Many regional and international organizations spoke with great force about climate change in 2007, advocating for the people whose survival depends on greenhouse gas reductions, in part in preparation for the United Nations Framework Convention on Climate Change meeting in Bali. For instance, the 2007 Bali Climate Declaration by Scientists, signed by more than 200
scientists, urged the international community to take immediate steps to create a climate change plan for the millions of people that will be affected by climate change. At the 13th Conference of the Parties to the United Nations Framework Convention on Climate Change, State Parties adopted the Bali Road Map and committed to establishing a new process to address climate change by the year 2009. While this action is the first pledge of its kind to address climate change from all the major greenhouse gas emitting nations, in order to respect and defend the rights of vulnerable populations, the international community must work with urgency and in cooperation with states to regulate greenhouse gas emissions as soon as possible.

Not only is global warming a transboundary issue because it is affecting people around the world, it is also crosses boundaries because it must be addressed in every available regional and international avenue. While many people throughout the world will feel negative effects of a rapidly changing climate, particular populations, often those least responsible for the problem, will be most susceptible to these changes. Urgent action at the international, regional, and domestic level is needed to ensure the preservation of these peoples’ lives, cultures, land, health and livelihoods.

VI. Depletion of Freshwater Resources: Colorado River Delta

The use and availability of water has changed as a result of population growth, urbanization, industrialization, technological increases, and climate change, and regions have depleted freshwater resources at a faster rate, often exhausting water that multiple countries depend upon. It has been predicted that a source of transboundary disagreements in the future will be over the allocation of freshwater resources. While many countries have difficulty managing water sources within their own borders, it becomes increasingly complicated when multiple countries share freshwater bodies. Over 260 river basins are shared by two or more countries, and a lack of strong institutions and agreements concerning how the water resources will be used causes tensions to arise when water becomes scarce. There is a need for an international framework to help mitigate damages when one country’s depletion of resources deprives another country’s residents, and to ensure that all people have access to an adequate amount of clean water.

The Committee on Economic, Social and Cultural Rights has stated that a right to water is included in right to an adequate standard of living in the International Covenant on Economic, Social and Cultural Rights. Moreover, the Committee has recognized the right to water as a

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781 IPCC SYNTHESIS REPORT, supra note 761, § 3.
782 DINAR, supra note 780, at 13.
784 Id. at 2.
prerequisite for the realization of other human rights, 786 and has asserted that the right to water includes an adequate quantity of water for multiple uses. 787 However, more than one in six people in the world lack access to safe drinking water. 788 When the right to clean water is violated, it has subsequent effects on the right to food, health, and economic activities. While states are obligated to ensure that their citizens have clean water, it is less clear whether states have international obligations to manage shared water sources in a way that does not harm another country’s water supplies.

Although water is very scarce in some areas of the world, there is more than enough water for everyone to have clean water to drink, if distributed equitably. 789 The World Water Vision Report states, “There is a water crisis today. But the crisis is not about having too little water to satisfy our needs. It is a crisis of managing water so badly that billions of people – and the environment – suffer badly.” 790 The Colorado River is an example of a poorly managed shared body of water, regardless of numerous treaties.

The Colorado River originates in the United States’ Rocky Mountains, runs through that nation’s dry and rapidly urbanizing southwest, flows into Mexico, and empties into the Gulf of California. The amount of water flowing into the Gulf of California, and the water resources for Mexico’s use, has greatly decreased as the U.S. southwest has grown in population. 791 In addition, the U.S. Department of Interior marked 2007 as the eighth year of the Colorado River Basin drought. 792 In Mexico, the Colorado River delta, once a thriving ecosystem, has decreased to 10 percent of its original area. The delta is home to approximately 200,000 people in 1,127 farming and fishing communities who have traditionally relied heavily on the delta for their every day needs. 793 Many communities in Mexico have suffered the consequences of the depleted water supply, including the indigenous populations. 794 Without the once expansive delta, the Cucupá Indians have found hunting, fishing, and cultivation of the native plants increasingly difficult. As the Cucupá move to cities because they are no longer able practice their traditional sustenance, their cultural identity and rights are threatened. 795

There have been many agreements and treaties among states within the United States regarding the management of the Colorado River, beginning with the Colorado River Compact

http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/a5458d1d1b0bd713fc1256cc400389e94/$FILE/G0340229.doc
786 Id. at ¶ 1.
787 Id. at ¶ 12(a).
789 DINAR, supra note 780, at 44.
795 Id.
of 1922. There have been fewer treaties between the United States and Mexico about the Colorado River’s usage and allotment. In 1944 the United States and Mexico entered into a water treaty regarding the Colorado and Tijuana Rivers and the Rio Grande that ensured Mexico would receive at least 1.5 million acre feet (maf) of water annually from the Colorado River. There have been further negotiations about the salinity of the water, but the 1944 treaty is still in effect, and Mexico is reportedly still receiving at least 1.5 maf of water per year, or 1.7 maf in flood years. However, it is estimated that the Colorado River delta is receiving 0.1 percent of the river’s annual water supply. In 1964 a U.S. court ordered the U.S. Bureau of Reclamation not to release more water to Mexico than the 1944 treaty requires, except for a few exceptions which do not include any stipulations about the Mexican people’s water supply. While this agreement may have been sufficient in the past, the use of the river has changed since 1944 because numerous dams have been erected to generate electricity and provide water for agriculture and municipal uses in the United States, which has had negative effects on those relying on the delta for sustenance.

On December 13, 2007, after two and a half years of negotiations, the U.S. Department of Interior (DOI) signed an agreement with the U.S. Colorado River basin states to regulate water management during periods of drought. In addition, the agreement established plans to build a Drop 2 Reservoir in California to capture “excess flow” in periods of heavier flow. U.S. Secretary of Interior Dirk Kempthorne stated, “As other states – and other countries – struggle to resolve their water issues in the coming decades, they will look to the cooperation among the basin states as a model. A way to embrace consensus rather than conflict. To conserve and share water rather than fight over water.” While the United States has made statements about the importance and effectiveness of the treaty, Mexico had very little input into the process, even though the proposal will affect it greatly.

During the DOI’s comment period for the Environmental Impact Statement (“EIS”), Mexico’s National Water Commission stated that none of the five alternatives was acceptable to Mexico because in each option, the amount of water delivered to the Colorado River basin would likely decrease even further. Mexico’s office of the International Boundary and Water Commission expressed their concern over the release of the EIS before acceptance from Mexico, despite multiple statements requesting more consideration into timing, conditions, and proposed reduction. The United States continues to assert that it will adhere to the 1944 treaty, the new

796 U.S. Dept. of Interior, supra note 792.
798 Id.
799 Environmental Defense Fund, supra note 791.
801 Environmental Defense Fund, supra note 791.
802 U.S. Dept. of Interior, supra note 792.
804 Id.
805 Id.
treaty will not affect Mexico’s water levels, and it will work in cooperation with Mexico to manage the Colorado River in the future.

While there have been numerous agreements regarding the Colorado River, the high demand for water in the region illustrates why an international framework to address transboundary depletion of water would be beneficial in protecting the affected communities’ rights to water. The Mexican residents have had very little control over the amount of water they receive after it runs through the United States, and the transformation of the Colorado River delta is an example of how use of a resource by one country can greatly impact the human rights of people in a neighboring country.

APPENDIX

CONSTITUTIONAL PROVISIONS RELATING TO ENVIRONMENTAL RIGHTS

1. Afghanistan

The 2004 Constitution ensures a “prosperous life and a sound environment for all those residing in this land.” Preamble. It further states that the State is “obliged to adopt necessary measures for … proper exploitation of natural resources and the improvement of ecological conditions.” Chapter 1, Article 15.

2. 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).

3. The Republic of Algeria

The 1996 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.

4. 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.

5. 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).

6. 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.

7. Austria

The 2000 Constitution establishes that “mining; forestry, including timber flotage; water rights; control and conservation of waters for the safe diversion of floods or for shipping and raft transport; maintenance of waterways” and other issues are of national concern and require legislation and regulation by the national government. Chapter I, Article 10(10). Additionally, the Constitution establishes that the government should take “measures to defend against dangerous stresses” that result from violations of emissions standards. Chapter I, Article 10(12).

8. 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.

9. 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.

10. 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.
11. 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.

12. 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).

13. The Republic of Benin

The 1990 Constitution provides that “every 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.

14. Bhutan

The draft Constitution of Bhutan of 2005, states that “The Royal Government shall…[p]revent pollution and ecological degradation…(and) [e]nsure a safe and healthy environment.” Article 5, 2(b) and (d).\(^{808}\)

15. 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.

16. 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 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;

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\(^{808}\) The draft Constitution of Bhutan is awaiting referendum.
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.

17. 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.

18. 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.
19. 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.

20. 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 forestrial products, wildlife, fish and aquatic resources.” Chapter V, Article 59.

21. 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”).

22. 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 defend 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).

23. 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.

24. 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).

25. 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.*

### 26. 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.

### 27. 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.

### 28. The Federal Islamic Republic of the Comoros

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

### 29. 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 affect his environment nor the well-being of his neighbors.” Id.

30. 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.

31. 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.

32. 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.

33. 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.

34. Democratic Republic of Congo

The 2003 Draft Constitution of the Transition states that “[a]ll Congolese shall have the right to a healthy environment that is favourable to their development.” Title III, Article 54. It further establishes that “the public authorities and citizens shall have the duty to ensure the protection of the environment according to conditions defined by the law.” Id.

35. 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.”

36. 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.

37. 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.

38. Equatorial Guinea

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

39. 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.

40. 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.

41. 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).

42. Fiji

The amended 1990 constitution states that, in the extraction of minerals from property belonging to Fijian citizens, account must be taken of “the risk of environmental damage.” Section 186, 4(b).

43. 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.

44. France

The amended 1958 Constitution includes an Environment Charter, which states that all French citizens have the right to live in a “balanced environment, favorable to human health.” Preamble. The Constitution further calls for the application of the precautionary principle in any circumstance that may pose irreparable harm to the environment. Articles 5. It calls for the promotion of sustainable development, and recognizes the right of individuals to access to information and participation in environmental decision-making. Articles 6 and 7. Additionally, the Charter enshrines several new principles, including polluter-pays and prevention, into national law and mandates their application in policymaking. Articles 3 and 4.

45. 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).

46. 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.

47. 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).

48. 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.

49. 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.

50. 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.

51. 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).

52. 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.

53. 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.

54. 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.

55. 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.

56. 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 holds officials accountable “for the concealment of facts and circumstances endangering the life and health of the people.” Id., Article 31(2).

57. The State of Kuwait

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

58. The Kyrghyz Republic (Kyrghyzstan)

The 1993 Constitution provides that “citizens of the Kyrghyz Republic shall have the right to a 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).

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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 . . . manage[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).

65. 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.

66. Malta

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

67. 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.

68. 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. Article XIII, Section 2.

69. 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).

70. 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).

71. 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.

72. 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(l). The Constitution also requires the government to “provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.” Id.

73. 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.

74. 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.

75. 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.

76. 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.

77. Democratic People's Republic of Korea (North Korea)
The amended 1972 Constitution states that the government “shall adopt measures to protect the environment…, preserve and promote the natural environment and prevent environmental pollution so as to provide the people with a hygienic environment and working conditions.” Chapter 3, Article 57.

78. 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[s] 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.

79. Oman

The amended 1996 Constitution states that “The State cares for public health and for the prevention and treatment of diseases and epidemics. …It works to conserve and protect the environment and prevent pollution.” Article 12.

80. 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.

81. The State of Palestine

The draft Constitution, as revised in May 2003, establishes that the State “shall strive to achieve a clean, balanced environment.” Article 15. It further provides that environmental protection is an “official and community responsibility” and that acts of environmental harm are punishable by law. Id.

82. 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.

83. 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.”

84. 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.

83. 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.

85. 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 take 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.

86. 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.

87. 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).

88. Qatar

The 2003 Constitution provides that the State “shall preserve the environment and its natural balance in order to achieve comprehensive and sustainable development for all generations.” Part II, Article 33.

89. 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).

The Constitutional Revision Law No. 429/2003 of October 29, 2003 amends the 1991 Constitution to explicitly recognize the right to a healthy environment, stating that “[t]he State recognizes the right of every person to a healthy, well-preserved and balanced environment.” Article 35(1).

90. 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.

91. **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.

92. **Saudi Arabia**

The 1992 Constitution provides that “the State works for the preservation, protection, and improvement of the environment, and for the prevention of pollution.” Chapter 5, Article 32.

93. **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).

94. **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 its condition.” *Id.,* Section VI, Article 45.

95. **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.

96. 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).

97. 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).

98. 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).

99. 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).

100. The Democratic Republic of Sudan

The Interim National Constitution states that “The people of the Sudan shall have the right to a clean and diverse environment.”  Ch. II, Art. 10 (1).  The Interim Constitution goes on to state that “every citizen shall… preserve the natural environment.”  Ch. 3, Art. 23 (2)(h).  

101. Suriname

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809 The Interim National Constitution of the Republic of the Sudan, adopted July 6, 2005 will last for a six-year interim period, until a permanent constitution is adopted in 2011.
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).

102. 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.

103. Taiwan

The 1947 Constitution provides that “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.

104. 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.

105. 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).

106. The Kingdom of Thailand

The 2007 Constitution upholds the rights of communities to “conserve or restore their customs, local knowledge, good arts and culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources, the environment and the biological diversity in a balanced and sustainable fashion.” Part 12, Section 66. The Constitution also states that “any project or activity which may seriously affect the community with respect to the quality of the environment, natural resources and health shall not be permitted, unless, prior to the operation thereof, its impacts on the quality of the environment and on public health have been studied and assessed and a public hearing process has been conducted for consulting the public as well as interested persons and there have been obtained opinions of an independent organization, consisting of representatives from private organizations in the field of the environment and health and from higher education institutions.
providing studies in the field of the environment, natural resources or health.” Part 12, Section 67. The Constitution explicitly confirms the right of a community to bring a lawsuit against the government if the government fails to perform its duties with respect to environmental impact assessments. *Id.*

107. 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.*

108. 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.*

109. Turkmenistan

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

110. 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).

111. 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.*

112. **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.

113. **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.* A 2004 amendment states that “water is a natural resource essential to life,” and that access to piped water and sanitation services are “fundamental human rights.”

114. **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.

115. **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.

116. **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.*

117. **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.

118. **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.*

119. **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.”