



**EARTHJUSTICE**

*Because the earth needs a good lawyer*

**ISSUE PAPER**

**HUMAN RIGHTS AND THE ENVIRONMENT**

**MATERIALS FOR THE FIFTY-NINTH SESSION OF THE UNITED NATIONS  
COMMISSION ON HUMAN RIGHTS  
GENEVA, 17 MARCH - 25 APRIL 2003**

**EARTHJUSTICE**

## 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

At the beginning of this third millennium, there should be no doubt that human activities can cause serious environmental problems, or that those problems, in turn, often result in grave harm to human beings. Put positively, a clean and healthy environment is essential to the realization of fundamental human rights.

The community of nations has not ignored this essential connection. This report highlights recent developments from international, regional and domestic bodies during 2002 in the area of human rights and the environment.<sup>1</sup> As a sampling – but only a sampling – of situations occurring in this past year, this report illustrates the interdependence of human rights and the environment and shows repeated and increasing recognition of a human rights-based approach to environmental protection. Such recognition demonstrates that a right to a clean and healthy environment, whether as a separate, codified right or as the result of repeated application of other human rights to environmental harms, has become a prevailing international legal norm.<sup>2</sup> The relationship between environmental problems and human rights violations calls for a holistic treatment of these issues. Therefore, international, governmental and non-governmental institutions dedicated to protecting human rights must recognize the connection and take steps to provide mechanisms to address the human rights implications of environmental problems. As a world leader in the protection of human rights, the UN Commission on Human Rights should set the pace for such recognition and, further, guarantee the right to a clean and healthy environment.

### *Background*

In July 1994, Ms. Fatma Zohra Ksentini, Special Rapporteur on Human Rights and the Environment for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, issued her Final Report to the Sub-Commission.<sup>3</sup> The Final Report was the culmination of a study process initiated in 1989, when several nongovernmental organizations presented information to the Sub-Commission regarding the need for all human rights bodies at the United Nations to study the connections between human rights and the environment. In response, the Sub-Commission asked Ms. Ksentini, then a member of the Sub-Commission, to prepare a note on methods by which a study on the relationship between human rights and the environment could be done.<sup>4</sup> At its next session, the Commission on Human Rights adopted a resolution (1990/41), which welcomed the Sub-Commission's decision to have Ms. Ksentini prepare a note on human rights and the environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In advance of its 1997 session, the Commission received comments on issues raised in Ms. Ksentini's final report from an additional five governments, three United Nations Departments, one regional organization and one nongovernmental organization.<sup>16</sup> At the 1997 session, the Commission adopted a Decision (1997/102) on human rights and the environment, by which it deferred action on the issue until its fifty-fifth session and invited the Secretary General to bring the Commission's consideration of human rights and the environment to the attention of the General Assembly at its special session on Agenda 21, the Commission on Sustainable Development, the United Nations Environment Programme and other relevant bodies and organizations. The Commission further requested that the Secretary General prepare a report on the General Assembly special session and the listed international bodies and organizations.

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

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

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

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

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

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

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

<sup>17</sup> E/CN.4/1997/19.

involving the human rights impact of toxics.<sup>18</sup> The Commission adopted Resolution 1998/12, in which it renewed the mandate of the Special Rapporteur on human rights and toxics for a period of three years,

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

In advance of its 55th Session, the Commission received a report on human rights and the environment from the Secretary-General, as the Commission had requested in 1997. The report includes a review of the General Assembly special session on Agenda 21 and it reports on comments received by the Secretary-General from the Food and Agriculture Organization.<sup>19</sup> The Secretary-General report did not make any recommendations regarding the Commission's continuing consideration of human rights and the environment. In another pre-session document, however, the Bureau of the Commission recommended that the mandate of the Special Rapporteur on toxics and human rights be converted to a mandate on human rights and the environment.<sup>20</sup>

A similar recommendation came in February 2000, from the Commission's inter-session open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, which recommended the conversion of the mandate of the Special Rapporteur on the adverse effects of the illicit movement of toxic waste to that of human rights and the environment. The Working Group recommended further that "the Commission be prepared to consider a broadening of the mandate" in 2001, noting that "the subject matter of an extended mandate would, however, need to be more precisely defined than 'human rights and the environment.'"<sup>21</sup> 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 57<sup>th</sup> Session of the Commission in 2001, the Special Rapporteur presented her report on the Adverse Effects of the Illicit Movement of Dumping and Movement of Dangerous Products and Wastes on the Enjoyment of Human Rights.<sup>22</sup> 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."<sup>23</sup>

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

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

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

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

<sup>22</sup> E/CN.4/2001/55.

<sup>23</sup> *Id.* at ¶ 104.

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

Similarly, at its 58<sup>th</sup> 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 this 59<sup>th</sup> Session.<sup>25</sup>

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

<sup>25</sup> E/CN.4/2002/27.

## DEVELOPMENTS

### I. INTERNATIONAL

Actions and statements from international bodies continue to shape the emergent customary international right to a clean and healthy environment. Evidence of such actions and statements are found in international court decisions, new treaties and protocols, and resolutions and reports from commissions, committees, secretariats, specialized agencies and similar entities. A review of these materials reveals that environmental harms adversely affect various individual and community rights such as the rights to life, health, sustenance and culture 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) provides an effective remedy.

#### A. Treaties and Treaty Bodies

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

In January 2002, a Basel Convention working group on human rights and the environment adopted a set of technical guidelines to protect human health and the environment from the improper management and disposal of plastic wastes, which were sent for comment to the Sixth Conference of the Parties in December 2002.<sup>26</sup>

The guidelines respond to the concern of developing countries that insufficient resources are devoted to the problem of plastic waste. In many developing countries, the disposal of the plastics often takes place by burning the plastics in open air or in landfills. Such burning releases harmful pollutants in the air and produces persistent organic pollutants that cause immune and enzyme disorders in humans.

In addition to considering these rights-inspired technical guidelines, the Sixth Conference of the Parties also produced a Draft Strategic Plan for the Basel Convention, which projects a plan for achieving environmentally sound management of hazardous and other wastes as envisaged by the Basel Convention.<sup>27</sup>

#### B. UN Economic and Social Council Bodies

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

In November 2002, the United Nations Committee on Economic, Social, and Cultural Rights adopted a General Comment on the right to water, referring to article 11 of the

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<sup>26</sup> See U.N. Environment Programme, *Press Release: New guidelines will remove hazards posed by plastic wastes*, at <http://www.basel.int/press/pr1-02%20Basel%20tech%20legal%20WGs%20conclusions.pdf> (visited February 9, 2003).

<sup>27</sup> See U.N. Environment Programme, *Secretariat of the Basel Convention*, at <http://www.basel.int/index.html> (visited January 6, 2003).

International Covenant on Economic, Social, and Cultural Rights.<sup>28</sup> The General Comment states: “The human right to drinking water is fundamental for life and health. Sufficient and safe drinking water is a precondition for the realization of all human rights.” The Comment defines the sufficiency, safety, affordability, and accessibility to water, and describes a state’s legal responsibility in fulfilling the right. The human right to water entitles everyone to sufficient, affordable, physically accessible, safe, and acceptable water for personal and domestic use.<sup>29</sup>

## 2) UN Commission on Human Rights: 58<sup>th</sup> Session (2002)

During its 58th Session, from March 18 to April 26, 2002, the Commission passed several resolutions similar to those passed in previous sessions regarding the emerging human right to a clean and healthy environment.<sup>30</sup>

### (a) Resolution 2002/27

In Resolution 2002/27, entitled “Adverse effects of the illicit movement and dumping of toxics,” the Commission reiterated Resolution 2001/35 and prior resolutions by reaffirming that “the illicit movement 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.”<sup>31</sup> It furthermore repeated that it “categorically condemns the illicit dumping of toxic and dangerous products and wastes in developing countries.”<sup>32</sup>

### (b) Resolution 2002/28

In Resolution 2002/28, entitled “Globalization and its impact on full enjoyment of human rights,” the Commission recognized “that globalization should be guided by the fundamental principles that underpin the corpus of human rights.”<sup>33</sup> The Commission further “welcomed the report of the United Nations High Commissioner for Human Rights entitled ‘Globalization and its impact on the full enjoyment of human rights’ (E/CN.4/2002/54), which focuses on the liberalization of agricultural trade and its impact on the realization of the right to development, including the right to food.”<sup>34</sup> Globalization without concern for environmental health would undermine this resolution because environmental health is a fundamental component of several

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<sup>28</sup> E/C.12/2002/11, November 26, 2002, at <http://193.194.138.190/html/menu2/6/gc15.doc> (visited March 24, 2003).

<sup>29</sup> *Id.*

<sup>30</sup> Office of the High Commissioner for Human Rights, *58<sup>th</sup> Session of the Commission on Human Rights, Resolutions Adopted at the 58<sup>th</sup> Session*, at <http://www.unhchr.ch/html/menu2/2/58chr/resolutions.htm> (visited February 10, 2003).

<sup>31</sup> Res. 2002/27, U.N. Comm’n on Hum. Rts., 58th Sess., at pmb., para. 4, *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2002.27.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2002.27.En?Opendocument) (visited February 10, 2003).

<sup>32</sup> *Id.* at ¶ 3.

<sup>33</sup> Res. 2002/28, U.N. Comm’n on Hum. Rts., 58th Sess., at pmb., *Globalization and its impact on the full enjoyment of human rights*, at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2002.28.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2002.28.En?Opendocument) (visited February 10, 2003).

<sup>34</sup> *Id.* at ¶ 5.

human rights, including, for example, the right to food. Food security cannot be assured without a healthy environment.

### **(c) Resolution 2002/31**

In Resolution 2002/31, entitled “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” the Commission reaffirmed that “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a human right”<sup>35</sup> A healthy environment is prerequisite to physical and mental health.

### **(d) Resolution 2002/75**

In Resolution 2002/75, entitled “Human rights and environment as part of sustainable development,” the Commission reaffirmed the Rio Declaration on Environment and Development and Agenda 21, adopted on 14 June 1992 by the Conference.<sup>36</sup> The Commission further welcomed “the holding of the preparatory expert meeting and the expert seminar on human rights and the environment convened jointly by the Office of the United Nations High Commissioner for Human Rights and the United Nations Environment Programme from 14 to 16 January 2002.”<sup>37</sup> However, the Commission decided “to continue its consideration of this question at its fifty-ninth session under the same agenda sub-item, taking into account the relevant outcomes agreed at the World Summit on Sustainable Development to be held at Johannesburg, South Africa, from 26 August to 4 September 2002.”<sup>38</sup>

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

The Sub-Commission is the main subsidiary body of the Commission, established by the Commission at its first session in 1947 under the authority of the Economic and Social Council. In 1999 the Economic and Social Council changed its title from Sub-Commission on Prevention of Discrimination and Protection of Minorities to Sub-Commission on the Promotion and Protection of Human Rights.<sup>39</sup>

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<sup>35</sup> Res. 2002/31, U.N. Comm’n on Hum. Rts., 58th Sess., at pmb., *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2002.31.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2002.31.En?Opendocument) (visited February 10, 2003).

<sup>36</sup> Res. 2002/75, U.N. Comm’n on Hum. Rts., 58th Sess., at pmb., *Human rights and the environment as part of sustainable development*, at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2002.75.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2002.75.En?Opendocument) (visited February 10, 2003).

<sup>37</sup> *Id.* at ¶ 1.

<sup>38</sup> *Id.* at ¶ 3.

<sup>39</sup> See United Nations, *Sub-Commission on the Promotion and Protection of Human Rights*, at <http://www.unhchr.ch/html/menu2/2/sc.htm> (visited February 10, 2003).

### (a) Report 2002/3

On June 17, 2002, the Sub-Commission published a report of the Workshop on Indigenous People, Private Sector Natural Resource, Energy and Mining Companies and Human Rights, held in Geneva in December 2001.<sup>40</sup> The workshop concluded, *inter alia*, that “a precondition for the construction of equitable relationships between indigenous peoples, States and the private sector is the full recognition of indigenous peoples’ rights to their lands, territories and natural resources.”<sup>41</sup> Further, the workshop recommended, *inter alia*, that “consultation between indigenous peoples and the private sector should be guided by the principle of free, prior, informed consent of all parties concerned,” and “invited the World Bank to adopt a policy on indigenous peoples which requires borrowers and clients to respect indigenous peoples’ rights, in particular their land and resource rights, and to free, prior, informed consent with respect to investments, loans, guarantees and operations that may affect them.”<sup>42</sup>

### (b) Report 2002/10

Pursuant to Decision 2002/105 of the Commission and Resolution 2001/2 of the Sub-Commission, on June 25, 2002, Special Rapporteur El Hadji Guissé published a preliminary report on the “relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation.”<sup>43</sup> In concluding that the right to drinking water and sanitation is a human right, the Special Rapporteur indicated that the right to drinking water and sanitation implicates the “right to a healthy environment.”<sup>44</sup>

## 4) UN Commission on Sustainable Development: World Summit on Sustainable Development (WSSD)

The World Summit on Sustainable Development took place in Johannesburg, South Africa from August 26 to September 4, 2002. The Summit focused on the challenge of conserving natural resources in the face of growing population and increasing demands for food, water, shelter, sanitation, energy, health services and economic security. The Summit examined the progress made since the adoption of Agenda 21 at the 1992 Rio Summit, and sought to create both intergovernmental and private-public approaches to better implement Agenda 21.

The final written product of the Summit, the Plan of Implementation, recognizes the link between human rights and environmental health in several ways.<sup>45</sup> For example, in discussing the role of agriculture in poverty eradication and food security, the Plan recommends actions “to halve by the year 2015 the proportion of the world’s people who suffer from hunger and realize

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<sup>40</sup> U.N. Doc. E/CN.4/Sub.2/AC.4/2002/3 (2002).

<sup>41</sup> *Id.* at Executive Summary, Conclusions ¶ 3.

<sup>42</sup> *Id.* at Executive Summary, Recommendations ¶¶ 4, 11.

<sup>43</sup> U.N. Doc. E/CN.4/Sub.2/2002/10 (2002).

<sup>44</sup> *Id.* at ¶ IV(C)(1)(d).

<sup>45</sup> See generally, Johannesburg Summit 2002, *World Summit on Sustainable Development, Plan of Implementation*, available at [http://www.johannesburgsummit.org/html/documents/summit\\_docs/2309\\_planfinal.htm](http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm) (visited February 10, 2003).



and economic well being of people around the world, and the GEF and its partners are in a unique position to make a significant difference.”<sup>53</sup>

Similarly, in a recent publication, *The Challenge of Sustainability: An Action Agenda for the Global Environment*, the GEF acknowledged the link between human rights and a healthy environment, stating “[The] drive for global sustainability should be rooted in the growing recognition of the strong links between the environment and development. A clean environment is essential for both development and poverty eradication.”<sup>54</sup> This statement, and the entire publication, demonstrates that the human right to development incorporates the emerging right to a clean environment.

### **7) United Nations Committee on Economic, Cultural and Social Rights**

On November 27, 2002, the Committee issued a General Comment interpreting the provisions of the International Covenant on Economic, Social and Cultural Rights, declaring formally for the first time that secure drinking water is a human right.<sup>55</sup> “Water should be treated as a social and cultural good, and not primarily as an economic commodity,” the Committee said, siding with those who object to the privatization of water supplies.<sup>56</sup> The Committee further declared “[w]ater is fundamental for life and health. The human right to water is indispensable for leading a healthy life in human dignity. It is a pre-requisite to the realization of all other human rights.”<sup>57</sup> Although the Covenant does not expressly refer to the word “water,” the committee determined that the right to water is “clearly implicit” in the rights contained in two sections of the Covenant.<sup>58</sup> The General Comment means that the 145 countries which have ratified the Covenant “have a constant and continuing duty” to progressively ensure that everyone has access to safe and secure drinking water and sanitation facilities – equitably and without discrimination.<sup>59</sup>

### **8) United Nations International Children's Emergency Fund (UNICEF)**

Released in May 2000 for the UN Special Session on Children and the World Summit on Sustainable Development, UNICEF, in collaboration with the United Nations Environment Program and the World Health Organization, published a report entitled *Children in the New*

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<sup>53</sup> See Global Environment Facility, *News Release, Assembly Formalizes the GEF's Commitment to Funding Land Degradation and Persistent Organic Pollutants Projects*, October 18, 2002, available at [http://www.gefweb.org/Outreach/Media/Press\\_Releases/Assembly\\_conclusion\\_press\\_release.pdf](http://www.gefweb.org/Outreach/Media/Press_Releases/Assembly_conclusion_press_release.pdf) (visited February 10, 2003).

<sup>54</sup> See Global Environment Facility, *The Challenge of Sustainability*, September 2002, at x, available at <http://gefweb.org/Outreach/outreach-Publications/MainBook.pdf> (visited December 5, 2002).

<sup>55</sup> See Environmental News Service, *Water for Health Declared a Human Right*, at <http://ens-news.com/ens/dec2002/2002-12-04-01.asp> (visited February 10, 2003).

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

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

<sup>58</sup> *Id.*

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

Millennium: Environmental Impact on Health.<sup>60</sup> In that report, UNICEF maintains that environmental quality is a key factor in determining whether a child survives the first years of life, and strongly influences the child's subsequent physical and mental development. By illustrating the link between the environment and the well-being of children, UNICEF, UNEP and the WHO hope to raise awareness and deepen understanding of environmental health issues by providing an overview of key environmental health threats to children.<sup>61</sup>

## 9) United Nations Environment Program (UNEP)

The UNEP Governing Council agreed that the conflicts in Israel and Afghanistan have caused serious environmental impacts.<sup>62</sup> The delegates endorsed 136 recommendations aimed at reducing conflict-related environmental problems in the occupied territories of Israel's West Bank and Gaza Strip. Recognized problems affecting both the state of the environment and human rights include: contaminated water supplies, land degradation and lack of proper waste disposal.<sup>63</sup> The Governing Council called upon both the Israeli government and the Palestinian Authority to work together to reduce current harms and to develop an implementation schedule for restoring damaged aquifers and rehabilitating damaged infrastructure.<sup>64</sup> A report on the conflict's environmental impacts states: "In the current phase of the conflict, the absence of even minimal cooperation is worsening the situation on a daily basis, with impacts not only on the environment but also on human health."<sup>65</sup> A separate report presented at the Council's meeting recognized the impacts of two decades of armed conflict in Afghanistan.<sup>66</sup> According to that report, in Kabul and other cities, only one in 10 people drink safe water. Villages face problems of deforestation, parched aquifers, erosion and pollution from pesticides.<sup>67</sup>

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<sup>60</sup> See, UNICEF, *Children in the New Millennium: Environmental Impact on Health*, at <http://www.unicef.org/programme/wes/pubs/envh/envh.htm> (visited February 10, 2003).

<sup>61</sup> *Id.*

<sup>62</sup> Mark Lacey, *U.N. Warns of Mideast Conflict's Harm to the Environment*, N.Y. TIMES, February 8, 2003, available at <http://www.nytimes.com/2003/02/08/international/middleeast/08ENVI.html?ex=1045897773&ei=1&en=ab10f63d090eb496> (visited February 10, 2003).

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

<sup>64</sup> *Id.*; U.N.E.P. Press Release, *Governments Back Environmental Rescue Plan for the Occupied Palestinian Territories*, available at <http://www.unep.org/Documents/Default.asp?ArticleID=3209&DocumentID=277> (visited February 10, 2003).

<sup>65</sup> Mark Lacey, *U.N. Warns of Mideast Conflict's Harm to the Environment*, N.Y. TIMES, February 8, 2003, available at <http://www.nytimes.com/2003/02/08/international/middleeast/08ENVI.html?ex=1045897773&ei=1&en=ab10f63d090eb496> (visited February 10, 2003).

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

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

### C. World Bank Inspection Panel

The World Bank created an Inspection Panel in 1993 to respond to private parties who believe a Bank-financed project undertaken by the World Bank Management is not in compliance with the Bank's rules, including rules regarding human rights and the environment. If persuaded, the Panel recommends to the World Bank Board of Executive Directors that the Panel investigate the project and Management's compliance with Bank policy and procedure. The Panel then reports to the Board on its findings, and the Board decides whether the project can proceed. In addition, the host country can withdraw its request for Bank funding thereby terminating the Bank's involvement. Several of the projects that the Panel has investigated in the past year raise issues of human rights and the environment.<sup>68</sup>

#### 1) Third and Fourth Power Projects (Uganda)

On July 27, 2001 the Panel received a Request for Inspection regarding the third and fourth power projects by the National Association of Professional Environmentalists and Save the Bujagali Crusade, as well as other local organizations and individuals.<sup>69</sup> The Panel completed the Uganda investigation and sent its report to the Board in May 2002.

The Board found that, *inter alia*: (i) the Sectoral and the Cumulative Environmental Impact Assessments were lacking or insufficient; (ii) the Resettlement Action Plan was incomplete; (iii) the Community Development Action Plan was inadequate; (iv) the project-affected people in the tourism industry were not being compensated for the loss of their livelihoods; (v) most project-affected people received adequate compensation packages; (vi) the Environmental Impact Assessment was generally of high quality; (vii) the project sponsor acted in good faith in attempting to mitigate the cultural consequences of losing the Bujagali falls; (viii) the economic and financial analyses of the project were seriously deficient; (ix) the forecast of future electricity demand and the analysis of tariff affordability used by the Bank were flawed; (x) the risks implied by the delay of policy reforms were neglected; (xi) the Power Purchase agreement was not always up to International Best Practice; (xii) management did not adequately analyze certain economic risks or the project's economic viability; (xiii) the World Bank neglected the analysis of alternative power supply options; (xiv) management violated the Bank's information disclosure policy when it withheld the Economic Review of the Bujagali project from the public; and (xv) Management violated several Bank Operational Policies.<sup>70</sup>

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<sup>68</sup> The World Bank Group, *The Inspection Panel*, at <http://wbln0018.worldbank.org/ipn/ipnweb.nsf> (visited February 10, 2003); see also The Inspection Panel, *Annual Report*, August 1, 2001 – June 30, 2002, at 2, available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/2002AnnualReport/\\$FILE/2002+Annual+Report.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/2002AnnualReport/$FILE/2002+Annual+Report.pdf) (visited February 10, 2003).

<sup>69</sup> The International Bank for Reconstruction and Development, *Notice of registration, Re: Request for Inspection – UGANDA: Third Power Project (Credit No. 2268-UG) and Fourth Power Project (Credit No. 3545-UG) IPN REQUEST RQ01/3*, at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/Uganda\\_NOR/\\$FILE/Uganda\\_NOR.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/Uganda_NOR/$FILE/Uganda_NOR.pdf) (visited February 10, 2003).

<sup>70</sup> See International Rivers Network, *A Review of the World Bank's Inspection Panel Report on the Bujagali Hydropower Project*, (June 10, 2002), available at [http://www.irm.org/programs/bujagali/IRN\\_comment.pdf](http://www.irm.org/programs/bujagali/IRN_comment.pdf).

The specific actions by Management approved by the Board to address the Panel's findings included, *inter alia*: (i) amend the indemnity agreement between Uganda and the World Bank to reaffirm the government's commitment not to develop the Kalagala Falls for hydropower, and instead set it aside to protect its natural habitat; (ii) support expanded multi-stakeholder consultants on certain aspects of the project; and (iii) support a strategic social and environmental assessment as a prerequisite to any future World Bank financing of power generation facilities in the region.<sup>71</sup>

## **2) Paraguay Reform Project for the Water and Telecommunications Sectors and the Argentina SEGBA V Power Distribution Project**

On May 17, 2002, the Panel received a Request for Inspection from Federación de Afectados por Yacyretá de Itapúa y Misiones (FEDAYIM), a local non-governmental organization, on its behalf as well as for more than 4,000 families affected by the social and environmental impacts of the Yacyretá Hydroelectric Dam and others.<sup>72</sup>

The Request alleged that due to inadequate project supervision by the Bank, the 4,000 requesting families were excluded from resettlement compensation and mitigation programs in spite of the fact that they have owned and occupied lands affected by the dam for more than 20 years.<sup>73</sup> The Request also complains about the environmental contamination and adverse health impacts caused by the elevation of the reservoir and two housing developments built by the Entidad Binacional Yacyretá, where waste water contaminates certain creeks.<sup>74</sup>

The Board approved, on September 9, 2002, the Panel's recommendation to conduct an investigation into the matters alleged in a Request. The Panel will investigate whether the Bank has complied with its own policies and procedures, *inter alia*, on Dam and Reservoir Projects, Environmental Assessment, Involuntary Resettlement, Project Supervision, Project Monitoring and Evaluation, and Suspension of Disbursements.<sup>75</sup>

## **3) Cameroon Petroleum Development and Pipeline Project and Petroleum Environment Capacity Enhancement Project**

On September 25, 2002, the Panel received a Request from the Centre for the Environment and Development (CED), a local nongovernmental organization based in Youndé, representing several residents of Mpango village (Kribi), and a number of people who live along the oil pipeline route, and others.<sup>76</sup> The Request claims that activities related to the construction

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<sup>71</sup> See Annual Report, *supra* n.68, at 17.

<sup>72</sup> *Id.* at 24.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 25.

<sup>75</sup> See World Bank Inspection Panel Press release, *Board approves the Inspection Panel' Investigation of the Argentina/Paraguay- Yacyretá Hydroelectric Project*, (September 20 ,2002), available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(webnews2\)/EDED505EC6EF4EBA85256C3A00633E3F](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(webnews2)/EDED505EC6EF4EBA85256C3A00633E3F).

<sup>76</sup> See World Bank Inspection Panel, Notice of Registration Re: Request for Inspection – CAMEROON: Petroleum Development and Pipeline Project (Loan No. 7020-CM); (September 30, 2002), available at [http://wbln0018.worldbank.org/ipn/ipnweb.nsf/\(attachmentweb\)/NOR/\\$FILE/NOR.pdf](http://wbln0018.worldbank.org/ipn/ipnweb.nsf/(attachmentweb)/NOR/$FILE/NOR.pdf).

of an oil pipeline between Cameroon and neighboring Chad represent a threat to local communities and the environment.<sup>77</sup>

According to the Request, “[a]s a general rule, there have been serious infringements of our rights which are due to violation of the policies of the World Bank and which have taken the following forms: insufficient information during the preparatory phase of the project and since implementation has begun; an inadequate consultation process; insufficient, non-existent or inadequate compensation; non-respect for workers’ rights; a renewed outbreak of sexually transmitted diseases and HIV/AIDS all along the oil pipeline and around the project’s main bases (from north to south), an increase in the prostitution of minors along the length of the oil pipeline.”<sup>78</sup>

More specific claims include: (i) impoverishment of the local population along the pipeline due to inadequacies of the resettlement and compensation process; (ii) pulmonary and other health problems associated with dust resulting from construction work; (iii) drying up, reduction of flow or pollution of water sources with adverse effects on the availability of water for consumption and irrigation, and on fisheries; (iv) noise nuisance with negative impact on the availability of game for subsistence; (v) inadequate design and implementation of the plan for the protection and benefit of indigenous peoples; (vi) inadequate design and implementation of the resettlement and compensation programs (including poor quality of the in-kind materials provided); (vii) inadequacy of the grievance procedure under the resettlement and compensation Programs; (viii) inadequate selection and implementation of the compensatory protected areas; (ix) inadequate scope and processing of the environmental assessment prepared for the project, including mitigation measures; (x) failure to assess and address the fragile domestic institutional capacity required to handle to the project; and (xi) violation of workers’ rights and poor working conditions, including adverse impacts on workers’ health.<sup>79</sup>

#### **4) Petroleum Development and Pipeline Project (Chad-Cameroon)**

Sponsored by US-based ExxonMobil and Chevron and Malaysia-based Petronas and with financial support from the Board of the World Bank Group, the Chad-Cameroon Petroleum Development and Pipeline Project (the Project) includes the construction of a 600-mile (1,070 km) pipeline from oil fields in Chad, through the rainforests of Central Africa, to the Cameroon coastline.<sup>80</sup> Cameroon’s relatively undisturbed forest is home to the Bakola pygmies. Both Chad and Cameroon have already violated rights to free speech and assembly of the general population because of this project. In 1998, national security forces in Chad allegedly massacred one hundred unarmed civilians who were demonstrating against the project. In addition, the

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

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

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

<sup>80</sup> See The World Bank Group, *Press Release, World Bank Group Approves Support for Chad-Cameroon Petroleum Development and Pipeline Project* (June 6, 2000) at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20058876~menuPK:34465~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

foreign companies involved in the project have histories of using military repression as a defense to local disapproval.<sup>81</sup>

On October 1, 2001, the Board approved the Panel's recommendation to conduct an investigation into claims made by Mr. Ngarlejy Yorongar, who was acting for himself and on behalf of more than 100 residents living in the vicinity of three oil fields of the Doba Petroleum Project in southern Chad, on aspects of the Chad Petroleum Development and Pipeline Project, the Management of the Petroleum Economy Project, and the Petroleum Sector Management Capacity Building Project.<sup>82</sup>

The requestors stated that their rights were, or would be directly harmed by the Bank's actions in the design and supervision of the projects. They claimed that the projects presented a threat to the existence of the community, their cultural property, and the environment.<sup>83</sup> Furthermore, they claimed that the people living in the Doba Basin were being harmed, because of the lack of compensation and environmental assessment.<sup>84</sup> These allegations could hold the Bank in violation of policies concerning environmental assessment, poverty reduction, natural habitats and indigenous peoples, among other things.<sup>85</sup>

On July 17, 2002, the Panel's investigation report was sent to the Board, and on August 21, 2002, Management received the Panel's response.<sup>86</sup> On September 12, 2002, the Board approved Management's response.<sup>87</sup> The Management action plan to address the Panel's findings focused on four areas: environmental and social compliance with the Bank's policies and procedures; economic issues; poverty reduction; and monitoring and supervision.<sup>88</sup>

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<sup>81</sup> See Susanne Breitkopf Urgewald, *The Chad Cameroon Petroleum Development and Pipeline Project: Risky Business* (Sept. 2000), at <http://www.ciel.org/Ifi/ifcchadcameroon.html> (last visited February 10, 2003); Project Underground, *Intravenous Earth*, reprinted from *The World Paper* (July 2000), available at <http://www.moles.org/ProjectUnderground/news/pipeline000804.html>; Environmental Defense Newsletter *African Pipeline Would Threaten People and Rainforests*, (November 1999), at [http://www.environmentaldefense.org/documents/170\\_Nov99.pdf](http://www.environmentaldefense.org/documents/170_Nov99.pdf). See generally, Association Tchadienne pour la Promotion et la Defense des Droits de l'Homme, Chad, Centre pour l'Environnement et le Developpement, Cameroon, Environmental Defense, USA, *The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability* (June 2002) available at [http://www.environmentaldefense.org/documents/2134\\_Chad-Cameroon.pdf](http://www.environmentaldefense.org/documents/2134_Chad-Cameroon.pdf).

<sup>82</sup> See World Bank Inspection Panel, *Press Release, World Bank Board approves the Inspection Panel's recommendation The Panel to investigate whether the Bank has observed its policies and procedures in the Chad Pipeline Project*, at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(webnews2\)/971286E39484903F85256AE0005FE0DF](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(webnews2)/971286E39484903F85256AE0005FE0DF) (visited February 10, 2003).

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

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

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

<sup>86</sup> See Inspection Panel Register, *PART I: Requests Registered* available at [http://wbln0018.worldbank.org/ipn/ipnweb.nsf/\(attachmentweb\)/Register/\\$FILE/Register.pdf](http://wbln0018.worldbank.org/ipn/ipnweb.nsf/(attachmentweb)/Register/$FILE/Register.pdf) (visited February 10, 2003).

<sup>87</sup> See The World Bank Group, *World Bank Board of Directors Approves Management's Response to Inspection Panel Report on Chad-Cameroon Pipeline Project*, (September 12, 2002) available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20067840%7EmenuPK:34466%7EpagePK:34370%7EpiPK:34424%7EtheSitePK:4607.00.html>.

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

Also on September 12, 2002, Edward Ayensu, Chairman of the Panel, addressed the Board on the Panel's investigation report.<sup>89</sup> In his address, the Chairman discussed when an environmental assessment is required, stating "when the project is likely to have sectoral and regional impacts, sectoral or regional EA is required."<sup>90</sup> Further, in discussing the role of human rights in Bank policies, the Chairman stated that "[t]he Panel agrees and believes that the situation in Chad exemplifies the need for the Bank to be more forthcoming about articulating its role in promoting rights within the countries in which it operates."<sup>91</sup>

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

The WHO recognizes the link between human rights a healthy environment by focusing program resources on myriad environmental health programs.<sup>92</sup> WHO environmental health program areas include children, environmental burden of disease, water and sanitation, food safety, solid wastes, noise, climate, occupational health, electro-magnetic fields, ultraviolet radiation, air, ionizing radiation, chemicals, and chemical incidents and emergencies.<sup>93</sup>

The WHO, together with the International Labour Organization and the United Nations Environment Programme, released a final draft of a report on the state of the science of endocrine disruptors. The report calls for further research and investigation of the impacts of these chemicals on human (and wildlife) health.<sup>94</sup> Endocrine disrupting chemicals encompass a variety of compounds -- including natural and synthetic hormones, pesticides, industry byproducts and other pollutants and have been shown to have adverse impacts on fertility, reproduction, neurological development, and immune system function. The report notes that early data suggest links between these chemicals and human health that may indicate violations of basic human rights to health and well-being. The potential for harm to human reproductive function and impacts on male:female ratios across populations indicate a potential violation of the human right to a family.<sup>95</sup>

#### **E. Organization for Economic Co-operation and Development (OECD)**

The OECD developed various inputs to the World Summit on Sustainable Development, held in Johannesburg, South Africa, from August 26 – September 4, 2002.<sup>96</sup> These included a report

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<sup>89</sup> See The World Bank Group, *Press Release, Chairman's Statement on Chad Investigation*, (September 18, 2002) available at <http://wbln0018.worldbank.org/ipn/ipnweb.nsf/WRelease/60E7C708A562A15885256C380057D0AD>.

<sup>90</sup> *Id.* at ¶ 4.

<sup>91</sup> *Id.* at ¶ 8.

<sup>92</sup> The World Health Organization, *Protection of the Human Environment* at <http://www.who.int/peh/> (visited February 10, 2003).

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

<sup>94</sup> International Programme on Chemical Safety, *Global Assessment of The State-of-the-Science of Endocrine Disruptors*, available at <http://rea.ei.jrc.it/~kohl/MARA/myweb/final%20draft/who.html> (visited February 3, 2003).

<sup>95</sup> The right to family is articulated in the American Declaration of the Rights and Duties of Man, May 2, 1948, art. VI, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, Doc. 21 Rev. 6 (adopted by the Ninth International Conference of American States, Bogota, 1948, available at <http://www.cidh.oas.org/Basicos/basic2.htm> (visited February 10, 2003).

<sup>96</sup> See Organization for Economic Co-operation and Development, *Working Together Towards Sustainable Development: The OECD Experience*, available at <http://www.oecd.org/EN/document/0,,EN-document-8-nodirectorate-no-4-30433-8,00.html> (visited February 10, 2003).

entitled “Working Together Towards Sustainable Development,”<sup>97</sup> and a “Global Forum on Sustainable Development: Financing the Environmental Dimension of Sustainable Development,” from April 24-26, 2002.<sup>98</sup> In the report, the OECD recognized the link between human rights and a healthy environment in various ways. For example, the OECD noted that:

[w]ithin OECD countries, the challenges include establishing appropriate policies to combat the threat of climate change, to better manage fisheries and water resources, and to provide greater protection of ecosystems and biodiversity. . . . A better integration of the social, economic and environmental dimensions of sustainable development in policy making is also needed. . . . [S]ustainable development demands co-operation and partnerships between OECD countries, transition economies, and developing countries. It requires enhanced bilateral and multilateral effort. . . . Climate change, biodiversity loss, deforestation, water scarcity, and overfishing – all need immediate action. International environmental conventions and agreements have been set up to tackle many of these.<sup>99</sup>

## II. REGIONAL

Like global international bodies, developments from regional bodies during 2001 and 2002 have continued to advance and solidify a customary international legal right to a clean and healthy environment. These developments are found in places similar to those of international bodies.

### A. European Union

#### 1) European Commission

The European Commission charged eight E.U. Member States with violating water quality directives (France, Greece, Germany, Ireland, Luxembourg, Belgium, Spain, and the UK).<sup>100</sup> In the case against France, the European Court of Justice (ECJ) ruled that France had not met the 50 mg/L limit for nitrates in surface waters. The European Commission’s increased regulation of water quality standards demonstrates the commitment to the newly recognized human right to clean water.<sup>101</sup>

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<sup>97</sup> See OECD, *Working Together Towards Sustainable Development*, available at <http://www1.oecd.org/scripts/publications/bookshop/redirect.asp?pub=972002131E1> (visited February 10, 2003).

<sup>98</sup> See OECD, *OECD Global Forum on Sustainable Development, Conference on Financing the Environmental Dimension of Sustainable Development, Rapporteur’s Report*, available at <http://www.oecd.org/pdf/M00029000/M00029881.pdf> (visited February 10, 2003).

<sup>99</sup> See *Working Together Towards Sustainable Development*, supra n. 97 at 7.

<sup>100</sup> *Commission Charges Eight E.U. States with Violating Water Quality Directives*, 25 Int’l Env’t. Rep. 6 (BNA) at 277 (March 13, 2002).

<sup>101</sup> U.N. Committee on Economic, Social, and Cultural Rights, 29<sup>th</sup> Sess., Gen. Comment 15, Agenda Item 3, E/C.12/2002/11 (2002), available at <http://193.194.138.190/html/menu2/6/gc15.doc>.

## 2) European Commission on Human Rights

### (a) Sixth Environment Action Programme of the European Community 2002-2012

On July 22, 2002, the European Parliament and the Council of the European Community adopted the Commission's proposed Sixth Community Environment Action Programme.<sup>102</sup> The preamble states: "A clean and healthy environment is essential for the well-being and prosperity of society."<sup>103</sup> The programme identifies four priority areas for the Community; climate change, nature and biodiversity, environment and health, and natural resources and waste.<sup>104</sup>

Among the approaches in the action program to achieve improvements in these four areas is the integration of environmental concerns into all relevant policy areas.<sup>105</sup> The program seeks to identify the dangers and create new standards regarding the effect of the environment on vulnerable groups such as children and the elderly.<sup>106</sup>

### (b) Hatten and Others v. the United Kingdom

In the case of *Hatten and Others v. the United Kingdom*, the European Court of Human Rights furthered its growing jurisprudence on the application of the right to privacy to environmental harms. The Chamber found on October 2, 2001 that noise from overnight air traffic at Heathrow Airport violated the right to privacy and inviolability of the home and family of nearby residents under Article 8 of the European Convention on Human Rights.<sup>107</sup> The Chamber also found a violation of the right of access to an effective legal remedy under Article 13 of the European Convention on grounds that the scope of review provided by the UK courts was insufficient to allow petitioners to claim that the increase in night flights under the 1993 scheme represented an unjustifiable interference with their privacy.<sup>108</sup> Finding that the United Kingdom had violated both Article 8 and 13, the Commission ordered that the United Kingdom pay the plaintiffs damages and court costs.<sup>109</sup>

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<sup>102</sup> Official Journal of the European Communities, L. 242, vol. 45, September 10, 2002, at 1, available at [http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_242/l\\_24220020910en00010015.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_242/l_24220020910en00010015.pdf) (visited February 10, 2003).

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

<sup>104</sup> *Id.* at 3; see also The European Commission, Sixth Environment Action Programme, *Environment 2010: Our Future, Our Choice*, at <http://europa.eu.int/comm/environment/newprg/index.htm> (visited February 10, 2003).

<sup>105</sup> *Id.* at 2, ¶ 13.

<sup>106</sup> *Id.* at art. 7, ¶ 2(a).

<sup>107</sup> *Hatten and Others v. United Kingdom*, European Court of Human Rights, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=7&Action=Html&X=211001547&Notice=0&Noticemode=&RelatedMode=0> (visited February 10, 2003).

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

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

The importance of the decision to the link between human rights and the environment is perhaps best illustrated by the concurring opinion of Judge Costa who wrote, “having regard to the Court’s case-law on the right to a healthy environment, maintaining night flights at that level meant that the applicants had to pay too high a price for an economic well-being. . . . Our Court’s case-law has, moreover, not been alone in developing along those lines. For example, Article 37 of the Charter of Fundamental Rights of the European Union of 18 December 2000 is devoted to the protection of the environment.”<sup>110</sup> The case was referred to the Grand Chamber on March 27, 2002. The Grand Chamber heard oral argument on November 13, 2002.<sup>111</sup>

## **B. Organization of American States (OAS)**

On June 4, 2002, at its fourth plenary session, the OAS General Assembly passed a Resolution on Human Rights and Environment in the Americas.<sup>112</sup> In that Resolution, the OAS “underscored the importance of studying the link that may exist between the environment and human rights,” and resolved, among other things, to “encourage institutional cooperation in the area of human rights and the environment in the framework of the Organization, in particular between the IACHR and the OAS Unit for Sustainable Development and Environment.”<sup>113</sup> On November 21, 2003. The Committee on Juridical and Political Affairs of the OAS, a group comprising representatives from the hemisphere's 34 countries (save Cuba) convened in Washington, DC to discuss advances made on linking human rights and environment in hemispheric affairs.<sup>114</sup> Representatives from the OAS's Unit for Sustainable Development and Environment and from the Inter-American Commission on Human Rights also presented to the CIPA on the state of human rights and environment in the hemisphere. Governments actively participated in nearly 2 hours of discussion around the topic, and agreed that further study and collaboration are necessary to deepen our approach to this linkage.<sup>115</sup>

### **1) Inter-American Commission on Human Rights (IACHR)**

On October 16, 2002, the Commission held a special “General Hearing” on the effects of Environmental Degradation on the Realization of Human Rights in the Hemisphere.<sup>116</sup> This hearing marked the first time that the IACHR formally and specifically addressed the linkages of human rights to the environment in a General Hearing. The General Hearing was part of an ongoing hemispheric initiative to foster attention of the regional human rights bodies to the impacts of environmental degradation on people, and particularly to promote the use of available legal mechanisms to guarantee access to justice for victims of human rights violations.

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<sup>110</sup> *Id.* at Separate Opinion of Judge Costa.

<sup>111</sup> See European Court of Human Rights, *Press Release Issued by the Registrar, Forthcoming Hearings* (October 31, 2002) <http://www.echr.coe.int/eng/PRESS/2002/oct/Announce%20HearingsNovember2002epress.htm#Murphy>.

<sup>112</sup> OAS AG/RES. 1896 (XXXII-O/02), *Human Rights and the Environment in the Americas*, available at [http://www.oas.org/juridico/english/ga02/agres\\_1896.htm](http://www.oas.org/juridico/english/ga02/agres_1896.htm) (visited February 10, 2003).

<sup>113</sup> *Id.*

<sup>114</sup> See Press Release, Argentine Center for Human Rights and Environment, November 21, 2002 (on file with Earthjustice); see also [www.cedha.org.ar](http://www.cedha.org.ar) (visited February 10, 2003).

<sup>115</sup> *Id.*

<sup>116</sup> See generally Center for Human Rights and Environment, *Hearing on Human Rights and Environment Inter-American Commission on Human Rights* at <http://www.cedha.org.ar/hr-env-hearing-oas.htm> (visited February 10, 2003).

### **C. North American Commission on Environmental Cooperation**

The North American Agreement on Environmental Cooperation (NAAEC), known as the environmental side agreement to the North American Free Trade Agreement, established the North American Commission on Environmental Cooperation (NACEC) comprising a Council, Secretariat and Joint Public Advisory Committee.<sup>117</sup> With the approval of the Council, the Secretariat of the NACEC can develop a factual record in response to a citizen submission claiming that the government of Canada, Mexico or the United States has failed to “effectively enforce its environmental laws.”<sup>118</sup>

As of November 2002, the NACEC has developed three factual records, is reviewing twelve citizen submissions, and has dismissed or terminated 23 others. Many of these submissions seek review of situations where the alleged failure to enforce environmental laws has directly affected human rights.<sup>119</sup>

#### **1) Cytrar II**

This submission asserts that Mexico is failing to effectively enforce its environmental law in relation to the establishment and operation of a hazardous waste landfill near the city of Hermosillo, Sonora, Mexico. The Submitters assert that the Cytrar hazardous waste landfill carried on activities in violation of multiple legal provisions, since: a) it operated without an environmental impact authorization; b) it failed to comply with the applicable legal provisions concerning the design and construction of its facilities; and c) it deposited hazardous waste originating from the company Alco Pacifico, Inc. of the United States of America. The submitters allege that these violations concerning the disposal of hazardous wastes have caused damage to human health and to habitat. On July 29, 2002, the Secretariat informed Council that the Secretariat considers that the submission warrants development of a factual record.<sup>120</sup>

#### **2) Molymex II**

This submission alleges that Mexico has failed to effectively enforce its environmental laws in relation to the operation of the company Molymex, S.A. de C.V. in the town of Cumpas, Sonora, Mexico. The company processes residues generated in the smelting of copper by national and foreign companies to produce molybdenum trioxide, causing damage and loss to human health and the environment. On May 28, 2002, the Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders.<sup>121</sup>

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<sup>117</sup> See NAAEC, Can.-Mex.-U.S., Signed at Mexico, Ottawa and Washington, D.C., Sept. 8 - 14, 1993; entered into force January 1, 1994, TIAS, US Treaties in Force at 374, at art. 8, at [http://www.cec.org/pubs\\_info\\_resources/law\\_treat\\_agree/naaec/index.cfm](http://www.cec.org/pubs_info_resources/law_treat_agree/naaec/index.cfm) (visited November 27, 2002).

<sup>118</sup> *Id.* at arts. 14-15.

<sup>119</sup> See NACEC, *Citizen Submissions on Enforcement Matters: Current Status of Filed Submissions*, at <http://www.cec.org/citizen/status/> (visited November 20, 2002).

<sup>120</sup> See NACEC, *Citizen Submissions on Enforcement Matters, CytrarII*, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=58> (visited February 10, 2003).

<sup>121</sup> See NACEC, *Citizen Submissions on Enforcement Matters, Molymex II* at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=56> (visited February 10, 2003).

### **3) Rio Magdalena**

The Submitters allege that wastewater originating in the municipalities of Imuris, Magdalena de Kino, and Santa Ana, located in the Mexican state of Sonora, is being discharged into the Magdalena River without prior treatment. According to the Submitters, the above contravenes Mexican environmental legislation governing the disposal of wastewater. On March 22, 2002, the Secretariat placed a work plan and a repository of documents on its web site or otherwise made these available to the public and stakeholders.<sup>122</sup>

### **4) Sierra Tarahumara**

The Submitters allege a failure by Mexico to effectively enforce its environmental law by denying access to environmental justice to Indigenous communities in the Sierra Tarahumara in the State of Chihuahua. They particularly assert failures to effectively enforce environmental law relative to the citizen complaint process, to alleged environmental crimes and to other alleged violations with respect to forest resources and the environment in the Sierra Tarahumara. On August 29, 2002, the Secretariat informed the Council that the Secretariat considers that the submission warrants development of a factual record.<sup>123</sup>

### **5) Children's Health**

The joint advisory panel to the NACEC (which combines the National Advisory Committee to the U.S. Representative and the Government Advisory Committee to the U.S. Representative) recommended in May, 2002 that effects of air pollution & toxics on children's health be prioritized on the U.S. agenda at the next NACEC meeting. The panel is charged with advising the U.S. representative to the NACEC on how trade among the United States, Canada, and Mexico affects both the environment and human health. Specific concerns are diesel emissions, heavy metals, the pesticide lindane, and 12 persistent, bioaccumulative, organic chemicals identified by UNEP. This recommendation demonstrates the link between trade and pollution and children's right to health.<sup>124</sup>

### **6) Pollutants and Health Program**

The CEC Pollutants and Health Program seeks to establish cooperative initiatives to prevent or correct adverse effects, on a North American scale, from pollution to human and ecosystem health. Guidance on methods to accomplish this mission is embodied within the language of Article 10 of NAAEC. These methods include: encouraging technical cooperation

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<sup>122</sup> See NACEC, *Citizen Submissions on Enforcement Matters, Rio Magdalena* at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=36> (visited February 10, 2003).

<sup>123</sup> See NACEC, *Citizen Submissions on Enforcement Matters, Tarahumara* at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=57> (visited February 10, 2003).

<sup>124</sup> *Advisory Panel to Recommend U.S. Agenda for NAFTA Environment Commission Meeting*, 25 Int'l Env't. Rep. 10 (BNA) at 484 (May 8, 2002); for full text of the U.N. Convention on the Rights of the Child, see <http://www.unicef.org/crc/crc.htm> (visited January 31, 2003).

between the Parties; promoting pollution prevention techniques and strategies; recommending appropriate limits for specific pollutants, taking into account differences in ecosystems; recommending approaches for the comparability of techniques and methodologies for data gathering and analysis, data management, and electronic data communications; and promoting access to publicly available information concerning the environment that is held by public authorities of each Party.<sup>125</sup>

### III. DOMESTIC

Whereas decisions of international and regional bodies serve as evidence of customary international law and treaty law, decisions of domestic bodies and actions of nations usually serve as evidence of the general principles of law recognized by civilized nations, a third prominent source of international law.<sup>126</sup> Such developments are most often found in national constitutions, statutes and regulations, the decisions of domestic courts and other materials comprising the domestic law of a state.

#### A. Constitutions<sup>127</sup>

Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right. Of the approximately 191 nations in the world,<sup>128</sup> there are now 109 national constitutions that mention the protection of the environment or natural resources.<sup>129</sup> One hundred of them recognize the right to a clean and healthy environment and/or the state's obligation to prevent environmental harm.<sup>130</sup> Of these, 53 constitutions explicitly recognize the right to a clean and healthy environment,<sup>131</sup> and 92 constitutions make it the duty

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<sup>125</sup> See NACEC, *Citizen Submissions on Enforcement Matters, Pollutants and Health*, at [http://www.cec.org/programs\\_projects/pollutants\\_health/index.cfm?varlan=english](http://www.cec.org/programs_projects/pollutants_health/index.cfm?varlan=english) (visited December 3, 2002).

<sup>126</sup> See I.C.J. Statute, art. 38.

<sup>127</sup> See *infra* Appendix 1 (providing a cumulative list of these countries and a brief description of the relevant provisions)

<sup>128</sup> As of 2002, there are 190 members of the United Nations, Switzerland retaining member status in March 2002. See generally U.N., *Member States* at <http://www.un.org/members/index.html> (visited March 13, 2002).

<sup>129</sup> See *infra* Appendix 1.

<sup>130</sup> Andorra, Angola, Argentina, Armenia, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Cape Verde, Chad, Chechnya, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Czech Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea (draft), Ethiopia, Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Iran, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia Lithuania, Macedonia, Madagascar, Malawi, Mali, Malta, Mexico, Micronesia, Moldova, Mongolia, Mozambique, Namibia, Nepal, Netherlands, Nicaragua, Niger, Norway, Palau, Panama, Papa New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Sao Tome and Principe, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Suriname, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Turkey, Turkmenistan, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam, Yugoslavia, Zambia.

<sup>131</sup> Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, Colombia, Congo, Costa Rica, Croatia, Cuba, Czech Republic, Ecuador, El Salvador, Ethiopia, Finland, Georgia, Honduras, Hungary, Kyrgyzstan, Latvia, Macedonia, Mali, Moldova, Mongolia, Mozambique, Nicaragua, Niger, Norway, Paraguay, Philippines, Portugal, Russia, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Tajikistan, Togo, Turkey, Ukraine, Yugoslavia. In addition to these, the constitutions of Comoros and Guatemala recognize a right to health that is not explicitly tied to the state of the environment.

of the national government to prevent harm to the environment.<sup>132</sup> Fifty-four constitutions recognize a responsibility of citizens or residents to protect the environment,<sup>133</sup> while 14 prohibit the use of property in a manner that harms the environment or encourage land use planning to prevent such harm.<sup>134</sup> Nineteen constitutions explicitly make those who harm the environment liable for compensation and/or remediation of the harm, or establish a right to compensation for those suffering environmental injury.<sup>135</sup> Sixteen constitutions provide an explicit right to information concerning the health of the environment or activities that may affect the environment.<sup>136</sup>

## B. Courts

### 1) Russia: Military Supreme Court, Case No. VKPI 01-68

On December 25, 2001, a military court in Vladivostok, Russia, found Russian military journalist and environmental whistleblower, Grigory Pasko, guilty of one of ten counts of revealing state secrets and sentenced him to four years in labor camp, reduced to two years and four months for time already served. Pasko was arrested in November of 1997 following his efforts to document Russia's Pacific Fleet's practice of illegally dumping nuclear waste into the Sea of Japan. Pasko gave the information to the Japanese television company NHK, which used the information for a news report aired in Japan.<sup>137</sup> The Supreme Court affirmed Pasko's sentence on June 25, 2002, and he was moved to the hard labor prison camp on September 10th, 2002.<sup>138</sup> This decision deals a significant blow to link between the environment and the right to free speech and illustrates the urgency of further recognition of such link. On December 24, 2002, the Russian Supreme Court Presidium rejected Pasko's request for a supervisory review of

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<sup>132</sup> Andorra, Angola, Argentina, Armenia, Bahrain, Belarus, Benin, Bolivia, Brazil, Bulgaria, Cambodia, Cameroon, Cape Verde, Chad, Chechnya, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Ecuador, El Salvador, Equatorial Guinea, Eritrea (draft), Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Iran, Kazakhstan, Kuwait, Laos, Latvia, Lithuania, Macedonia, Madagascar, Malawi, Mali, Malta, Mexico, Micronesia, Mongolia, Mozambique, Namibia, Nepal, Netherlands, Nicaragua, Niger, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Sao Tome and Principe, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Suriname, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Turkey, Turkmenistan, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam, Yugoslavia, Zambia.

<sup>133</sup> Algeria, Argentina, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, China, Colombia, Congo, Cuba, Czech Republic, Finland, Ghana, Guatemala, Guyana, Haiti, India, Kazakhstan, Kyrgyzstan, Laos, Lithuania, Macedonia, Madagascar, Mali, Moldova, Mongolia, Mozambique, Panama, Papua New Guinea, Poland, Russia, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, South Korea, Spain, Sri Lanka, Sudan, Tajikistan, Tanzania, Thailand, Turkey, Ukraine, Uruguay, Uzbekistan, Vanuatu, Vietnam, Yugoslavia.

<sup>134</sup> Albania, Armenia, Belarus, Burundi, Chile, Czech Republic, Moldova, Mongolia, Romania, Russia, Slovakia, Switzerland, Ukraine, Uzbekistan.

<sup>135</sup> Angola, Argentina, Azerbaijan, Belarus, Brazil, Chechnya, Chile, Congo, Costa Rica, Ecuador, Haiti, Kyrgyzstan, Moldova, Mongolia, Paraguay, Poland, Russia, Spain, Ukraine.

<sup>136</sup> Albania, Azerbaijan, Belarus, Colombia, Czech Republic, Ecuador, Eritrea (draft), Georgia, Kazakhstan, Latvia, Moldova, Norway, Russia, Slovakia, Ukraine, Yugoslavia.

<sup>137</sup> See Sierra Club, *Another Nikitin? Russian Journalist Grigory Pasko Faces Trial*, at <http://www.sierraclub.org/human-rights/russia/pasko.asp> (visited February 10, 2003).

<sup>138</sup> See Bellona, *The Pasko Case*, at <http://www.bellona.no/imaker?id=15050&sub=1> (visited December 3, 2002).

his conviction. On the same day, his human rights petition was sent to the European Court of Human Rights where it remains pending.<sup>139</sup>

## 2) United States Federal Courts

Currently pending before the federal courts in California and New York are several cases concerning human rights abuses in developing countries that have resulted from environmental degradation allegedly caused by European and US corporations. Although these cases have not yet been decided on the merits, they have cleared significant procedural hurdles that otherwise would have left the plaintiffs without an adequate forum in which to seek relief.

### **(a) *Doe v. Unocal* (U.S. District Court for the Central District of California, Case Nos. 96CV6959(RSWL), 96CV6112(RSWL))**

On September 18, 2002, the United States Court of Appeals for the Ninth Circuit reversed an earlier Federal District Court decision and will allow a human rights lawsuit against Unocal to go forward. In the case, 11 Burmese villagers allege that Unocal, a California based oil company, are liable for human rights abuses associated with its Yadana gas pipeline project in Burma.<sup>140</sup> The abuses include rape, forced labor, and murder. In recognizing the accountability of corporations that aid and abet human rights abuses, the Ninth Circuit has affirmed that US corporations cannot violate international human rights with impunity.<sup>141</sup>

The Court held that plaintiffs need only demonstrate that Unocal knowingly assisted the military in the perpetration of the abuses, and that plaintiffs had presented evidence that Unocal had done so.<sup>142</sup> It also found that forced labor such as that employed by the Burmese military on behalf of the Unocal pipeline is the “modern equivalent of slavery.”<sup>143</sup> The decision follows a June 2002 decision in related state lawsuit, in which California Superior Judge Victoria Chaney held that plaintiffs’ claims may proceed to trial.<sup>144</sup> On February 14, 2003, the U.S. Court of Appeals for the Ninth Circuit decided to rehear plaintiffs’ appeal in *Doe v. Unocal* before an 11 judge en banc panel, erasing the September 18, 2002 decision from the books.<sup>145</sup>

### **(b) *Bowoto v. Chevron* (U.S. District Court for the Northern District of California, Case No. 99CV2506(SI))**

In May of 1999, victims of gross human rights abuses associated with Chevron's oil production activities in the Niger Delta region of Nigeria filed suit against Chevron in federal

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<sup>139</sup> See Bellona, *Pasko Appeals to European Court*, at <http://www.bellona.no/en/international/russia/envirorights/pasko/27745.html> (visited January 2, 2003).

<sup>140</sup> *Doe v. Unocal*, 2002 U.S. App. LEXIS 19263 (9<sup>th</sup> Cir. 2002).

<sup>141</sup> See Earthrights International, *Unocal Can Be Held Liable for Human Rights Crimes in Burma, says Appeals Court*, at <http://www.earthrights.org/news/unocalsept19pr.shtml> (visited February 10, 2003).

<sup>142</sup> *Id.*

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

<sup>144</sup> *Id.*

<sup>145</sup> See Earthrights International, *Ninth Circuit to Rehear Unocal Appeal*, at <http://www.earthrights.org/news/enbanc.shtml> (visited March 22, 2003).

court in San Francisco.<sup>146</sup> The case is based on two incidents: the shooting of peaceful protestors at Chevron's Parabe offshore platform and the destruction of two villages by soldiers in Chevron helicopters and boats.<sup>147</sup> It was filed under the Alien Tort Claims Act, which permits suits in U.S. courts against individuals or corporations that commit international human rights violations anywhere in the world, if that person or corporation resides in or visits the United States.<sup>148</sup> In August 2002, the Court granted in part Plaintiffs' request for leave to file a Fourth Amended Complaint, which was filed at that time.<sup>149</sup>

**(c) *Arias v. DynCorp* (U.S. District Court for the District of Columbia, Case No. 01CV1908 (RWR))**

This case, involves DynCorp's aerial spraying of herbicides on the Colombian side of the Ecuador/Colombia border as part of the U.S. government's "Plan Colombia" coca eradication program.<sup>150</sup> Plaintiffs allege that DynCorp knew or should have known that the herbicides were highly toxic if inhaled, and nonetheless sprayed these herbicides despite knowing that winds would carry them into areas of Ecuador where the plaintiffs live.<sup>151</sup> According to plaintiffs' complaint, local people suffered massive health problems, numerous deaths and widespread environmental damage to their subsistence agriculture, and at least 10,000 people were harmed.<sup>152</sup>

An amicus curiae brief in support of the plaintiffs and opposing DynCorp's pending motion to dismiss argues that significant environmental harms that cross international boundaries violate international law and are actionable under the Alien Tort Claims Act, 28 U.S.C. § 1350, particularly where the harms are serious enough to violate the right to a healthy environment, i.e. they are long-term, widespread and severe, they violate the rights to life, security of the person and health on a mass scale or they deprive substantial numbers of people of their means of subsistence.<sup>153</sup>

**(d) *Jota et al. and Aguinda et. al. v. Texaco* (U.S. District Court for the Southern District of New York 93CV7527(JSR))**

Texaco's environmental destruction of the Ecuadorian Amazon has affected tens of thousands of people. The victims of Texaco's abuses sought recourse in a consolidated lawsuit, Jota, et al and Aguinda, et al v. Texaco, filed, in part, under the Alien Tort Claims Act (ATCA),

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<sup>146</sup> See Earthrights International, *Bowoto v. ChevronTexaco*, at <http://www.earthrights.org/chevron/index.shtml> (visited February 10, 2003).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*; see also Earthrights International, *Fourth Amended Complaint for Damages and Declaratory and Injunctive Relief*, at <http://www.earthrights.org/chevron/4thamendedcomplaint.doc> (visited December 3, 2002).

<sup>150</sup> See Earthrights International, *Arias v. DynCorp*, at <http://www.earthrights.org/dyncorp/index.shtml> (visited February 10, 2003).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

28 U.S.C. § 1350.<sup>154</sup> In the lawsuit, the plaintiffs asserted that Texaco's actions violated international law.<sup>155</sup> The Aguinda plaintiffs alleged that, from 1972-1992, Texaco released massive quantities of highly toxic petroleum wastes into waters people used for bathing, fishing, drinking, and cooking, and that Texaco sprayed these wastes onto local roads.<sup>156</sup> In addition, the plaintiffs claimed that Texaco's actions have had devastating impacts on their ability to maintain their traditional cultures.<sup>157</sup> The Jota plaintiffs alleged that Texaco's pollution crossed the border causing thousands of persons similar injuries in an adjoining region of Peru.<sup>158</sup>

In a decision issued on August 16, 2002, the U.S. Court of Appeals for the Second Circuit affirmed the lower court's decision to dismiss the case.<sup>159</sup> The Court of Appeals, however, did not adopt the district court's finding that plaintiffs would be unlikely to state a claim for a violation of international law.<sup>160</sup> Rather, the Court held that it was unnecessary to consider that issue, because other public and private interest factors would require dismissal even if the ATCA expresses a strong U.S. policy interest in hearing this case.<sup>161</sup>

### **3) Brazil: Special Jurisdiction Appellate Court, Case No. 0208625-3**

A recent decision of the Special Jurisdiction Appellate Court for the State of Paraná affirmed the human right to clean water. The court held that the plaintiffs, Albertino Marque and another unnamed person, should have their water supply re-established by the local water company despite their default on payment. This decision was based on the plaintiffs' constitutional rights, consumer rights, and, more specifically, human rights. The court reasoned that when a person suffered from an illness requiring basic access to water, the right to health supercedes the contractual legality of discontinuing the water supply.<sup>162</sup>

## **C. Governments**

### **1) Costa Rica**

#### **(a) Oil Exploration**

In May, 2002, the government of Costa Rica rejected a plan to open its Caribbean waters to offshore oil exploration, rejecting the environmental impact study presented by MKJ Explorations, a member of the US-based Harken Costa Rican Holdings, citing more than 50 legal and environmental problems.<sup>163</sup> The decision went beyond local law, drawing on international

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<sup>154</sup> See Earthrights International, *Aguinda v. Texaco*, at <http://www.earthrights.org/texaco/index.shtml> (visited February 10, 2003).

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

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

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

<sup>160</sup> See Earthrights International, *Aguinda v. Texaco*, at <http://www.earthrights.org/texaco/index.shtml> (visited February 10, 2003).

<sup>161</sup> *Id.*

<sup>162</sup> Summary on file with Earthjustice.

<sup>163</sup> See CorpWatch, *Costa Rica, Offshore Oil Drilling Scrapped* (May 15, 2002), at <http://www.corpwatch.org/news/PND.jsp?articleid=2573>; AIDA, *Oil-Free Costa Rica*, at

agreements signed by the Costa Rican government. One such agreement was the Rio Declaration on Environment and Development, signed at the United Nations Conference on Environment and Development in 1992.

At the heart of ongoing debate is the highly criticized 1994 Hydrocarbons Law. The law divided the country into 27 oil and natural gas exploration blocks, including some that encroach on indigenous reserves and nationally protected land. The blocks were opened to bidding by foreign companies in 1997.<sup>164</sup> This development is a signal from Costa Rica that it will not prioritize oil exploration over, among other things, the human rights of indigenous and other Costa Rican citizens.

### **(b) Open Pit Mining**

In June 2002, Costa Rican President Abel Pacheco signed a decree banning open pit mining in Costa Rica, halting all open pit exploration and mining projects awaiting government approval. President Pacheco said the decree was aimed at protecting Costa Rica's environmental wealth. "These practices can be a real threat to living beings. With this initiative we are lifting our voice to the world, asking that our natural resources be valued," he said at a ceremony to mark World Environment Day.<sup>165</sup> "This is a declaration of peace for nature and the environment. We will accept no more corruption affecting our environment," said Pacheco.

## **2) Austria**

In its Implementation Strategy for the Convention on Biodiversity, the Austrian government declared "[t]he right to ecologically functional landscapes that are intact on a regional level is viewed as a fundamental human right. It is the ethical responsibility of every citizen to help preserve this cultural and natural heritage, including the diversity of animals and plants."<sup>166</sup>

## **3) Canada**

The Canadian Environmental Protection Agency proposed designation of certain components of smog as toxic substances based on data that these substances pose a threat to human life and health. The agency specifically proposed adding ozone and its PM-10 precursors (of respirable particulate matter 10 micrometers or less in diameter) to its List of Toxic Substances (including gaseous ammonia, ozone, sulfur dioxide, nitrogen oxide, nitrogen dioxide, and volatile organic compounds (VOCs)). The regulatory impact statement concluded that the substances "are entering the environment in a quantity or concentration or under conditions that

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<http://www.aida2.org/english/projects/prjtalamanca.php> (visited January 10, 2003); NRDC, *Press Release: NRDC Applauds Costa Rican Rejection of Offshore Oil Drilling* (May 13, 2002), at <http://www.nrdc.org/media/pressreleases/020513.asp>.

<sup>164</sup> *Id.*

<sup>165</sup> See Planet Ark, *Costa Rica Bans Open Pit Mining* (June 7, 2002), at <http://www.planetark.com/dailynewsstory.cfm/newsid/16310/story.htm>.

<sup>166</sup> See Federal Ministry of the Environment, *Austrian Implementation Strategy for the Convention on Biological Diversity*, p. 39, (April, 1998) available at <http://www.biodiv.org/doc/world/at/at-nbsap-01-en.doc>.

constitute or may constitute a danger in Canada to human life or health.”<sup>167</sup> This proposed designation demonstrates the link between a healthy environment, in particular clean air, and the fundamental human rights to life and health.<sup>168</sup>

#### 4) Mexico

Semarnat, Mexico’s Environment Ministry, is the first agency in Mexico to comply with the new Federal Law of Transparency and Access to Public Governmental Information. In Tijuana, a newly drafted Municipal Environmental Code grants citizens the right to know the content of factory emissions and to enforce this law. Citizens now have access to declarations of environmental impact and risk during the initial evaluation stage of proposed projects, and individuals will be able to learn the contents of potentially toxic emissions from facilities located close to their homes. The Tijuana law was modeled after both the U.S. Freedom of Information Act and the Oregon State Toxics Right-to-Know law.<sup>169</sup> The emerging international human right to information arises from a growing awareness of the effects of environmental pollution on human health and welfare.

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<sup>167</sup> *Canadian Agency Proposes Designation of Smog Components as Toxic Substances*, 25 Intl. Env’tl. Rep. 16 (BNA), at 752 (July 31, 2002); see Canada Gazette, Part I, at <http://canada.gc.ca/gazette/partI/pdf/g1-13630.pdf> (July 27, 2002).

<sup>168</sup> A link between human rights to health and well-being “through sanitary and social measures relating to food” is articulated in the American Declaration of the Rights and Duties of Man, May 2, 1948, art. XI, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, Doc. 21 Rev. 6 (adopted by the Ninth International Conference of American States, Bogota, 1948).

<sup>169</sup> E-LAW Impact: *Right-to-Know Takes Hold in Mexico*, at [http://www.elaw.org/custom/custompages/viewpage.asp?webpage\\_id=19&profile\\_id=1191](http://www.elaw.org/custom/custompages/viewpage.asp?webpage_id=19&profile_id=1191) (May 2002); see also <http://semarnat.gob.mx> (visited January 31, 2003).

## CASE STUDIES

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

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

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

### I. Africa

#### A. Liberia

Liberia hosts the last two significant blocks of closed canopy tropical rainforest in the upper Guinea forests of West Africa, which span Ghana, Cote d'Ivoire, Guinea, Sierra Leone and Liberia. The forest has shrunk to an estimated 12.7% of its original size - and almost 45% of this remaining forest is in Liberia.<sup>170</sup>

Liberia's rainforest, recognised as a global biodiversity hotspot, is under great pressure, mainly from industrial logging. There is also an enormous impact on indigenous rural communities in Liberia, which depend on the land and the forest for their livelihood - food, clean water, medicinal plants, construction materials etc. Their cultural and spiritual practices are so dependent on the forest that without it their survival and growth would be severely threatened. The prevailing level of poverty in these communities is a clear indication of what is to come if nothing is done to check the current trend of forest exploitation.

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<sup>170</sup> Whitley Award, *Silas Siakor - 2002 Sting and Trudie Styler Award for Human Rights and the Environment*, at [http://www.whitley-award.org/Articles/projects/human\\_rights/SilasSiakor.html](http://www.whitley-award.org/Articles/projects/human_rights/SilasSiakor.html) (visited February 10, 2003).

## **B. Nigeria Update<sup>171</sup>**

On October 20<sup>th</sup>, 2002, Diebiri-Batan, an Ijaw community located along the Batan river in Delta State, Nigeria, was subject to what a joint investigation called a “massive” oil spill by Shell resulting from a slack in two bolts used on an underwater tie-in manifold located at a delivery line. The river, contaminated by the spill, serves as the only source of drinking water for the local people. The adjoining creeks, in which the local people carry out their fishing activities, were also severely polluted. Fishponds, fishing nets, traps and hooks were either destroyed or completely submerged by crude oil. According to reports from community members, the spill also spread through rivers and creeks to neighboring communities, such as Ajuju, Ewerigbene, and Kumusi. This is the latest in a series of spills in the community from Shell's facility in the area. In 1990, 1998 and 2000, spills have occurred from the pipelines and flow-station in Batan, due to rusty and ill-maintained equipment.<sup>172</sup>

Shell, the largest oil producer in Nigeria, extracting nearly 2 million barrels of oil per day, has been the subject of serious human rights and environmental concerns in the Niger Delta. These include complicity in the execution of Ken Saro-Wiwa and the Ogoni 9, rampant gas flaring throughout the delta, and frequent oil spills.

On October 26<sup>th</sup>, 2002, accompanied by soldiers, Shell repaired the faulty equipment. On November 7<sup>th</sup>, Shell resumed the gas-flare operations, even though the community did not receive adequate clean up and the company has failed to provide relief materials, let alone compensate the people for the economic and health impacts of the spill. The army and navy soldiers brought in by Shell, supposedly to provide protection during repairs to their equipment, reportedly harassed and brutalized community members. Mrs. Diana Sunday, a fisherwoman from Diebiri-Batan, reported that her two brothers, who scampered for safety during the military invasion on October 26<sup>th</sup>, had not been seen for several days.

According to a field report released on November 20<sup>th</sup>, members of the affected communities complained about the economic hardship resulting from the abrupt halt in their fishing activities, lack of drinking water in the community, and the continued refusal of Shell to supply them with relief materials to cushion the hardships from the spill. One month after the spill, fisherfolk were still unable to return to work due to the lack of compensation for damaged equipment from the spill. Though community members have repeatedly appealed to the company to take responsibility for their faulty equipment by conducting a full clean-up of the area and adequately compensating community members for the health impacts and economic hardships, Shell still refuses.

## **C. Tanzania**

Tanzania has been subject to privatization conditions in IMF and World Bank structural adjustment lending, including water privatization for the capital city of Dar es Salaam. In Tanzania, less than 40 percent of the rural population and 70 percent of the urban population have access to piped water. The rest of the population must seek water from untreated sources.

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<sup>171</sup> This case study was included in the issue paper prepared for the Commission's 52<sup>nd</sup> and 55<sup>th</sup> Sessions.

<sup>172</sup> See Project Underground, *Drillbits and Tailings: Shell Plays Blame-Game to Avoid Responsibility for Spill in Niger Delta* (December, 2002), at [http://moles.org/ProjectUnderground/drillbits/7\\_10/1.html](http://moles.org/ProjectUnderground/drillbits/7_10/1.html).

Women often walk up to 15 kilometers to fetch water of doubtful quality. Cholera outbreaks are common. Although IMF and World Bank conditions continue to place heavy pressure on the government to privatize, at present there is no agreement between government and multinational water company bidders as to the final content of the bidding document. The right to water implies the right to affordable, clean water, and this right is threatened in Tanzania and other locations where water privatization is occurring without basic guarantees of the right to water for even the poorest communities.<sup>173</sup>

## **II. Asia**

### **A. Indonesia**

#### **1) Forests**

The Indonesian government has designated one of the world's most biologically diverse areas, a Sumatran lowland rainforest, a "production forest," and logging there is underway.<sup>174</sup> This unprecedented destruction is motivated by a system that regards natural resources, especially forests, as a source of revenue to be exploited for political ends and personal gain. This system virtually ignores sustainable forest management and the rights of local people.

As many as 65 million people live in Indonesian forests and depend on them for their livelihoods, combining cultivation of rice and other food crops with fishing, hunting, and gathering of non-timber forest products such as rattan, honey and resins. They rely on the forests for medicinal plants and herbs, and their knowledge of local ecosystems is irreplaceable.

One "production" scheme is to convert natural forests into oil palm plantations, which are slated to cover almost 1/3 of Indonesia's remaining forests. Some national and multinational companies have obtained licenses to plant oil palm having no intention to do so; they clear the forest solely for the timber profits and move on to clear more. After the disastrous forest fires of 1997-98 that sent smoke clouds around the globe, the Indonesian government accused 176 companies of illegally setting fires to clear brush; of these, 133 were oil palm companies.

Typically, forest peoples are not consulted or informed about company plans; bulldozers suddenly tear through their forests and farms, wiping out rich biological and cultural diversity to establish huge monoculture plantations. As a crop, oil palm requires massive amounts of fertilizer and insecticides. Soil erosion, loss of soil nutrients and watershed disruption result as the land is carved with drainage ditches. Threatened, harassed and jailed for their protests, the human rights of indigenous Indonesians are being violated by these environmental harms.

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<sup>173</sup> See Public Citizen, *Critical Mass Energy and Environment Program: Tanzania* [http://www.citizen.org/cmep/Water/cmep\\_Water/reports/tanzania/index.cfm](http://www.citizen.org/cmep/Water/cmep_Water/reports/tanzania/index.cfm) (visited February 10, 2003).

<sup>174</sup> Global Response, *GR Action #4/02 Stop Financing Forest Destruction / Indonesia* (June-July 2002) at [http://www.globalresponse.org/gra\\_index/gra0402.html](http://www.globalresponse.org/gra_index/gra0402.html).

## 2) Mine Tailings

In Indonesia, Newmont Mining Corporation runs Minahasa Raya and Nusa Tenggara.<sup>175</sup> At Minahasa Raya in North Sulawesi, Newmont has dumped 2.8 million tons of toxic mine waste into the coastal waters of Buyat Bay since 1996. The method of waste disposal Newmont is using is effectively banned in the United States because of the toxicity and extreme damage it does to the ocean ecosystem. As a result, the people from the villages of Ratatotok and Buyat whose economy relies on the health of Buyat Bay have found that their water is contaminated, their fisheries are collapsing, and their children are contracting skin diseases.

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

### B. India

The effects of climate change are felt hard in India. India's large rural population is dependent on the cycles of the seasons. Fish workers who earn their living from the rivers and seas, farmers who rely on seasonal monsoons, and a large and varied indigenous population that lives in harsh climatic regions including mountains, deserts and river deltas, all make India especially susceptible to a changing climate. This year alone, India simultaneously experienced massive floods killing thousands in the east, and heat and drought in the west. Recently, 10 children died from starvation in Rajasthan due to drought. Failure of the world's governments to take effective action to address the causes and effects of climate change is a growing human rights violation in India and elsewhere.<sup>176</sup>

### C. China Update<sup>177</sup>

In the village of Yaowan on the northern bank of the Yangtze River, some residents have dreaded the arrival of demolition teams that have begun flattening their settlement and forcing its occupants to move elsewhere.<sup>178</sup> Yaowan is one of hundreds of villages and dozens of towns that will be flooded after the world's biggest hydroelectric dam blocks the Yangtze at the bottom of the scenic Three Gorges in June 2003. Many people in the reservoir area, 600km (375 miles) long, complain that the government's resettlement programme is unfair and plagued by

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<sup>175</sup> See Project Underground, *Newmont Mining Corporation Under Fire for Environmental and Human Rights Abuses* (May 15, 2002), at [http://moles.org/ProjectUnderground/mining/newmont/n\\_hrabuses0502.html](http://moles.org/ProjectUnderground/mining/newmont/n_hrabuses0502.html).

<sup>176</sup> See, e.g., CorpWatch, *The Human Face of Climate Change: Thousands Gather in India to Demand Climate Justice* (November 4, 2002), at <http://www.corpwatch.org/campaigns/PCD.jsp?articleid=4728>.

<sup>177</sup> This case study was included in the issue paper prepared for the Commission's 55<sup>th</sup> Session.

<sup>178</sup> This case study is taken from *Dam Shame: China's Three Gorges Dam*, *The Economist*, July 6, 2002, available at <http://im.org/programs/threeg/index.asp?id=020711.damshame.html> (visited January 14, 2003); see also Probe International, *Three Gorges Probe*, at <http://www.probeinternational.org/pi/3g/index.cfm> (visited February 10, 2003).

corruption. To date, more than 640,000 people have been resettled, and tens of thousands more will be forced to relocate by April of 2003 when submergence is scheduled to begin.<sup>179</sup>

The government is fearful of unrest that could cast more doubt over the controversial project and complicate the task of relocating more than 1.2m people, or perhaps as many as 2m according to some Chinese experts. Criticism of the project is rarely allowed to appear in China's state-controlled media. But in 1999 a Chinese academic wrote in a leading journal that the resettlement of reservoir-area inhabitants could become “an explosive social problem, a source of constant social instability in our country for the first half of the next century.”

It already is a huge social problem. A scarcity of arable land means many of those resettled will have to move far from their homes. The finance ministry has recommended relocating them to sparsely populated areas such as Tibet and Xinjiang, which will fuel anti-Chinese sentiment among ethnic minorities in those areas. Compensation payments are woefully inadequate and much of the little that is available is drained away by corruption.

But the government does not want evacuees airing their grievances in public. Early last year, the authorities arrested four farmers from Gaoyang township in Yunyang County, who had complained to foreign journalists about corruption among officials in charge of resettlement. The farmers were accused of leaking state secrets, charged with “interference of Three Gorges resettlement” and sentenced to 3 years in prison. Reports of police using excessive force to quash resettlement protests in other counties have begun to surface.<sup>180</sup> The environmental impacts of the dam, the massive human resettlement it requires, and the related fear of public debate, each pose significant risk of violating the human rights of the people living in the region.

China has also begun construction of a third Mekong River Dam with plans to build eight total dams, with promises of fiscal support from Japan and Thailand, and without consulting downstream nations likely to suffer major effects from the removal of customary water and sediment flows into Southeast Asia's Mekong River Delta<sup>181</sup>. The Mekong River flows from China's Tibetan Plateau through Burma, Laos, Thailand, Cambodia, and Vietnam. Because of the potential downstream impacts of damming this river on farming and aquaculture as well as the estimates that the project will displace 30,000 people upstream of the dams, various human rights are at issue. Among the rights implicated by this project are liberty of movement and the right to choose one's residence,<sup>182</sup> the right to inviolability of the home,<sup>183</sup> the right of refugees

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<sup>179</sup> *Human Rights Dammed off at Three Gorges: An Investigation of Resettlement and Human Rights Problems in the Three Gorges Dam Project*, International Rivers Network, January 2003, available at <http://www.irm.org/programs/threeg/3gcolor.pdf> (visited February 10, 2003).

<sup>180</sup> *Id* at 2.

<sup>181</sup> *China's Upper Mekong Dams Endanger Millions Downstream*, International Rivers Network, available at [http://www.irm.org/programs/mekong/gmskit/03\\_uppermekongfac.pdf](http://www.irm.org/programs/mekong/gmskit/03_uppermekongfac.pdf) (visited February 7, 2003).

<sup>182</sup> International Covenant on Civil & Political Rights, March 23, 1976, art. 12, 6 I.L.M. 368 (1967).

<sup>183</sup> American Declaration of the Rights and Duties of Man, May 2, 1948, art. X, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, Doc. 21 Rev. 6 (adopted by the Ninth International Conference of American States, Bogota, 1948).

to request and receive protection and humanitarian assistance from their government,<sup>184</sup> and the right to be consulted for free and informed consent prior to being displaced.<sup>185</sup>

### **III. Europe**

#### **A. Russia**

One-quarter of the world's frontier forests are in Russia, populated in part by the indigenous Buryats, Soyots and Evenks. Unfortunately, these forests are falling to the axe faster than in much of the tropics. To protect these boreal forests, Russian environmentalists have created 99 nature reserves and 33 national parks, amounting to nearly 2% of national territory.<sup>186</sup>

Presently, the Russian oil giant, Yukos, wants to build a Russia-China oil pipeline right through Tunkinskii National Park, in clear violation of the Law on Protected Territories. The Yukos pipeline would extend from Siberia's Irkutsk Region to the city of Daqing, China, a distance of 1,490 miles (2,400 km) -- twice as long as the Trans Alaska Pipeline System. It would cross seismically active regions where fault lines run perpendicular to each other. Seismic activity, high mountain passes, extreme weather and geography pose serious challenges for pipeline construction, maintenance and security.

For the indigenous Buryats, Soyots and Evenks, who herd sheep and farm in the Tunka Valley, the whole region is sacred, and many consider pipeline construction an affront to their culture, history and beliefs. Yukos plans to build the pipeline within 200 meters of specific sites that are sacred to the Buryats, who suffered persecution under Stalin for their traditional practices of Buddhism and shamanism.

#### **B. Spain**

On November 19, 2002, the oil tanker *Prestige* broke in two and sank off the Spanish coast.<sup>187</sup> The tanker is Liberian, registered in the Bahamas, managed in Greece, and chartered by a company in Switzerland. The vessel was carrying 77,000 tons of fuel oil. Fuel oil, a heavy, viscous blend gathered from the bottom of tanks at the end of the refining process, can be far more toxic and difficult to clean up than crude oil. Ecologists fear that the 26-year-old *Prestige* is an environmental time bomb as it is now resting 130 miles (210 km) off the Spanish coast and 3.6 km (two miles) below the surface.

The scenic shores of Galicia, in northwest Spain, have been blackened by the oil from the vessel. Galicia, where local people depend on fishing and summer tourism for their livelihood,

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<sup>184</sup> UN High Commissioner for Refugees Guiding Principles on Internal Displacement, principle 3-2, U.N. Office for the Coordination of Humanitarian Affairs.

<sup>185</sup> *Id.*, principle 7c; see also *Human Rights Dammed Off at Three Gorges*, International Rivers Network, *supra* n. 179, at 6.

<sup>186</sup> Global Response, *GR Action #1/03 Support Sarayacu People vs. Oil Development / Ecuador* (February - March 2003), available at <http://www.globalresponse.org/gr/current.html>.

<sup>187</sup> See Project Underground, *Drillbits and Tailings: Oil Tanker Destroys Livelihoods in Spain* (December, 2002) at [http://moles.org/ProjectUnderground/drillbits/7\\_10/2.html](http://moles.org/ProjectUnderground/drillbits/7_10/2.html).

has an uncertain future, as its diverse reserve of fish and shellfish is under severe threat. It is the fisherpeople of Galicia who have been the main victims of the disaster. Those fisherpeople put out more boats than the rest of the EU fleet put together in an enterprise worth more than US\$300-million a year, divided among family-owned boats, whose efforts sustain entire communities along the coast.

The consequences for northwestern Spain are worsening daily, as Spanish authorities extended restrictions on fishing and gathering shellfish. The ban now reaches as far south as the Portuguese border. Dozens of Spanish beaches along the coastline have been contaminated by the thick oil, and thousands of seabirds have been killed or contaminated.

By December 4, two weeks after the Prestige sank, Portugal and France were on high alert after oil slicks from the tanker began encroaching on their territory. French officials said that oil-stained birds had begun washing up on the southwestern French coast.

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

### **C. Sweden Update<sup>188</sup>**

As reported in our issue paper prepared for the Commission's fifty-fifth session, the Sámi people of Northern Scandinavia have lived the nomadic life of reindeer herders, traveling across Sweden, Norway, Finland and the Kola peninsula of Russia, for over 1,000 years. This traditional lifestyle has long been threatened by modern forest management practices, which degrade the soil to the detriment of the reindeer's winter food supply. The Sámi people now face an even more immediate threat in the form of numerous lawsuits brought against them by private land owners. The land owners claim the right to be compensated for damage that the reindeer have caused to their pine plantations. Although Sweden, for example, has recognized the Sámi's right to graze their reindeer on both private and state land, Swedish legislation leaves it to the Sámi people to prove their customary rights in the courts. In the absence, however, of written documentation to prove long-standing use, the Sámi cannot prove their rights and are likely to lose both these rights and large sums of money in the course of litigation. Without government support, the Sámi culture faces almost certain extinction.

In an unfortunate development, in February 2002, the more than 10-year old court battle has resulted in a Sámi defeat in the Court of Appeals. The decision is confirming a previous court decision from 1996 that the private forest owners don't have to accept reindeer winter grazing on their lands. The court decision acknowledges that it is the responsibility of the Swedish state to ensure that the Sámi reindeer herding culture can be maintained and developed. The Sámi communities have declared that they will take the case to the Supreme Court as a court

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<sup>188</sup> This case study was included in the issue paper prepared for the Commission's 55<sup>th</sup> Session.

decision in favor of the private land owners risks driving the communities into bankruptcy and hindering reindeer herding in the region.<sup>189</sup>

#### **D. Turkey Update<sup>190</sup>**

In 1999, we reported that the people of Bergama, Turkey, had decided that they prefer their health and the health of their environment over the promised riches of gold-extraction. In 1989, Eurogold, a multinational mining company, moved into this agricultural region near the Aegean coast and began making arrangements to extract 24 tons of gold through a cyanide heap leaching process. Fearing the potential pollution of their water and soil, local residents overwhelmingly opposed the mining and took actions to prevent Eurogold's projected eight-year mining plan from becoming a reality. In 1997, 10,000 residents and supporters from across Turkey occupied the mine site, convincing the authorities to suspend Eurogold's activities for 30 days. Before the moratorium had expired, Turkey's highest court ruled on a case brought by several hundred residents and overturned the Ministry of Environment's decision to permit the mining project. The court based its judgment on the grounds that the threat posed by Eurogold's cyanide-based technology violated the people's constitutionally-protected right to a healthy and intact environment and to their own physical integrity. However, the government subsequently reissued the revoked permit. In a positive turn of events, on March 6, 2002, the Izmir Third Administrative Court ordered the gold mine in Bergama closed immediately.<sup>191</sup>

### **IV. Island Nations**

#### **A. Australia Update<sup>192</sup>**

One of Australia's most stunning national parks and the rights of its indigenous inhabitants are in jeopardy. Beneath Kakadu National Park lies one of the world's largest uranium deposits, known as the Jabiluka uranium mine. Located in Australia's Northern Territory, the mine lies within the boundaries of Kakadu National Park, designated a UN World Heritage Site in recognition of its outstanding archeological sites and the integrity of its diverse ecosystem. The Australian government has granted mining concessions to Energy Resources of Australia (ERA) despite a court ruling that the lands belong to the Mirrar people, the traditional owners of the land who hold it sacred.

In July 1999, the World Heritage Committee (WHC) decided to postpone any declaration to list Kakadu National Park as a World Heritage Site in Danger, despite scientific, cultural and technical reports that indicated a serious threat to the park and its inhabitants. Eventually, at the

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<sup>189</sup> See Taiga Rescue Network, *Sami Lost Court Case*, at [http://www.taigarecue.org/news\\_update/news.php?news\\_update=europe&article=352](http://www.taigarecue.org/news_update/news.php?news_update=europe&article=352) (visited January 15, 2003).

<sup>190</sup> This case study was included in the issue paper prepared for the Commission's 55<sup>th</sup> Session.

<sup>191</sup> See Mines and Communities, *Press Release - Izmir Third Administrative Court Decides the Bergama Mine Should Close* (March 6, 2002) at <http://www.minesandcommunities.org/Action/press30.htm>.

<sup>192</sup> This case study was included in the issue paper prepared for the Commission's 55<sup>th</sup> and 58<sup>th</sup> Sessions.

November 2000 WHC meeting in Cairns, the Australian government succeeded in convincing the WHC not to make any such declaration.<sup>193</sup>

Less than six months later, in March 2001, the majority shareholder of ERA—Rio Tinto—announced that it would not mine Jabiluka in the short-term.<sup>194</sup> In response to Rio Tinto’s announcement, a representative from Victoria called on the Australian government to commence discussions with Rio Tinto about handing the mine site back to the Mirrar.<sup>195</sup> However, ERA maintains that it will eventually develop Jabiluka even if Rio Tinto’s announcement currently has placed the project on hold.<sup>196</sup> Thus, for now, the human rights of the Mirrar people and the right of all Australians to the protection of Kakadu National Park remain in jeopardy.<sup>197</sup>

## V. North America

### A. United States

#### 1) Climate Change

The Arctic is the aboriginal homeland of the Inuit, Inupiat, Yupik, and several other native groups. Most indigenous Arctic inhabitants reside along coastlines and in river valleys, living off the land in the traditions of their ancestors, using knowledge passed down for hundreds of generations. Their subsistence livelihoods depend on fish, marine mammals, and other wildlife. The activities associated with the harvest of these resources also make important contributions to the health, culture, and identity of native Arctic peoples.

During the past several decades, the Arctic has warmed at an alarming rate, and it is projected to continue to warm by as much as 18 degrees Fahrenheit by 2100.<sup>198</sup> This warming trend has had a devastating impact on Arctic ecosystems, including sea ice, permafrost, forests and tundra.<sup>199</sup>

Melting sea ice affects populations of marine mammals, caribou, polar bears and the subsistence livelihoods of people that depend on them.<sup>200</sup> Thawing permafrost in the Arctic has damaged houses, roads, airports and pipelines, and caused landscape erosion, slope instability, and landslides. Forest and tundra ecosystems are important features of the Arctic environment that native Arctic peoples rely on to practice their subsistence lifestyle. In Alaska, substantial

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<sup>193</sup> Anti-Nuclear Alliance of Western Australia, *Jabiluka Update* – January 2001, at <http://www.anawa.org.au/nt/jabiluka-update-01-01.html> (visited Dec. 19, 2001).

<sup>194</sup> Anti-Nuclear Alliance of Western Australia, *Jabiluka Update* – March - May 2001, at <http://www.anawa.org.au/nt/jabiluka-update-05-01.html> (visited Dec. 19, 2001).

<sup>195</sup> *Id.*

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

<sup>197</sup> See <http://www.mirrar.net/media/2002-12-05.html> (visited January 2, 2003).

<sup>198</sup> U.S. GLOBAL CHANGE RESEARCH PROGRAM, CLIMATE CHANGE IMPACTS ON THE UNITED STATES: THE POTENTIAL CONSEQUENCES OF CLIMATE VARIABILITY AND CHANGE – OVERVIEW: ALASKA, 74-75 (2000).

<sup>199</sup> USGCRP FOUNDATION REPORT, POTENTIAL CONSEQUENCES OF CLIMATE VARIABILITY AND CHANGE FOR ALASKA, 289 (1998).

<sup>200</sup> *Id.* at 292.

changes in patterns of forest disturbance, including insect outbreaks, blowdown, and fire, have been observed in both the boreal and southeast coastal forest.<sup>201</sup>

Climate warming and insect infestations make forests more susceptible to forest fire. Since 1970, the acreage subjected to fire has increased steadily from 2.5 million to more than 7 million acres per year. A single fire in 1996 burned 37,000 acres of forest and peat, causing \$80 million in direct losses and destroying 450 structures, including 200 homes. As many as 200,000 Alaskan residents may now be at risk from such fires, with the number increasing as outlying suburban development continues to expand. The increase in forest fires also harms local wildlife, such as caribou, that native Arctic peoples depend on for subsistence.<sup>202</sup>

In a similar development, a suit has been filed against two U.S. government agencies, the Export Import Bank (ExIm) and the Overseas Private Investment Corporation (OPIC), that provide financing and loans to U.S. corporations for overseas projects that commercial banks deem too risky.<sup>203</sup> The action alleges that OPIC and ExIm illegally provided over \$32 billion in financing and insurance for oil fields, pipelines and coal-fired power plants over the past ten years without assessing their contribution to global warming and their impact on the U.S. environment as required under key provisions of the National Environmental Policy Act.

Plaintiffs include a North Carolina couple who fear their retirement property will be lost to storm surges, erosion and the rising sea level; one of the largest maple syrup producers in Vermont who believes his business will be ruined as maple trees disappear from the area; and a marine biologist whose life's work is in jeopardy because coral reefs he has spent a lifetime studying and enjoying are disappearing at an alarming rate due to bleaching from rising ocean temperatures.<sup>204</sup> This ground-breaking case underscores the important relationship between the environment and, *inter alia*, the right to property, the right to work, and the right to development.

## 2) Pegasus Mine Update

In our issue paper prepared for the Commission's 55<sup>th</sup> Session in 1999, we reported on the Pegasus Mine in Montana. As reported, the mine, owned by Pegasus Gold, caused numerous environmental problems — including cyanide spills, acid mine drainage, liner rips, and wildlife deaths — and, in the first half of the 1990s, the state of Montana, the US Environmental Protection Agency, and two local Native American citizen groups separately sued the company, alleging numerous violations of the Clean Water Act. As we reported, in 1996, Pegasus settled these cases by signing a consent decree, whereby the company agreed to pay substantial penalties and initiate extensive compliance projects. Less than two years later, however, Pegasus declared bankruptcy, and soon thereafter withdrew its expansion plans for the mine, thus shutting down the mines indefinitely. Although the mine closure came as welcome news to the tribes, the bankruptcy has meant that the reclamation funds Pegasus agreed to spend pursuant to the consent decree have been frozen in an escrow account. In the absence of these funds, state and national government have had to bear the costs of cleaning up the site.

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<sup>201</sup> *Id.* at 296.

<sup>202</sup> *Id.*

<sup>203</sup> See Climate Lawsuit.org, at <http://www.climatelawsuit.org/> (visited January 13, 2003).

<sup>204</sup> *Id.*

Unfortunately, recent reports indicate that such clean-up has not occurred, and the human right to water is threatened. In a June, 2002, report, the Clark Fork Coalition indicated that “[th]e Beal Mountain Mine, a cyanide heap leach operation once touted by the mining industry as a prime example of an environmentally friendly mine, is dumping toxic pollutants into neighboring trout streams, according to documents recently released by the Montana Department of Environmental Quality (DEQ).”<sup>205</sup>

The report further states that DEQ has found cyanide levels downstream of the mine as high as 23 parts per billion, and selenium levels up to 6 parts per billion. Both levels exceed legal limits, and are toxic to aquatic life. The state has already exhausted the \$6.3 million reclamation bond that was supposed to cover the reclamation of the mine. DEQ estimates that the site will cost at least another \$5-7 million for long-term water treatment and maintenance. The U.S. Forest Service has contributed \$2 million for the installation of a biotreatment system last year.

Beal Mountain is not the only mess Pegasus left for taxpayers to clean up. The Zortman/Landusky mine, located south of the Fort Belknap Indian Reservation, has such severe acid mine drainage that it will require water treatment in perpetuity. State and federal agencies have determined that reclamation and water treatment will cost \$30 million more than the site’s reclamation bond. Beal Mountain is currently applying for a permit to discharge its waste into German Gulch, Beefstraight Creek and Minnesota Gulch. If approved, the mine would be authorized to use 3.5 miles of stream as a “mixing zone” to dilute its wastewater.

## **B. Mexico**

On Friday, October 19, 2001, the world lost a courageous champion for human rights and the environment. Ms. Digna Ochoa of Mexico -- a determined voice in support of dignity and basic human decency -- was found murdered by gunshot wounds in her office in Mexico City.<sup>206</sup>

Ms. Ochoa dedicated her life to representing victims of human rights abuses in Mexico, including Rodolfo Montiel and Teodoro Cabrera, two Mexican environmentalists wrongly convicted of charges they confessed to under duress of torture. While working for the Jesuit-run Miguel Agustin Pro Center for Human Rights (PRODH), Ms. Ochoa was the first lawyer to represent Mr. Montiel and Mr. Cabrera and led the effort to unearth clear and compelling evidence that the men were tortured until they signed blank pieces of paper later filled in with false confessions. The outrageous circumstances of Ms. Ochoa's death reflect poorly on the progress made to confront and resolve troubling human rights cases in Mexico. Over one year after the murder of Digna Ochoa, little progress has been made in the investigation of her

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<sup>205</sup> See Clark Fork Coalition, Mineral Policy Center, *Montana DEQ Data Reveal Beal Mountain Mine Releasing Cyanide Into Trout Streams*(June 26, 2002) at [http://www.mineralpolicy.org/media/pdf/20020626\\_BealMtn.pdf](http://www.mineralpolicy.org/media/pdf/20020626_BealMtn.pdf).

<sup>206</sup> See Sierra Club, *Digna Ochoa, Human Rights Champion, Murdered* (June, 2002), at <http://www.sierraclub.org/human-rights/Mexico/ochoa.asp>.

death.<sup>207</sup> A petition filed with the Inter-American Commission on Human Rights on behalf of Mr. Montiel and Mr. Cabrera is pending.<sup>208</sup>

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

### **A. Free Trade Area of the Americas**

Plans to take the North American Free Trade Agreement (NAFTA) and bring it south to Central and South America in the form of a proposed Free Trade Area of the Americas (FTAA) are alarming citizen organizations across the hemisphere.<sup>209</sup> In their eyes, NAFTA has brought poverty and ruin to countless Mexican farmers, and forced them to work in low-wage factory jobs by driving down agricultural prices in the face of subsidized U.S. crops. Taking this concept and forcing it on the rest of the hemisphere through the FTAA is a threat that has galvanized the highly committed and organized indigenous federations of South America.

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

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

### **B. Bolivia, Brazil**

The \$2 billion Bolivia-Brazil natural gas pipeline is currently the largest private sector investment in Latin America. The 3,110 kilometer pipeline stretches from Santa Cruz, Bolivia to Porto Alegre, Brazil<sup>210</sup> and will enable export of Bolivian gas reserves to Brazil.<sup>211</sup> The pipeline

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<sup>207</sup> See Sierra Club, *Digna Ochoa, Human Rights Champion, Murdered* (October, 2002) at <http://www.sierraclub.org/human-rights/Mexico/ochoa2.asp>.

<sup>208</sup> See Earthrights International, *Rodolfo Montiel and Teodoro Cabrera v. Mexico* at <http://www.earthrights.org/litigation/montielbrief.shtml> (updated February 5, 2003).

<sup>209</sup> See Oxfam America, *Indigenous People Defend their Culture and Livelihoods, Oppose the FTAA* (December 3, 2002) at <http://www.oneworld.net/cgi-bin/index.cgi?root=129&url=http%3A%2F%2Fwww%2Eoxfamamerica%2Eorg%2Fadvocacy%2Fart3812%2Ehtml>

<sup>210</sup> See generally Environmental Media Services, *Bolivia-Brazil Natural Gas Pipeline*, at [http://www.ems.org/banks/bolivia\\_brazil\\_gas.html](http://www.ems.org/banks/bolivia_brazil_gas.html) (visited February 10, 2003).

<sup>211</sup> See Bankwatch Network, *The Bolivia-Brazil Gas Pipeline*, at [http://www.bankwatch.org/publications/issue\\_papers/2001/eib-bolivia-brazil.html](http://www.bankwatch.org/publications/issue_papers/2001/eib-bolivia-brazil.html) (visited February 10, 2003).

is financed by various actors including Bolivia and Brazil, several oil companies, and development banks including the European Investment Bank (EIB), the Inter-American Development Bank, the World Bank, and the Overseas Private Investment Corporation (OPIC).<sup>212</sup> Additionally, in recent years, Bolivia has granted dozens of oil and gas concessions, mostly on indigenous lands and in protected areas.<sup>213</sup> The project has significant long- and short-term impacts on the environment and on the human rights of indigenous inhabitants.

For example, in 1998, the Comité de Fiscalización de El Carmen, a local monitoring body, documented a number of social and environmental impacts and violations. These included: the close proximity of the pipeline route and worker camps to the town; trash dumping; purchases of illegally harvested wood for construction; new access roads; inadequate erosion control measures; failure to repair damage caused to local roads and the power generator; worker misconduct with regard to sexual abuse of local women; and reduced community access to food and medicine.<sup>214</sup> The pipeline also endangers the livelihoods of Guarani natives who live in the area of the Brazilian Pantanal, as well as Bolivian campesinos in the Oriente by polluting areas which they use for subsistence agriculture and export products such as soya.<sup>215</sup> All of these threats persist.

## C. Colombia

### 1) Plan Colombia Update<sup>216</sup>

In the fall of 2000, the United States and Colombia began an aerial herbicide application program to eradicate coca and poppy crops in drug-producing areas of Colombia, as part of a greater anti-narcotics initiative called Plan Colombia. Each year, the spraying campaigns have intensified. In 2001 and 2002 the governments sprayed 86,070 and 125,738 hectares respectively,<sup>217</sup> and the goal is to spray 200,000 hectares in 2003.<sup>218</sup> Modeling of spray drift by the US EPA indicates that the Plan Colombia spraying, as currently implemented, may kill native vegetation and adjacent croplands of an area equal to that of the drug crops sprayed.<sup>219</sup>

This program violates human rights of Colombian and Ecuadorian peasants and indigenous peoples living in the affected regions. The spray mixture and the manner in which it is applied have resulted in numerous health problems for residents, destruction of food resources, contamination of surface water, damage to surrounding wilderness areas, and tremendous

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<sup>212</sup> *Id.*

<sup>213</sup> See Environmental Media Services, *Bolivia-Brazil Natural Gas Pipeline*, at [http://www.ems.org/banks/bolivia\\_brazil\\_gas.html](http://www.ems.org/banks/bolivia_brazil_gas.html) (visited January 10, 2003).

<sup>214</sup> *Id.*

<sup>215</sup> See Barbara Pando, American University, *Bolivia Gas Pipeline*, at <http://www.american.edu/TED/BOLPIPE.HTM#section5> at 25 (visited January 10, 2003).

<sup>216</sup> This case study was included in the issue paper prepared for the Commission's 58<sup>th</sup> Session.

<sup>217</sup> January 14, 2003, communication from Rebecca Brown Thompson of the US State Department to the Amazon Alliance.

<sup>218</sup> Lisa Haugaard, The Latin American Working Group, *Blunt Instrument, The United States' Punitive Fumigation Program in Colombia*, p.10, available at <http://www.usfumigation.org/LAWGFumigationReport.pdf> (visited February 10, 2003).

<sup>219</sup> Report from EPA Administrator Johnson to US Secretary of State, (August 19, 2002), p. 51.

deforestation resulting from relocation of spray victims and their farms that is beyond levels that the United States and Colombia claim results from coca and poppy production.

Despite these harms, the United States and Colombia have provided only limited information about the program and have not conducted adequate health and environmental assessments. Monitoring of impacts is lacking and even those who have filed official complaints have received no compensation for harms suffered.<sup>220</sup>

Reports to date indicate that the aerial herbicide application program has resulted in human rights abuses.<sup>221</sup> Health harms from the spraying reported prior to September 2002 included gastrointestinal disorders (e.g. severe bleeding, nausea, and vomiting), testicular inflammation, high fevers, dizziness, respiratory ailments, skin rashes, and severe eye irritation. The spraying may also have caused birth defects and miscarriages. In spite of the many reports of harms and pressure from citizen groups, the governments denied that the spraying could cause any adverse health impacts. Finally, in the fall of 2002, and only after being advised by the US EPA that the herbicide product used could in fact harm human health, the US Department of State switched to using a less toxic formulation of the glyphosate herbicide.<sup>222</sup>

The Plan Colombia spraying has also destroyed more than 1,500 hectares of legal food crops (e.g. yucca, corn, plantains, tomatoes, sugar cane, grass for livestock grazing, and fruit trees) and is reported to have caused death of livestock (e.g. cows, chickens). On the environmental side, the spraying has parched wilderness areas and caused deforestation and loss of critical habitat to endangered bird species as affected farmers relocate to virgin lands. Other environmental harms include contamination of surface waters and death of fish. Thus, by undertaking this environmentally destructive course of action, these governments are depriving Colombian individuals of their rights to a clean and healthy environment, health, sustenance, property, inviolability of the home and family, and access to information, to name a few.

## 2) U'wa Update<sup>223</sup>

The U'wa people have lived in Samore, Colombia in the northeastern part of the country for thousands of years, migrating between cloud forests and lush valleys. During the past decade, the U'wa's committed struggle against oil exploration in their ancestral territory has drawn international attention. US-based Occidental Petroleum believes the area may hold as much as 1.4 billion barrels of oil and has sought permission to drill an exploratory well. The

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<sup>220</sup>Lisa Haugaard, The Latin American Working Group, *Blunt Instrument, The United States' Punitive Fumigation Program in Colombia*, p.10, available at <http://www.usfumigation.org/LAWGFumigationReport.pdf> (visited February 10, 2003).

<sup>221</sup> Earthjustice and Amazon Alliance have gathered a great deal of evidence that supports each of the effects on the health, livelihood, and the environment of the Colombians and Ecuadorians detailed in this section of the issue paper. We would be pleased to provide the UN Commission on Human Rights and/or any of the government delegations with copies of such evidence. Please contact us at [ejusintl@earthjustice.org](mailto:ejusintl@earthjustice.org) or [amazon@amazonalliance.org](mailto:amazon@amazonalliance.org).

<sup>222</sup> US DEPARTMENT OF STATE REPORT TO CONGRESS: A REPORT ON ISSUES RELATED TO THE AERIAL ERADICATION OF ILLICIT COCA IN COLOMBIA (September 2002) available at <http://www.state.gov/g/inl/rls/rpt/aeicc/> (visited February 14, 2003).

<sup>223</sup> This case study was included in the issue paper prepared for the Commission's 55<sup>th</sup> and 57<sup>th</sup> Sessions.

U'wa have explained that they have a spiritual connection to their land that does not permit the extraction of oil and that mandates that they preserve the environment there.

In 2000, the Colombian government agreed to expand the Unified U'wa Reservation from 150,000 acres to 500,000 acres. Less than a month later, ignoring the U'wa's clear statement that the expansion would not legitimize drilling elsewhere in their ancestral territory, the Ministry of the Environment granted Occidental a license to drill 500 meters from the boundary of the reservation, well within U'wa ancestral territory (even after the expansion, the reservation incorporates only a fraction of the ancestral territory). Development of the well and related access roads would wreak havoc on the territory that the U'wa consider sacred.

Since the fall of 1999, the Gibraltar 1 drilling site has been a focal point for protest activities and clashes between the U'wa and Colombian soldiers stationed there to protect the drilling project. In February 2000, 150 riot police used tear gas to disperse hundreds of demonstrators from the area. The U'wa reported that three children drowned when their parents were forced into a nearby river to escape the tear gas. The following day, the U'wa submitted a petition for precautionary measures to the Inter-American Commission on Human Rights. In March 2000, a Colombian court issued a temporary injunction suspending drilling because of concern that the project would jeopardize the U'wa's fundamental rights, including their right to life.<sup>224</sup> In May, an appellate court dissolved the injunction.<sup>225</sup>

On May 6, 2002, in a hopeful turn of events, Occidental petroleum announced at its annual shareholders meeting its decision to return to the Colombian government its controversial Siriri oil block (formally Samore), located on the traditional territory of the U'wa people and to abandon its project there.<sup>226</sup>

Unfortunately, less than a year later, the U'wa are again under threat. In late October, the U'wa reported that machinery had once again begun to arrive to the Gibraltar 1 well site.<sup>227</sup> This is the same site where Occidental spent \$100 million over ten years to develop an exploratory well which--according to the company--did not yield any financially viable hydrocarbon reserves. Convinced that oil exists, Ecopetrol, the Colombian state oil company, has moved 40 tractors and drilling equipment to the site, under heavy military protection. Colombian armed

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<sup>224</sup> Titu Augusto Gaitan and U'wa People v. Ministry of the Environment, Protective Action 20000009 (11<sup>th</sup> Cir. Penal Ct., March 29, 2000) (decision of Judge Elsa Riveros de Jimenez); *see also Update 1-Colombia Oil Site Ruled 'Off-limits' to Oxy*, REUTERS, Mar. 31, 2000, *available at* <http://www.amazonwatch.org/newsroom/mediaclips00/uwa00/mar3100r.html> (visited February 14, 2003); Steven Dudley, *In Colombia, a Dispute Fueled by Oil*, WASHINGTON POST, Feb. 20, 2000 (visited Jan. 2001) <http://www.ran.org/news/newsitem.php?id=329>, Rainforest Action Network, *U'wa Campaign*, *available at* <http://www.ran.org/news/newsitem.php?id=329&area=oil> (visited February 14, 2003).

<sup>225</sup> Titu Augusto Gaitan and U'wa People v. Ministry of the Environment, (Super. Ct., Jud. Dist. Santa Fe de Bogota May 15, 2000) (decision of Judge Marco Elias Arevalo Rozo).

<sup>226</sup> *See* Project Underground, *Drillbits and Tailings: Occidental Announces Plans to Leave U'wa Land*, *available at* [http://www.moles.org/ProjectUnderground/drillbits/7\\_04/1.html](http://www.moles.org/ProjectUnderground/drillbits/7_04/1.html) (visited February 14, 2003); Rainforest Action Network, *Occidental Petroleum to Leave U'wa Land*, *at* <http://ran.org/news/newsitem.php?id=531&area=oil> (visited February 14, 2003).

<sup>227</sup> *See* U'wa Update: OIL COMPANY REINVADES U'WA LAND!!!, *available at* [http://amazonwatch.org/newsroom/alert/uwa\\_02/0211\\_col\\_act.html#update](http://amazonwatch.org/newsroom/alert/uwa_02/0211_col_act.html#update) (visited February 14, 2003).

forces have occupied the local roads every 500 meters between the towns of Saravena and Cubara.

It is unclear at this point whether or not Occidental is involved in these new efforts to drill deeper at the Gibraltar site. According to Colombian legal documents, the company has relinquished its rights to the Gibraltar site, but they may still maintain drilling rights to the rest of the Siriri oil block which falls entirely on U'wa traditional land. Unfortunately, the Colombian government has used an effective divide and conquer campaign to buy off the campesino organizations in the region--some of the U'wa's strongest allies. The campesinos joined the U'wa in their opposition to the project and helped maintain the occupation and road blocks that for months throughout 1999 and 2000 prevented Occidental from invading U'wa land. Under massive pressure from Ecopetrol and the Colombian government, and with rampant poverty in northeastern Colombia, the campesinos have recently signed an agreement to support oil development in return for much needed public projects. This leaves the U'wa as one of the sole remaining voices of resistance, defending the fragile cloud forest ecosystems against the devastation of oil extraction and militarization.

## **D. Peru**

### **1) La Oroya Update<sup>228</sup>**

The health and environmental conditions endured by the more than 30,000 residents of La Oroya in the central Peruvian Andes represent a clear violation of the human rights to health, life, food, and a clean and healthy environment. Since 1922, a nearby multi-metal smelter, currently operated by the Doe Run Corporation of Missouri, has been contaminating the urban environment surrounding the smelter with toxic emissions. A 1999 blood evaluation conducted in La Oroya by the Ministry of Health shows that 99.1% of 346 children tested have blood-lead levels indicative of lead poisoning, and that nearly 20% of these require immediate hospitalization.<sup>229</sup> Because lead inhibits neurological development, the thousands of children poisoned by the smelter will likely be impaired for life.<sup>230</sup>

Sadly, the Peruvian government and Doe Run do not publicly recognize the severity of the situation, and are not addressing the atmospheric contamination or the public health crisis. Urgent action is needed in La Oroya and surrounding communities to curtail the emissions from the smelter, relocate the inhabitants of areas contaminated by historic emissions, mitigate the areas with toxic contamination, and provide medical treatment and monitoring to the many thousands of people whose health and lives have been compromised by the wanton operation of this metallurgical complex during the past century.<sup>231</sup>

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<sup>228</sup> This case study was included in the issue paper prepared for the Commission's 58<sup>th</sup> Session.

<sup>229</sup> Ministerio de Salud, DIGESA, Estudio de Plomo en Sangre en una Poblacion Seleccionada de La Oroya (Study of Lead Levels in Blood in a Select Population of Oroya people), (November, 1999).

<sup>230</sup> Herbert Needleman et al., 332 NEW ENG. J. MED., 83-88 (1990).

<sup>231</sup> Anna K. Cederstav et al., La Oroya Cannot Wait (2002).

## 2) Tambogrande

The proposed Tambogrande mining project in northern Peru offers a stark illustration of the problems associated with large-scale mining operations in an era of deregulation and globalization. The town of Tambogrande is poor, isolated and in the heart of Peru's "El Niño" zone. It sits directly on a major gold, zinc and copper deposit that Manhattan Minerals, a small Canadian mining multinational, is seeking to develop into an open-pit mine. Projected impacts of the mine could be severe. Construction of the mine would require the relocation of an estimated 8,000 inhabitants of a total population of between 14,000 and 16,000 people and the diversion of a local river. The project could also have significant impacts on agricultural production in the area. Tambogrande farmers are Peru's principal mango exporters and the area has become one of Peru's leading agricultural centers thanks to major investment in irrigation systems, some of it financed by the World Bank.<sup>232</sup>

Concerned by the proposed relocation and by threats to their agriculturally based livelihoods, local populations have mounted significant resistance to the project. On February 27 and 28 of 2001, an estimated 10,000 people participated in blocking road access to the exploration site. A recent initiative collected approximately 28,000 notarized signatures of individuals in the Tambogrande district, of approximately 37,000 eligible voters, who are opposed to the mine. Tambogrande's Mayor and local Archbishop have called for the project not to go forward, citing not only the potential environmental impacts, but the mine's disruptive social impacts. Such impacts have already emerged during the exploration phase, as evidenced by the tense environment of distrust and conflict that exists in the area. The archbishop has called the project "socially unviable." These actions represent significant opposition to the proposed mine by affected citizens and community leaders.

The Tambogrande project is located in the department of Piura, a region that until now has been known for agriculture, not mining. Manhattan's operation may open the door to the exploitation of hundreds of thousands of hectares currently under concession in Piura. The impact on traditional agricultural livelihoods, from which the vast majority of Piurans draw sustenance and income, could be significant. On Sunday, June 2nd, 2002 the municipality of Tambogrande, held a referendum in which 94% of the people who turned out and voted in this northern agricultural town cast their vote against mining in urban and agricultural centers and surrounding areas.<sup>233</sup>

## 3) Camisea

The Camisea Gas Field Project is an effort to build an infrastructure to recover, process and transport natural gas liquids from the Camisea gas field.<sup>234</sup> The field has an estimated 8.7

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<sup>232</sup> See Robert Moran, *An Alternative Look at a Proposed Mine in Tambogrande, Peru*, (Oxfam America, August 15, 2001), available at [http://www.globalminingcampaign.org/theminingnews/assets/pdf/tambogrande\\_eng.pdf](http://www.globalminingcampaign.org/theminingnews/assets/pdf/tambogrande_eng.pdf) (visited February 14, 2003); see also Amazon Financial Information Service, *Red List Risk Profile, Tambo Grande Mining Project*, available at <http://www.redlisted.com/tambogrande.pdf> (visited January 13, 2003).

<sup>233</sup> See Oxfam America, *Tambogrande Speaks Out*, at <http://www.oxfamamerica.org/advocacy/art2763.html> (visited January 14, 2003).

<sup>234</sup> See Rainforest Action Network, *Case Study: Camisea Gas Field Project at* [http://www.ran.org/ran\\_campaigns/citigroup/cs\\_camisea.html](http://www.ran.org/ran_campaigns/citigroup/cs_camisea.html) (visited January 13, 2003); Planet Ark, *Peru's Camisea – Economic Boom or Environmental Bane?* at

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

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

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<http://www.planetark.org/dailynewsstory.cfm/newsid/18873/story.htm> (visited January 13, 2003); Amazon Watch, *The Camisea Natural Gas Project*, at [http://www.amazonwatch.org/megaprojects/peru\\_camisea.html](http://www.amazonwatch.org/megaprojects/peru_camisea.html) (visited January 13, 2003).

## APPENDIX

### CONSTITUTIONAL PROVISIONS RELATING TO ENVIRONMENTAL PROTECTION

#### 1. The Republic of Albania

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

#### 2. The Republic of Algeria

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

#### 3. The Principality of Andorra

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

#### 4. People’s Republic of Angola

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

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

#### 5. Argentina

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

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

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

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

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

## **7. The Azerbaijan Republic**

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

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

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

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

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

## **10. Belgium**

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

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

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

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

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

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

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

The Constitution, as amended in 1998, provides that “everyone has the right to an ecologically balanced environment, which is a public good for the people’s use and is essential for a healthy life.” Title VII, Chapter VI, Article 225. “The Government and the community have a duty to defend and preserve the environment for future and future generations.” *Id.* In particular, the Government has the responsibility to:

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

*Id.*, Paragraph 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **24. Colombia**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **31. East Timor**

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

### **32. The Republic of Ecuador**

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

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

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

### **33. El Salvador**

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

### **34. Equatorial Guinea**

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

### **35. Eritrea**

The 1997 Constitution directs the State “to work to bring about a balanced and sustainable development throughout the country, and shall use all available means to ensure all citizens to improve their livelihood in a sustainable manner, through their development.” Chapter II, Article 10(2). The Draft Constitution makes it the responsibility of the State to

“regulate all land, water and natural resources and to ensure their management in a balanced and sustainable manner and in the interest of the present and future generations.” *Id.*, Article 10(3). The Draft Constitution further directs the State to “create the right conditions for securing the participation of the people to safeguard the environment.” *Id.*

### **36. The Republic of Estonia**

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

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

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

### **38. Finland**

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

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

### **39. The Republic of Georgia**

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

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

### **40. Federal Republic of Germany**

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

### **41. The Republic of Ghana**

The 1992 Constitution directs the State to “take appropriate measures needed to protect and safeguard the national environment for posterity,” and to “seek cooperation with other states

and bodies for purposes of protecting the wider international environment for mankind.” Chapter 6, Article 36(9).

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

#### **42. Greece**

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

#### **43. The Republic of Guatemala**

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

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

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

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

#### **45. Haiti**

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

The Constitution authorizes the State to punish violations of the law, which “specifies the conditions for protecting flora and fauna.” *Id.*, Article 257. The Constitution also makes it a

duty of the citizen to “respect and protect the environment.” Title III, Chapter III, Article 52-1(h).

#### **46. The Republic of Honduras**

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

#### **47. The Republic of Hungary**

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

#### **48. India**

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

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

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

#### **50. The Republic of Kazakhstan**

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

#### **51. The State of Kuwait**

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

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

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

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

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

## **54. The Republic of Latvia**

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

## **55. The Republic of Lithuania**

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

## **56. The Republic of Macedonia**

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

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

### **57. The Republic of Madagascar**

The 1998 Constitution provides that “the State, with the participation of the autonomous provinces, assures the protection, the conservation, and the improvement of the environment through appropriate means.” Title II, Section II, Article 39. The Constitution makes it everyone’s duty to “respect the environment.” *Id.*

### **58. The Republic of Malawi**

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

### **59. The Republic of Mali**

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

### **60. Malta**

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

### **61. Mexico**

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

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

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

### **63. The Republic of Moldova**

The 1994 Constitution provides that “every human being has the right to live in an environment that is ecologically safe for life and health, to obtain healthy food products.” Title

II, Chapter II, Article 37(1). The Constitution holds “private individuals and legal entities” responsible for “any damages they may cause to personal health and property due to an ecological offense.” *Id.*, Article 37(4). The Constitution provides that the “right of private property carries with it the duty to observe the rules regarding the protection of the environment.” *Id.*, Article 46(5). The Constitution also makes it “the duty of every citizen to protect the natural environment.” Title II, Chapter III, Article 59.

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

#### **64. Mongolia**

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

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

#### **65. The Republic of Mozambique**

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

#### **66. The Republic of Namibia**

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

### **67. The Kingdom of Nepal**

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

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

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

### **69. The Republic of Nicaragua**

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

### **70. The Republic of Niger**

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

### **71. The Kingdom of Norway**

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

### **72. The Republic of Palau**

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

### **73. The Republic of Panama**

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

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

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

### **75. The Republic of Paraguay**

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

## **76. Peru**

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

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

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

## **78. The Republic of Poland**

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

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

## **79. The Portuguese Republic**

The 1976 Constitution, as amended, provides that “all have a right to a healthy and ecologically balanced human environment.” Part I, Title III, Chapter II, Article 66(1). The Constitution makes it a fundamental responsibility of the State to “protect and enhance the cultural heritage of the Portuguese people, to protect nature and environment, conserve natural resources and to ensure the proper development of the national territory.” Article 9(e). The Constitution requires the State “to prevent and control pollution, and its effects, and harmful forms of erosion,” to make ecological balance an objective in national planning, to establish nature reserves and guarantee nature conservation, and to “promote the rational use of natural resources, while safeguarding their capacity for renewal and ecological stability.” Part I, Title III, Chapter II, Article 66(2). The Constitution further provides that, “in economic and social matters” a primary duty of the State is to adopt a national policy for energy that is in keeping with conservation of natural resources and a balanced ecology.” Part II, Title I, Article 81 (1).

## **80. Romania**

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

## **81. The Russian Federation**

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

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

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

## **82. Sao Tome and Principe**

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

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

## **83. Saudi Arabia**

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

#### **84. The Republic of Seychelles**

The 1993 Constitution “recognizes the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment.” Chapter III, Part I, Article 38. The Constitution directs the State to “to take measures to promote the protection, preservation and improvement of the environment,” and “to promote public awareness of the need to protect, preserve and improve the environment.” *Id.*, Article 38(a), (c). The Constitution also makes it the duty of every citizen to “protect, preserve and improve the environment.” *Id.*, Part II, Article 40(e).

#### **85. The Slovak Republic**

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

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

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

#### **86. The Republic of Slovenia**

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

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

The 1996 Constitution provides that “everyone has the right to an environment that is not harmful to their health or well-being,” and “to have the environment protected, for the benefit of present and future generations.” Chapter 2, Article 24. The Constitution directs the State to “prevent pollution and ecological degradation,” “promote conservation,” and “secure

ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” *Id.*, Article 24(b)(i)-(iii).

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

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

### **89. Spain**

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

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

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

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

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

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

### **92. Suriname**

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

### **93. Switzerland**

The New Constitution of 1998 establishes the rights and duties of the Confederation regarding environmental protection. The Constitution sets forth the manner in which to provide

for sustainable development, protection of the environment, adequate territorial planning, water and forest use, nature and heritage protection, and the protection of animals. Title 3, Chapter 2, Article 73-80.

#### **94. Taiwan**

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

#### **95. The Republic of Tajikistan**

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

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

The 1977 Constitution, as amended, directs the State to ensure that “the affairs of the Government are carried out in such a way as to ensure that the natural resources of the nation are developed, preserved and utilized for the benefit of all citizens in general and also to guard against exploitation of man by man.” Section 2, Article 9(1)(c).

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

#### **97. The Kingdom of Thailand**

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

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

### **98. The Republic of Togo**

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

### **99. The Republic of Turkey**

The 1982 Constitution provides that “everyone has the right to live in a healthy, balanced environment.” Chapter 3, Section VIII, Part A, Article 56. The Constitution makes it the duty of the State and the citizens to “improve the natural environment, and to prevent environmental pollution.” *Id.* The Constitution directs the State to “take necessary measures to maintain and develop efficient land cultivation [and] to prevent its loss through erosion.” *Id.*, Section III, Part B, Article 44. The Constitution also specifies that land distribution policies “shall not lead . . . to the depletion of forests and other land and underground resources.” *Id.*

### **100. Turkmenistan**

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

### **101. The Republic of Uganda**

The 1995 Constitution provides that the “State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.” Chapter XIII. The Constitution directs the State to “promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations”; to manage “the utilization of the natural resources of Uganda . . . in such a way as to meet the development and environmental needs of present and future generations of Ugandans”; to “promote and implement energy policies that will ensure that people’s basic needs and those of environmental preservation are met”; to “create and develop parks, reserves and recreation areas and ensure the conservation of natural resources”; to “promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda.” Chapter XXVII. The Constitution also requires the State to ensure that all Ugandans have “access to . . . clean and safe water.” Chapter XIV(b).

### **102. Ukraine**

The 1996 Constitution provides that “everyone has the right to an environment that is safe for life and health.” Chapter II, Article 50. The Constitution makes it the duty of the State “to ensure ecological safety and to maintain the ecological balance on the territory of Ukraine, [and] to overcome the consequences of the Chernobyl catastrophe -- a catastrophe of global scale.” Chapter I, Article 16.

The Constitution also establishes the right “to compensation for damages inflicted through the violation of [the right to a safe environment].” Chapter II, Article 50. The Constitution further provides that “everyone is obliged not to harm nature . . . and to compensate for any damage he or she inflicted.” *Id.*, Article 66. The Constitution also provides that “the use of property shall not . . . aggravate the ecological situation and the natural qualities of land.” *Id.*, Article 41.

The Constitution further provides that “everyone is guaranteed the right of free access to information about the environmental situation, . . . and also the right to disseminate such information.” *Id.*, Article 50. The Constitution forbids anyone to make such information secret. *Id.*

### **103. United Arab Emirates**

The 1971 Provisional Constitution provides that “the natural resources and wealth in each Emirate shall be considered the public property of that Emirate,” and that “society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy.” Chapter 2, Article 23.

### **104. The Oriental Republic of Uruguay**

The amended 1966 Constitution declares that “the protection of the environment is of common interest.” Section II, Chapter II, Article 47. The Constitution provides that “persons should abstain from any act that may cause the serious degradation, destruction, or contamination of the environment.” *Id.*

### **105. The Republic of Uzbekistan**

The 1992 Constitution provides that “the land, its mineral, fauna and flora, as well as other natural resources shall constitute the national wealth, and shall be rationally used and protected by the State.” Part III, Chapter 12, Article 55. The Constitution provides that “the use of any property must not be harmful to the ecological environment.” *Id.*, Article 54. The Constitution also provides that “all citizens shall protect the environment.” Part II, Chapter 11, Article 50.

### **106. The Republic of Vanuatu**

The amended 1980 Constitution provides that every person has the duty “to himself and his descendants and to others . . . to safeguard the natural wealth, natural resources and environment in the interests of the present generation and of future generations.” Chapter 2, Part II, Article 7.

### **107. The Republic of Venezuela**

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

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

#### **108. The Socialist Republic of Vietnam**

The 1992 Constitution provides that “state organs, units of armed forces, economic organizations, and individuals have the duty to implement state regulations on the rational use of natural resources and protection of the environment.” Chapter 2, Article 29. The Constitution prohibits “all acts of depleting natural resources and destroying the environment.” *Id.* The Constitution requires organizations and individuals “to protect, replenish, and exploit [land allotted to them] in a rational and economical fashion.” *Id.*, Article 18.

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

The 1992 Constitution, as amended, provides that “man shall be entitled to a healthy environment.” Section II, Article 52. The Constitution charges the State “with maintaining a healthy human environment and to this end shall prescribe the conditions and manner of the performance of economic and other activities.” *Id.* The Constitution also makes it the duty of everyone to “protect the human environment and make use of it in a rational manner.” *Id.* The Constitution further provides that “man shall be entitled to . . . timely information about [the environment’s] condition.” *Id.*

#### **110. Zambia**

The Preamble to the amended 1991 Constitution declares that “we shall . . . conduct the affairs of the state in such manner as to preserve, develop, and utilize its resources for this and future generations.”