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ENVIRONMENTAL RIGHTS REPORT

HUMAN RIGHTS AND THE ENVIRONMENT

**MATERIALS FOR THE 61ST SESSION OF THE UNITED NATIONS COMMISSION
ON HUMAN RIGHTS
GENEVA, MARCH 14 – APRIL 22, 2005**

ABOUT EARTHJUSTICE

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

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

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TABLE OF CONTENTS

INTRODUCTION.....	1
DEVELOPMENTS.....	6
I. INTERNATIONAL.....	6
A. U.N. Economic and Social Council	8
B. U.N. Economic and Social Council Bodies	9
1) U.N. Commission on Human Rights: 60 th Session (2004)	9
2) U.N. Sub-Commission on the Promotion and Protection of Human Rights	11
3) U.N. Commission on Sustainable Development.....	13
4) Special Rapporteur on the Right to Food.....	14
C. Office of the U.N. High Commissioner for Human Rights	14
D. U.N. General Assembly Bodies	14
1) United Nations Global Environment Facility (GEF)	14
2) United Nations Environment Programme (UNEP).....	15
3) U.N. Millenium Project.....	15
E. Treaties and Treaty Bodies	16
1) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)	16
2) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	16
3) Stockholm Convention on Persistent Organic Pollutants	17
4) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	18
5) Convention on Biological Diversity (Biodiversity Convention)	18
6) Inter-Parliamentary Union (IPU) Resolution on Biodiversity	19
7) Kyoto Protocol to the Framework Convention on Climate Change	20
F. World Bank.....	20
1) World Bank Inspection Panel	22
G. World Health Organization (WHO).....	25
H. Organization for Economic Cooperation and Development (OECD)	26
II. REGIONAL.....	27
A. European Union (EU)	27
1) Council of Ministers	27

2)	European Commission (EC)	28
3)	European Court of Human Rights (Council of Europe)	32
B.	Organization of American States (OAS)	32
1)	Inter-American Commission on Human Rights (IACHR)	33
2)	Inter-American Court of Human Rights	34
C.	North American Commission on Environmental Cooperation.....	35
1)	Alca-Iztapalapa II.....	35
2)	Coal-Fired Power Plants	36
3)	Montreal Technoparc	36
4)	Quebec Automobiles.....	36
III.	DOMESTIC.....	37
A.	Constitutions	37
1)	Uruguay.....	38
2)	France.....	39
B.	Courts	39
1)	India	39
2)	Bangladesh.....	40
3)	Costa Rica	41
4)	Malaysia.....	41
5)	Canada.....	42
6)	United States	43
C.	Governments.....	44
1)	Indonesia.....	44
2)	Iraq	44
3)	Brazil.....	45
4)	Liberia.....	45
5)	South Africa.....	45
	CASE STUDIES.....	46
IV.	Africa.....	46
A.	Cameroon.....	46
1)	Illegal Logging.....	46
B.	Kenya	48
1)	Mau Forest	48
C.	Liberia.....	49

1) Industrial Logging.....	49
D. Nigeria.....	49
1) Genetically Modified Food.....	49
2) Oil in the Niger Delta.....	50
E. South Africa.....	51
1) Toxic Pollution.....	51
F. Tanzania.....	53
1) Water Access.....	53
V. Asia.....	54
A. Burma.....	54
1) Natural Gas Pipeline.....	54
B. China.....	55
1) Three Gorges Dam.....	55
C. India.....	56
1) Mangrove Destruction.....	56
D. Indonesia.....	57
1) Freeport Mines.....	57
2) Mine Tailing Pollution.....	57
E. Malaysia.....	59
1) Hydroelectric Dam.....	59
F. Thailand.....	59
1) Pak Mun Dam.....	59
VI. Europe.....	61
A. Azerbaijan, Georgia and Turkey.....	61
1) BTC Pipeline.....	61
B. Italy.....	63
1) Illegal Waste Dumping.....	63
C. Russia.....	64
1) Nuclear and Chemical Contamination.....	64
2) Oil and Gas Projects on Sakhalin Island.....	65
D. Spain.....	66
1) Oil Leak Off Spanish Coast.....	66
E. Turkey.....	67
1) Toxic Ship Dismantling.....	67

VII.	Island Nations	68
A.	Australia.....	68
1)	Uranium Mining.....	68
B.	Papua New Guinea.....	69
1)	Mining Activities on Misima	69
VIII.	North America	70
A.	Jamaica.....	70
1)	Bauxite Mining	70
B.	Mexico	71
1)	Abandoned Lead Smelter.....	71
2)	La Parota Dam	72
3)	Protecting the Rights of Environmental Defenders to Protest Illegal Logging near Copper Canyon.....	73
C.	United States	73
1)	Expansion of Nevada Mine.....	73
2)	Red Dog Mine, Alaska.....	74
3)	Yucca Mountain Project, Nevada	76
4)	Oil Exploration in Alaska	76
IX.	Central and South America	77
A.	Argentina.....	77
1)	Deforestation on Indigenous Lands	77
B.	Colombia.....	78
1)	Aerial Spraying Program	78
C.	Ecuador	79
1)	Groundwater Pollution in Amazon	79
D.	Peru	81
1)	Camisea.....	81
2)	Lead Smelter in La Oroya.....	82
3)	Tambogrande	83
E.	Trinidad.....	84
1)	Proposed Aluminum Smelter	84
	APPENDIX.....	86

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 2004 in the area of human rights and the environment.¹ As a sampling – but only a sampling – of situations occurring in this past year, this report illustrates the interdependence of human rights and the environment and shows repeated and increasing recognition of a human rights-based approach to environmental protection. Such recognition demonstrates that a right to a clean and healthy environment, whether as a separate, codified right or as the result of repeated application of other human rights to environmental harms, is emerging as an important component of international law.² The relationship between environmental problems and human rights calls for a holistic treatment of these issues. Therefore, international, governmental and non-governmental institutions dedicated to protecting human rights must recognize the connection and take steps to provide mechanisms to address the human rights implications of environmental problems. As a world leader in the protection of human rights, the U.N. Commission on Human Rights should set the pace for such recognition and, further, guarantee the right to a clean and healthy environment.

Background

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

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

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

³ E/CN.4/Sub.2/1994/9.

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

Ms. Ksentini presented her note to the Sub-Commission in 1990, and the Sub-Commission responded by appointing her to be Special Rapporteur on Human Rights and the Environment and assigning her the task of preparing a comprehensive report on the linkage between human rights and the environment.⁵ Again, the Commission endorsed the Sub-Commission's action and Ms. Ksentini commenced work as Special Rapporteur on Human Rights and the Environment.⁶ Ms. Ksentini produced a Preliminary Report in 1991⁷ and Progress Reports in 1992⁸ and 1993.⁹

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

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

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

⁵ See Sub-Commission Res. 1990/7.

⁶ See Commission Res. 1991/44.

⁷ E/CN.4/Sub.2/1991/8.

⁸ E/CN.4/Sub.2/1992/7.

⁹ E/CN.4/Sub.2/1993/7.

¹⁰ Sub-Commission Res. 1994/27.

In that posture, the question of human rights and the environment came before the Commission at its 51st session in 1995. The Commission took note of Ms. Ksentini's Final Report, but rather than immediately following the Special Rapporteur's or the Sub-Commission's recommendations, the Commission issued a call for comments on issues raised in the Final Report and continued its consideration of human rights and the environment to the next session, in 1996.¹¹ On a related topic, in 1995 the Commission appointed a new Special Rapporteur, with a three-year mandate to examine the human rights effects of illicit traffic and dumping of toxic and dangerous products and wastes.¹² Ms. Ksentini was appointed to this new position.

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

In advance of its 1997 session, the Commission received comments on issues raised in Ms. Ksentini's final report from an additional five governments, three United Nations Departments, one regional organization and one non-governmental organization.¹⁶ At the 1997 session, the Commission adopted a Decision (1997/102) on human rights and the environment, by which it deferred action on the issue until its 55th session and invited the Secretary General to bring the Commission's consideration of human rights and the environment to the attention of the General Assembly at its special session on Agenda 21, the Commission on Sustainable Development, the United Nations Environment Programme and other relevant bodies and organizations. The Commission further requested that the Secretary General prepare a report on the General Assembly special session and the listed international bodies and organizations.

The Commission also received the Toxics Rapporteur's progress report, in which she reported on various situations involving the human rights effects of toxics.¹⁷ In light of its 1997 Decision to defer consideration, the Commission did not address the question of human rights and the environment as such at its 1998 session. The Commission did, however, receive written

¹¹ Commission Res. 1995/14.

¹² *See* Commission Res. 1995/181.

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

¹⁴ Commission Res. 1996/13.

¹⁵ E/CN.4/1996/17.

¹⁶ E/CN.4/1997/18.

¹⁷ E/CN.4/1997/19.

statements and hear oral interventions from governments, international organizations and nongovernmental organizations that evidenced the recurring overlap between human rights and the environment. The Commission also received a 1998 progress report from the Special Rapporteur on toxics and human rights, in which she addressed a range of cases and incidents involving the human rights impact of toxics.¹⁸ The Commission adopted Resolution 1998/12, in which it renewed the mandate of the Special Rapporteur on human rights and toxics for a period of three years,

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

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

A similar recommendation was made in February 2000 by the Commission's inter-session open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, which recommended the conversion of the mandate of the Special Rapporteur on the adverse effects of the illicit movement of toxic waste to that of human rights and the environment. The Working Group recommended further that "the Commission be prepared to consider a broadening of the mandate" in 2001, noting that "the subject matter of an extended mandate would, however, need to be more precisely defined than 'human rights and the environment.'"²¹ The issue of converting the Special Rapporteur's mandate reflects the growing understanding that the full enjoyment of human rights requires addressing a broad range of environmental problems – including but not limited to problems related to toxic wastes – because such problems implicate a host of fundamental human rights.

At the 57th Session of the Commission in 2001, the Special Rapporteur presented her report on the Adverse Effects of the Illicit Movement of Dumping and Movement of Dangerous

¹⁸ E/CN.4/1998/10.

¹⁹ E/CN.4/1999/89.

²⁰ E/CN.4/1999/104, ¶ 20(b).

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

Products and Wastes on the Enjoyment of Human Rights.²² In her report, the Special Rapporteur stated, “Human rights bodies must remain vigilant for human rights violations associated with the activities of multinational corporations, toxic wastes, and other environmental problems. Supervisory mechanisms should be strengthened and codification efforts continued.”²³ However, after the Commission took note of the Rapporteur’s report, it decided not to convert but rather to renew the existing mandate for the three years ending April 2004, and to continue consideration of this question at its 58th Session.²⁴

Similarly, at its 58th Session in April 2002, the Commission reaffirmed “that illicit traffic in and dumping of toxic and dangerous products and wastes constitute a serious threat to the human rights to life and the enjoyment of the highest attainable standard of physical health.” However, the Commission did not address the question of converting the mandate, deciding instead to continue consideration of the question at its 59th Session.²⁵ At the 59th Session, the Commission repeated the 58th Session Resolution in its entirety.²⁶ In April 2004, at the 60th Session, the Commission renewed the mandate of the Special Rapporteur for an additional three years.²⁷ In July 2004, the Commission appointed Okechukwu Ibeanu to assume the role of Special Rapporteur.

²² E/CN.4/2001/55.

²³ *Id.* at ¶ 104.

²⁴ E/CN.4/Res/2001/35.

²⁵ E/CN.4/2002/27.

²⁶ E/CN.4/2003/20.

²⁷ E/CN.4/2004/L.11/Add.3, p.8 at ¶14.

DEVELOPMENTS

I. INTERNATIONAL

Actions and statements from international bodies continue to shape the emergent customary international right to a clean and healthy environment. Explicit and implicit evidence of such actions and statements are found in international court decisions, new treaties and protocols, and resolutions and reports from commissions, committees, secretariats, specialized agencies and similar entities. A review of these materials reveals that environmental harms adversely affect various individual and community rights such as the rights to life, health, water, food, work, culture, development, and information and participation, and that a human rights-based approach to environmental protection (*e.g.* right to a clean and healthy environment, right to water, right to nature protection, and other basic procedural and democratic rights) can provide an effective remedy. Whether explicit or implicit, the increasing practice of substantively upholding and encouraging respect for the right to a clean and healthy environment is important and should be recognized and strengthened. The following is a description of the major human rights affected by environmental harms – and the failure of governmental and private actors to take adequate measures to protect those rights. Reference to many of these rights is made in specific case studies discussed in the second part of this Environmental Rights Report.

Right to Life

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

Right to Health

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

Right to Water

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

Right to Work

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

Right to Culture

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

Right to Development

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

Right to Information

The right to information in the environmental context has at least two components: the right to obtain government-held information on request, and the government's affirmative duty to apprise the people of environmental dangers and emergencies. One example of violation of the former component includes the Nigerian government's decision to implement a food aid program without allowing their citizens to make an informed choice between genetically modified and non-genetically modified food.

Right to Participate

The right to information is itself a component of the right to popular participation, which includes everything from suffrage to direct participation in planning of development activities. This right comes into play whenever a government makes an environmentally significant decision without providing meaningful opportunities for affected parties to participate. The Colombian government's failure to invite communities affected by the aerial spraying program to participate in a required consultation process, for example, constitutes a violation of its citizens' right to participation.

The examples of environmental aspects of recognized human rights described throughout this report represent only a sampling of the many linkages between human rights and environmental protection. Other substantive areas that combine human rights and environmental

considerations include: humanitarian law, the rights of indigenous people, the plight of people displaced from their homes because of environmental conditions (“environmental refugees”), and the effects of development projects funded by multilateral development banks.

A. U.N. Economic and Social Council

The Economic and Social Council coordinates the work of 14 U.N. agencies, 10 functional commissions, and five regional commissions; receives reports from 11 U.N. funds and programmes; and issues policy recommendations to the U.N. system and to Member States. Under the U.N. Charter, the Council is responsible for: promoting higher standards of living, full employment, and economic and social progress; identifying solutions to international economic, social and health problems; facilitating international cultural and educational cooperation; and encouraging universal respect for human rights and fundamental freedoms. In the context of each of these functions, environment-related human rights issues regularly arise. The Council has taken action in this context that further demonstrates the emerging right to a clean and healthy environment.²⁸

In 2004, the Council adopted a resolution on the coordinated and integrated U.N. system approach to promoting rural development in developing countries, with due consideration to least developed countries for poverty eradication and sustainable development (E/2004/48). By this resolution, the Council reaffirmed that sustainable agriculture and rural development are essential to the implementation of an integrated approach to food security and safety in an environmentally sustainable way. The Council further requested that the U.N. support the implementation of the United Nations Convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa.²⁹

The Council also adopted a resolution on the “Protection against products harmful to health and the environment” in 2004, requesting that all governments engage in the process of developing a strategic approach to international chemicals management by 2005 in an effort to minimize the adverse effects of chemicals on human health and the environment.³⁰ The Council also acknowledged the work of the Secretary-General and cooperation of several governments in creating an electronic version of the Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or Not Approved by Governments, which will be updated annually by the Secretary-General.³¹

²⁸ See U.N. ECOSOC, *What ECOSOC Does*, at <http://www.un.org/esa/coordination/ecosoc/about.htm> (last visited Mar. 9, 2005).

²⁹ ECOSOC Res. 2004/48, U.N. ECOSOC, Substantive Sess. of 2004, at 128, U.N. Doc. E/2004/INF/2/Add.2, available at <http://www.un.org/docs/ecosoc/documents/2004/resolutions/eres2004-48.pdf> (visited Feb. 19, 2005); see also U.N. ECOSOC, *Press Release: ECOSOC Adopts More Than 50 Texts on Broad Range of Human Rights Issues* (July 22, 2004), available at <http://www.un.org/News/Press/docs/2004/ecosoc6135.doc.htm> (last visited Feb. 19, 2005).

³⁰ ECOSOC Res. 2004/48, U.N. ECOSOC, Substantive Sess. of 2004, at 149, U.N. Doc. E/2004/INF/2/Add.2, available at <http://www.un.org/docs/ecosoc/documents/2004/resolutions/eres2004-48.pdf> (visited Feb. 19, 2005)

³¹ *Id.*

Also in 2004, the Council adopted a resolution on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (E/2005/251).³² The Council endorsed the decision of the Commission on Human Rights to extend the mandate of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights for an additional three years.³³

B. U.N. Economic and Social Council Bodies

1) U.N. Commission on Human Rights: 60th Session (2004)

During its 60th Session, from March 15 to April 23, 2004, the Commission adopted several resolutions similar to those passed in previous sessions regarding the human right to a clean and healthy environment.³⁴ These resolutions and decisions included an updated report dedicated to the consideration being given to the relationship between the environment and human rights as part of sustainable development.³⁵

(a) Report of the Secretary-General on the Relationship Between Human Rights and the Environment

In February 2005, the Secretary-General released a report on the “consideration being given to the relationship between the environment and human rights as part of sustainable development.”³⁶ The report analyzes some of the developments that have taken place at the international, regional and national level in recognition of the link between the protection of the natural environment and the enjoyment of human rights.³⁷

The report concludes that since the World Summit on Sustainable Development in Johannesburg, South Africa (2002), there has been growing recognition of the connection between environmental protection and human rights. The work carried out by human rights treaty bodies and the special procedures of the Commission on Human Rights as well as several multilateral environmental agreements adopted in recent years, provide several examples of this connection. At the regional level, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and a growing number of decisions by regional courts also provide examples of the growing recognition of the links between human rights and the environment. These links are also

³² See U.N. ECOSOC, *Press Release: ECOSOC Adopts More Than 50 Texts on Broad Range of Human Rights Issues* (July 22, 2004), available at <http://www.un.org/News/Press/docs/2004/ecosoc6135.doc.htm> (last visited Feb. 19, 2005).

³³ *Id.*

³⁴ Office of the High Commissioner for Human Rights, *Resolutions Adopted at the 60th Session*, at http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=4&t=11 (last visited Jan. 12, 2005).

³⁵ See *Decision 2004/119*, U.N. CHR, 60th Session, at 1, U.N. Doc. E/CN.4/2004/L.104 (2004), available at http://ap.ohchr.org/documents/E/CHR/decisions/E-CN_4-DEC-2004-119.doc (last visited Jan. 12, 2005).

³⁶ *Excerpted from Report of the Secretary-General, Human rights and the environment as part of sustainable development*, U.N. CHR, 61st Sess., at 2, U.N. Doc. E/CN.4/2005/96 (2005), available at <http://www.ohchr.org/english/bodies/chr/docs/61chr/E.CN.4.2005.96.doc> (last visited Mar. 10, 2005).

³⁷ *Id.*

reinforced by developments that have taken place at the national level in the fields of constitutional law, legislation, administrative practices and decisions, and the case law of municipal courts.³⁸

(b) Resolution 2004/17

Resolution 2004/17, entitled “Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights,” affirmed that the illicit movement and dumping of toxic and dangerous products and wastes constitute a serious threat to human rights, including the rights to life, the enjoyment of the highest attainable standard of physical and mental health, and other human rights (including the rights to water, food, adequate housing and work).³⁹ The Resolution urged human rights bodies to be more systematic in addressing violations of rights associated with the practices of multinational companies, toxic waste, and other environmental problems. The Resolution categorically condemned illicit dumping in developing countries, and extended the mandate of the Special Rapporteur for another three years.

The Resolution urged all Governments to take appropriate legislative and other measures, in accordance with their international obligations, to prevent the illegal international trafficking in toxic and hazardous products and wastes from developed to developing countries. Further, it required that all governments ban the export of toxic and dangerous products, substances, chemicals, pesticides, and persistent organic pollutants that are banned or severely restricted in their own countries. The Resolution also urged States to strengthen the role of national environmental protection agencies and non-governmental organizations, local communities and associations, trade unions, workers, and victims, and provide them with the legal and financial means to take necessary action.

(c) Resolution 2004/19

In a resolution on the right to food, the Commission considered it intolerable that there were around 840 million undernourished people in the world. According to the Food and Agriculture Organization, every seven seconds a child under the age of 10 dies, directly or indirectly, of hunger despite the fact that the world produces more than enough food to feed its entire population.⁴⁰ The Commission encouraged all States to take steps with a view to achieving progressively the full realization of the right to food.

(d) Resolution 2004/27

Resolution 2004/27, regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, urged States to use whatever means necessary

³⁸ *Id.*

³⁹ *Resolution 2004/17*, U.N. CHR, 60th Session, at 2, U.N. Doc. E/CN.4/2004/L.18 (2004), available at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-17.doc (last visited Jan. 12, 2005).

⁴⁰ *Resolution 2004/19*, U.N. CHR, 60th Session, at 2, U.N. Doc. E/CN.4/2004/L.24 (2004), available at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-19.doc (last visited Jan. 12, 2005).

to achieve this right for everyone.⁴¹ The Resolution called upon the international community to continue assisting developing countries in promoting the full realization of this right. It called upon the States to guarantee that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health will be exercised without discrimination of any kind and will also pay special attention to the situation of vulnerable groups, including by the adoption of positive measures. The Resolution affirmed that access to a sufficient amount of safe and clean water for personal and domestic use is fundamental to the realization of the right to the enjoyment of the highest attainable standard of health. It also stressed that good governance, sound economic policies, and responsive democratic institutions are key to the full realization of the right.⁴²

(e) Resolution 2004/55

In a resolution on internally displaced persons, the Commission requested that the Secretary-General establish a mechanism that would address the complex problem of internal displacement, in particular by mainstreaming consideration of human rights of the internally displaced into all relevant parts of the United Nations System.⁴³ The Commission also asked that the Secretary-General review the new mechanism's performance and effectiveness after two years.

(f) Decision 2004/122

By this decision, the Commission urgently called upon the Sub-Commission on the Promotion and Protection of Human Rights to prepare a report on the legal implications of the disappearance of States for environmental reasons.⁴⁴ In this regard, the Commission urged governments to ascertain the implications for the human rights of their residents with particular reference to the rights of indigenous people.

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

The Sub-Commission is the main subsidiary body of the Commission and was established by the Commission at its first session in 1947 under the authority of the Economic and Social Council. In 1999, the Economic and Social Council changed its title from Sub-Commission on Prevention of Discrimination and Protection of Minorities to Sub-Commission on the Promotion and Protection of Human Rights.⁴⁵ The Sub-Commission held its 56th annual session from July 26 to August 13, 2004, during which it passed 53 resolutions and decisions,

⁴¹ *Resolution 2004/27*, U.N. CHR, 60th Session, at 3, U.N. Doc. E/CN.4/2004/L.41 (2004), available at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-27.doc (last visited Jan. 12, 2005).

⁴² *Id.*

⁴³ *Resolution 2004/55*, U.N. CHR, 60th Session, at 5, U.N. Doc. E/CN.4/2004/L.77 (2004), available at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-55.doc (last visited Jan. 12, 2005).

⁴⁴ *Decision 2004/122*, U.N. CHR, 60th Session, at 1, U.N. Doc. E/CN.4/2004/L.49 (2004), available at http://ap.ohchr.org/documents/E/CHR/decisions/E-CN_4-DEC-2004-122.doc (last visited Jan. 12, 2005).

⁴⁵ See Office of the U.N. High Commissioner for Human Rights, *Sub-Commission on the Promotion and Protection of Human Rights*, at <http://www.unhcr.ch/html/menu2/2/sc.htm> (last visited Jan. 12, 2005).

including several resolutions underscoring the link between environmental health and human rights. Under economic, social and cultural rights, the Sub-Commission adopted resolutions on the realization of the right to drinking water and sanitation; implementation of existing human rights norms and standards in the context of the fight against extreme poverty; the right to development; the right to food and progress in developing international voluntary guidelines for its implementation; and the effects of debt on human rights.

(a) Resolution 2004/6

The Sub-Commission unanimously adopted a resolution entitled “Promotion of the realization of the right to drinking water and sanitation,” which affirms that access to drinking water must not be subject to any restriction, but must be subject to regulation and control by the public authorities.⁴⁶ The Resolution also affirmed that the right to water is an individual and collective human right and is closely linked to other rights.

(b) Resolution 2004/9

The Sub-Commission adopted a resolution entitled “Final Report on the study ‘Indigenous peoples’ permanent sovereignty over natural resources.’”⁴⁷ The Resolution urges all States to ensure the free and fair exercise of the right to return to one’s home and place of habitual residence by all refugees and displaced persons. It further asks States to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems. The Resolution requests that the Office of the U.N. High Commissioner for Human Rights widely circulate the draft principles on housing and property restitution for refugees and displaced persons among non-governmental organizations, governments, specialized agencies, and other interested parties for comment. It also requests that the Special Rapporteur take those comments into account in the preparation of his final report to be considered by the Sub-Commission at its 57th Session.

(c) Decision 2004/105

The Sub-Commission unanimously adopted a decision entitled “The right to food and progress in developing international voluntary guidelines for its implementation,” addressing various issues related to the progressive realization of the right to food.⁴⁸ The Resolution welcomed the progress made by the Intergovernmental Working Group of the Food and Agriculture Organization for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. The Commission also called upon all governments and interested and affected parties to continue

⁴⁶ *Resolution 2004/6*, U.N. Sub-Commission on the Promotion and Protection of Human Rights, 56th Session, at 21, U.N. Doc. E/CN.4/Sub.2/2004/L.20 (2004), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G04/162/46/PDF/G0416246.pdf?OpenElement> (last visited Jan. 12, 2005).

⁴⁷ *Resolution 2004/9*, U.N. Sub-Commission on the Promotion and Protection of Human Rights, 56th Session, at 31, U.N. Doc. E/CN.4/Sub.2/2004/L.14 (2004).

⁴⁸ *Decision 2004/105*, U.N. Sub-Commission on the Promotion and Protection of Human Rights, 56th Session, at 72, U.N. Doc. E/CN.4/Sub.2/2004/L.25 (2004)

the drafting process and to renew their efforts to reach consensus on the remaining issues to work towards the completion and adoption of that set of guidelines.

(d) Decision 2004/107

The Sub-Commission unanimously adopted a decision, entitled “The right to drinking water supply and sanitation,” in which it welcomed the reports prepared by Mr. El-Hadji Guissé 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. The Commission requested that Guissé, Special Rapporteur on the right to water, prepare a set of draft guidelines for the realization of the right to drinking water supply and sanitation to be submitted to the Sub-Commission at its 57th Session.⁴⁹

(e) Preliminary Report on the study on human rights and the human genome

At the 56th Session, the Special Rapporteur on human rights and the human genome presented her preliminary report, stating that recent developments in the field of genetics appear to have given rise to new conflicts between the right to health, the right to intellectual property, and human rights regimes. The Special Rapporteur’s report analyzes aspects of these conflicts from a human rights perspective while taking into account four issues: the human genome; the common heritage of humanity, the genetic manipulation of humanity, and human rights; discrimination; and intellectual property and genetics. Her preliminary report examines the issue of discrimination in genetics, an issue that will be further explored in the report that will be presented to the Sub-Commission at its 58th Session.

3) U.N. Commission on Sustainable Development

During its 12th Session on April 14-30, 2004, the Commission focused on the 2004-05 theme of Water, Sanitation and Human Settlements. It was noted that persistent poverty continues to hinder sustainable development and that poverty must be addressed in an integrated manner, incorporating the issues of water, sanitation and human settlements. While lack of financial resources, technology transfer and capacity were cited as major constraints by the majority of developed and developing countries, the importance of decentralizing decision-making processes and shifting attention from global to local levels was also highlighted by several delegations and major groups. Several countries stressed that gender equality should be integrated into all aspects of the Commission’s review process. Developing countries emphasized the need to maintain the balance of the ‘three pillars’ of sustainable development – social, economic and environmental. Overall, most major groups asserted the value of an integrated, human rights-based approach to water, sanitation and human settlements.⁵⁰

⁴⁹ *Decision 2004/107*, U.N. Sub-Commission on the Promotion and Protection of Human Rights, 56th Session, at 72, U.N. Doc. E/CN.4/Sub.2/2004/L.51 (2004).

⁵⁰ See U.N. Commission on Sustainable Development, *Press Release: Sustainable Development Commission Concludes Two-Week Review of Progress in Meeting Anti-Poverty Goals on Water, Sanitation, Human Settlements* (Apr. 30, 2004), available at <http://www.un.org/News/Press/docs/2004/envdev779.doc.htm> (last visited Mar. 2, 2005).

4) Special Rapporteur on the Right to Food

In January 2004, the Special Rapporteur on the right to food issued a report, addressing the issue of international trade and food security. The report examines the negative impacts of international trade in food and agricultural commodities, global trading rules, and transnational corporations on the poor and marginalized people. Rather than benefitting the poor, the Special Rapporteur maintains that these systems and institutions are exacerbating marginalization and inequality. In his report, the Rapporteur analyzes emerging developments seeking to address these concerns, the concept of “food sovereignty,” and the development of stronger human rights obligations for transnational corporations.⁵¹ Additionally, he makes several recommendations, including a statement that governments must monitor and regulate the activities of their transnational corporations to ensure that they do not violate the right to food.⁵²

C. Office of the U.N. High Commissioner for Human Rights

The U.N. Office of the High Commissioner for Human Rights has been mandated to prepare a report focusing on the responsibilities of transnational corporations and related business enterprises with regard to human rights. In particular, the report will list existing initiatives and standards, the scope and legal status of those initiatives, and other issues.⁵³ At a consultative meeting held on October 22, 2004, participants recommended five categories of norms with relevance to business and human rights. The first two categories would cover legally-based instruments and contractually-based initiatives. Voluntary initiatives would form the next group, including voluntary procedures and certification schemes. The next category would comprise mainstream financial transaction-related initiatives, such as the FTS4Good Index, which influence markets on social issues. Tools and other initiatives, notably methodologies for undertaking human rights impact assessments, would form the last group. The outcomes of the consultative meeting will be incorporated into the final report to be presented at the 61st Session of the Commission on Human Rights.⁵⁴

D. U.N. General Assembly Bodies

1) United Nations Global Environment Facility (GEF)

A report published in April 2004, entitled GEF and Small Island Developing States, focuses on the collaboration between the Global Environment Facility (GEF) and small island developing states (SIDS). The report highlights GEF’s work with SIDS on key natural resource issues that affect human rights: climate change, biodiversity, international waters, and land degradation.⁵⁵ For more than a decade, GEF has collaborated with SIDS and their networks in

⁵¹ *The Right to Food*, U.N. CHR, 60th Sess., at 2, U.N. Doc. E/CN.4/2004/10 (2004), available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/34441bf9efe3a9e3c1256e6300510e24/\\$FILE/G0410777.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/34441bf9efe3a9e3c1256e6300510e24/$FILE/G0410777.pdf).

⁵² *Id.* at 19.

⁵³ *Excerpted from EurActiv, UN examines human rights responsibilities of transnational corporations* (Nov. 5, 2004), available at <http://www.euractiv.com/Article?tcmuri=tcm:29-131966-16&type=News> (last visited Feb. 18, 2005).

⁵⁴ *Id.*

⁵⁵ GEF, *Talking Points, Vol. 4, No. 4* (Nov. 2004) at 15, available at http://thegef.org/Outreach/Talking_Points/Talking_Points_Vol.4_No.4_FINAL.doc (last visited Mar. 2, 2005).

addressing global environmental concerns through action-oriented projects that also promote opportunities for sustainable livelihoods for island residents. Restoring and protecting coastal and marine environments, revitalizing watersheds, preserving biodiversity, protecting land from degradation, and adapting in all sectors to changing climatic regimes are important focuses.⁵⁶

2) United Nations Environment Programme (UNEP)

In 2004, UNEP released a report entitled “Understanding Environment, Conflict and Cooperation.” The report presents UNEP’s response to the global interest in the intersection of the environment and security as well as the contribution of timely and credible assessments to conflict prevention. UNEP’s mandate for this work is consistent with the broader U.N. goal of promoting peace and security, and follows from the Montevideo Programme III adopted by the Governing Council in 2001, in which UNEP was encouraged to promote “studies on the concept of security and the environment.” The Report explores the relationship between environmental degradation and political instability and recognizes that we need a more systematic assessment of the relationship between environment and security. It identifies gaps and opportunities in environment, conflict, and cooperation research and policy, and is designed to promote collaboration within the U.N. family and with other organizations.⁵⁷ The report reflects UNEP’s interest in promoting understanding of the relationship between environment and peace, and builds upon its assessment of the impact of military conflict on resources and the environment in Bosnia, Iraq, the Occupied Palestinian Territories, Afghanistan, and Liberia.⁵⁸

3) U.N. Millennium Project

As an independent advisory body, the U.N. Millennium Project was commissioned by the U.N. Secretary-General in 2002 to develop a concrete action plan to reverse the devastating poverty, hunger and disease affecting billions of people worldwide.⁵⁹ In January 2005, the Project released a report, entitled “Investing in Development: A Practical Plan to Achieving the Millennium Development Goals,” proposing solutions for achieving the Millennium’s development goals by 2015. The Project presents recommendations for implementing existing technologies on a larger scale to combat poverty and other problems in both rich and poor countries.⁶⁰ The report outlines specific proposals, including: detailed strategies to meet the Millennium goals for developing countries; increased development aid from high-income nations; identification of “fast track” countries that can handle a rapid increase of development aid; opening of markets to exports from developing countries; and increase in funding for scientific research to address the needs of the poor in health, agriculture, natural resource and environmental management, energy, and climate change.⁶¹

⁵⁶ *Id.*

⁵⁷ UNEP, *Understanding Environment, Conflict, and Cooperation* (2004), available at <http://www.unep.org/PDF/ECC.pdf> (last visited Feb. 18, 2005).

⁵⁸ *Id.*

⁵⁹ U.N. Millennium Project, *About the UN Millennium Project*, available at <http://www.unmillenniumproject.org/documents/5-MP-AboutMP-E.pdf> (last visited Feb. 18, 2005).

⁶⁰ *Id.*

⁶¹ See Planet Ark, *Key Recommendations in New UN Report on Poverty* (Jan. 18, 2005), at <http://www.planetark.com/dailynewsstory.cfm/newsid/29055/story.htm> (last visited Feb. 18, 2005).

E. Treaties and Treaty Bodies

1) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

The Aarhus Convention was adopted on June 25, 1998 in Aarhus, Denmark, at the Fourth Ministerial Conference in the “Environment for Europe” process.⁶² On that date, it was signed by 35 countries and the European Community, and it entered into force on October 30, 2001.⁶³ The Preamble to the Convention states that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”⁶⁴ The Convention is the first international treaty on the public’s right to access information and to participate in environmental decision-making, and is therefore considered an important precedent for other regions.

To increase the Convention’s effectiveness, a Compliance Committee was set up by the first Meeting of the Parties in October 2002 as a non-confrontational, non-judicial, and consultative mechanism for reviewing compliance with the Convention. During its sixth meeting on December 15-17, 2004, the Compliance Committee initiated substantive discussion of its first five cases claiming violations against the governments of Ukraine, Turkmenistan, Kazakhstan, Hungary, and Turkey. Although it only has advisory powers, the Compliance Committee has a number of special features. Its members are experts serving in their personal capacity; it is able to undertake information-gathering visits within the territory of the Party concerned (with the party’s consent); and it is able to accept communications directly from the public.⁶⁵

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

In October 2004, the Seventh Conference of the Parties (COP 7) of the Basel Convention adopted a ministerial statement setting out strategies for mobilizing additional resources to address hazardous wastes. The statement calls for strengthening partnerships with industries and other international organizations and agreements, particularly the Rotterdam Convention on trade in hazardous chemicals and pesticides and the Stockholm Convention on Persistent Organic Pollutants. The statement further encourages governments to take action by setting individual or regional targets for minimizing wastes.⁶⁶ Additionally, COP 7 adopted three decisions on the

⁶² See UN Economic Commission for Europe, *Introducing the Aarhus Convention*, at <http://www.unece.org/env/pp/welcome.html> (last visited Jan. 19, 2005).

⁶³ See UN Economic Commission for Europe, *Participants*, available at <http://www.unece.org/env/pp/ctreaty.htm> (last visited Jan. 28, 2005).

⁶⁴ U.N. ECE, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, June 25, 1998, U.N. Doc. ECE/CEP/43.

⁶⁵ See generally Aarhus Convention, UNECE, *Compliance Committee Background*, at <http://www.unece.org/env/pp/compliance.htm#sixthmeeting> (last visited Mar. 2, 2005).

⁶⁶ See Basel Convention, UNEP, *Ministers stress partnerships and voluntary targets for reducing hazardous wastes* (Oct. 29, 2004), available at <http://www.basel.int/press/presrel291004.doc> (last visited Mar. 10, 2005).

dismantling of ships, recognizing that abandonment of ships on land or in ports could have effects on human health and the environment,⁶⁷ and requesting that Parties promote the environmentally sound management of ship dismantling worldwide.⁶⁸ Parties were asked to investigate incidents of abandonment and to report them to the Open-ended Working Group. The Secretariat of the Basel Convention believes that “these developments represent important steps taken towards the future establishment of a global legal regime governing ship dismantling.”⁶⁹

The Conference of Parties agreed to establish a Regional Center for Training and Technology Transfer in Tehran, Iran, and requested that the Secretariat conclude a framework agreement with the Islamic Republic of Iran to establish the Center.⁷⁰ The Islamic Republic of Iran offered to provide \$100,000 each year to meet the operational costs of the Center for the first three to five years of its operation once the Center is established.⁷¹

3) Stockholm Convention on Persistent Organic Pollutants

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

The Convention requires governments to develop action plans within two years of the Convention’s entry into force and to promote the use of best available technologies and best environmental practices. It adopts a ‘precautionary approach’ and establishes a POP Review Committee that will regularly consider additional candidates for the POPs list. A UNEP guidance document notes that the Convention’s request that international aid be directed to developing countries to help manage POPs will be integral to the treaty’s success.⁷²

⁶⁷ *Decision VII/27: Abandonment of ships*, Basel Convention, UNEP, 7th Sess., at 64, U.N. Doc. UNEP/CHW.7/33 (2005), available at <http://www.basel.int/meetings/cop/cop7/docs/33eRep.pdf> (last visited Feb. 15, 2005).

⁶⁸ *Decision VII/26: Environmentally sound management of ship dismantling, id.*, at 63.

⁶⁹ See Stephen Leahy, *ENVIRONMENT: Trade in Toxic Ships Dealt Sinking Blow* (Nov. 8, 2004), at http://www.chasque.net/ips_eng/notas/2004/11/08/17:56:18.html (last visited Jan. 27, 2005).

⁷⁰ *Report of the Open-Ended Working Group of the Basel Convention*, UNEP, at 38, U.N. Doc. UNEP/CHW/CHW.7/33 (2004), available at <http://www.basel.int/meetings/cop/cop7/docs/33eRep.pdf> (last visited Feb. 17, 2005).

⁷¹ *Id.*

⁷² See UNEP, *Ridding the World of POPs: A Guide to the Stockholm Convention on Persistent Organic Pollutants* (Aug. 2002), available at http://www.pops.int/documents/guidance/beg_guide.pdf (last visited Jan. 12, 2005).

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

The Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade entered into force on February 24, 2004. The Convention allows parties to determine which potentially hazardous chemicals may be imported based on the country's ability to safely manage those chemicals. The Convention's entry into force demonstrates the international significance of the link between the rights to life, health, and information, and the environmental threats posed by hazardous chemicals. Thus far, most of the Parties to the Rotterdam Convention are developing countries.⁷³

The first conference of the Convention's Member States since the agreement entered into force took place on September 20-24, 2004 in Geneva, Switzerland.⁷⁴ The Conference of Parties agreed to add 14 new hazardous chemicals and pesticides to an initial "watch list" of 27 substances.⁷⁵ This first Conference marks the successful launching of the Rotterdam Convention on its mission to protect human health and the environment from toxic hazards.⁷⁶

5) Convention on Biological Diversity (Biodiversity Convention)

The Biodiversity Convention was one of the major agreements adopted at the Earth Summit in Rio de Janeiro in 1992, and it has been ratified by over 187 countries and the European Community.⁷⁷ The three main goals of the Convention are: conservation of biological diversity; sustainable use of its components; and fair and equitable sharing of the benefits from the use of genetic resources.⁷⁸ These goals indicate international agreement on the need for a healthy environment and specific indicators to measure environmental health. In particular, the goals of sustainable use and equitable sharing of benefits seek to ensure that the human rights to life, food, work, sustenance, culture, information, and access to justice are protected in the context of the destruction and/or commercialization of biological and genetic resources.

⁷³ See FAO, *Treaty on hazardous chemicals and pesticides trade to become law* (Nov. 27, 2003), available at <http://www.fao.org/english/newsroom/news/2003/24790-en.html> (last visited Feb. 16, 2005).

⁷⁴ *Report of the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on the work of its first meeting*, UNEP, at 1, U.N. Doc. UNEP/FAO/RC/COP.1/33 (2004), available at <http://www.pic.int/cops/cop1/z33/English/COP%201-33%20e.doc> (last visited Feb. 19, 2005).

⁷⁵ See UNEP, *Press Release: Risk Reduction Discussed at Rotterdam Convention Conference* (Sept. 23, 2004), available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=404&ArticleID=4595&l=en> (last visited Feb. 19, 2005)

⁷⁶ *Id.*

⁷⁷ See Secretariat of the CBD, *Launch of the COP-7 Electronic Press Room* (Jan. 19, 2004), available at <http://www.biodiv.org/doc/press/2004/pr-2004-01-16-cop-en.doc> (last visited Jan. 12, 2005).

⁷⁸ *Id.*

In February 2004, the Seventh Conference of the Parties (COP 7) to the Biodiversity Convention took place in Malaysia.⁷⁹ The COP 7 adopted the Akwé: Kon Guidelines which are voluntary guidelines for conducting cultural, environmental, and social impact assessments of activities and development that will impact sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. The Secretariat of the Convention expects that impact assessment procedures and methodologies embodied in the voluntary guidelines will play a key role in providing information on the cultural, environmental, and social impacts of proposed developments. This process will help prevent potential adverse impacts on the livelihoods of indigenous and local communities concerned.⁸⁰

6) Inter-Parliamentary Union (IPU) Resolution on Biodiversity

At its 111th Assembly on October 1, 2004, the Inter-Parliamentary Union (IPU) unanimously adopted a resolution that affirmed the role of parliaments in preserving biological diversity, focusing on a number of key areas of the work of the Biodiversity Convention. The emphasis on the role of governments is an important indicator of the need for a legal and rights-based approach to biodiversity conservation and use. The IPU called on States that have not yet done so to ratify or accede to the Convention on Biological Diversity and its Cartagena Protocol on Biosafety as well as the other biodiversity-related treaties and agreements adopted at the international and regional levels. It called on governments to take more effective action in implementing the Convention on Biological Diversity to achieve the target set by the World Summit on Sustainable Development: to significantly reduce the current rate of biodiversity loss by 2010.

The Resolution urges countries to notify and consult with each other on projects that might have adverse effects on shared natural resources, and ensure that comprehensive environmental impact assessments are conducted before such projects are implemented, in accordance with international standards. It encourages governments to commit themselves to the establishment of an international regime on access to genetic resources and the fair and equitable sharing of benefits. Significantly, the Resolution calls on governments to revise and develop the legal framework that relates to the preservation and sustainable use of biodiversity as well as incorporate the objectives of the Convention into national sectoral and cross-sectoral programmes and policies.⁸¹

As part of the preparations for the Assembly, the Secretariat of the Convention on Biological Diversity prepared a background paper on the role of States in the preservation of

⁷⁹ See UNEP, *Press Release, Governments set rigorous targets for reducing the rate of biodiversity loss by 2010* (Feb. 20, 2004), available at <http://www.biodiv.org/doc/press/2004/pr-2004-02-20-cop-en.doc> (last visited Jan. 12, 2005).

⁸⁰ The full text of the Akwé: Kon Guidelines is available at <http://www.biodiv.org/doc/publications/akwe-brochure-en.pdf>.

⁸¹ *The Role of Parliaments in Preserving Biodiversity*, IPU, 111th Assembly (2004), available at <http://www.ipu.org/conf-e/111/111-2.htm> (last visited Jan. 12, 2005).

biological diversity.⁸² The paper asserted that governments are responsible for ensuring that Parties take the necessary legislative, administrative, and/or policy actions needed to honor the obligations of the Convention. It suggested that the elevation of environment and biodiversity concerns to constitutional status might enhance the priority conferred by governments to these issues. It also suggested that governments can promote effective legislative policy; the role of mandatory legal frameworks with binding rules for biodiversity conservation have been strongly recommended by the IPU.

7) Kyoto Protocol to the Framework Convention on Climate Change

On November 18, 2004, Russia became the 55th country to ratify the Kyoto Protocol, triggering the 90-day countdown to its entry into force. The Protocol entered into force on February 16, 2005 as the first legally binding international treaty on climate change.⁸³ The Protocol legally limits greenhouse gas emissions from industrialized nations, setting varying emissions targets for individual countries. Averaged over the “commitment” period between 2008 to 2012, these targets will result in an aggregate 5% reduction of such emissions from 1990 levels for industrialized countries as a whole.⁸⁴ In achieving these reductions, Annex I (industrialized) countries may engage in both emissions trading – whereby, with some restrictions, one party may acquire emission reduction units from another – and joint implementation – whereby Annex I countries may use certified emissions reductions created by projects in other member states that they assist in financing.⁸⁵ Although the Protocol mentions neither the right to life nor the right to health, its implementation will enhance the protection of these rights (and others) from adverse environmental impacts.

Although the United States withdrew its support for the Kyoto Protocol in 2001, in February 2005, U.S. Senator Chuck Hagel (R-Nebraska) introduced new legislation focused on developing and sharing of clean energy technology, providing tax incentives to U.S. businesses that operate in an environmentally-friendly way, and helping to bridge the differences between developed and developing countries on climate change and issues such as carbon sequestration.⁸⁶

F. World Bank

In 2004, the World Bank issued various publications and statements acknowledging the link between human rights and environmental health. It published a *Green MiniAtlas* in September 2004, which is an “at-a-glance” guide to the most pressing environmental problems

⁸² See Convention on Biological Diversity, UNEP, *Promoting the Conservation and Sustainable Use of Biological Diversity: A Challenge For Parliaments*, available at <http://www.biodiv.org/doc/statements/ipu-paper-web.doc> (last visited Jan. 12, 2005).

⁸³ See ENN, *Feted and Hated, Kyoto Enters into Force* (Feb. 16, 2005), available at <http://enn.com/today.html?id=7150> (last visited Mar. 2, 2005).

⁸⁴ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22, pmb., Art. 2.

⁸⁵ *Id.* at Arts. 6, 12.

⁸⁶ See Press Release, *Participants in Special Event Marking Entry Into Force of Kyoto Protocol Stress Need for Action to Counter Global Warming* (Feb. 17, 2005), available at <http://www.un.org/News/Press/docs/2005/envdev822.doc.htm> (last visited Feb. 19, 2005).

around the world. It draws on data from the World Bank's *Little Green Data Book 2004*, which provides a wealth of information on key environmental topics for over 200 countries and territories. While taking an in-depth look at the most critical issues, the *Little Green Data Book* recognizes that environmental degradation has the greatest impact on the poorest people in the poorest countries.⁸⁷ *The Little Green Data Book* draws on data from the World Bank's *World Development Indicators 2004*, and provides quick reference to the latest available environmental data for World Bank member countries as well as other economies with populations of over 30,000. Each page corresponds to an individual country, offering country-specific data that provides a baseline for comparison with regional and income group averages. Under the headings of agriculture, forests, biodiversity, energy, emissions and pollution, water and sanitation, and "greener" national accounts, the *Little Green Data Book* presents 47 key indicators of the environment and its relationship to people. The book also notes that air pollution in many areas can be a major environmental threat to human health, and that forests, an important source of livelihood for many people, are central to the support of natural systems as well as economic growth.⁸⁸

In October 2004, the World Bank and the Global Environment Facility (GEF) launched a five-year initiative to facilitate the protection of coral reefs.⁸⁹ The World Bank points out that more than 30 million small fishermen in developing countries depend on coral reefs to survive (implicating the right to work), and more than half of the protein needed by 400 million poor people living in tropical coastal areas come from fish (implicating the right to food).⁹⁰ The World Bank explains that the new program will allow researchers from developed and developing countries to identify the risks facing coral reefs as a result of human intervention and climate change. Decision-makers will use the results of this research in designing the economic and environmental management of coral reefs.⁹¹

⁸⁷ World Bank, *Green miniAtlas*, at http://publications.worldbank.org/ecommerce/catalog/product?item_id=3899069 (last visited Feb. 18, 2005).

⁸⁸ World Bank, *The Little Green Data Book 2004*, at <http://publications.worldbank.org/ecommerce/catalog/product?context=drilldown&item%5fid=3426628> (last visited Feb. 18, 2005).

⁸⁹ See World Bank, *Press Release: Applying Good Science in the Protection of Coral Reefs* (Oct. 14, 2004), available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20267942~menuPK:34465~pagePK:64003015~piPK:64003012~theSitePK:4607,00.html> (last visited Feb. 16, 2005).

⁹⁰ *Id.*

⁹¹ The World Bank Group, *News & Broadcast, The World Bank And Global Environment Facility Launch Initiative on Coral Reefs* (Oct. 15, 2004), at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,date:10-15-2004~menuPK:278083~pagePK:34392~piPK:34427~theSitePK:4607,00.html> (last visited Jan. 13, 2005).

1) World Bank Inspection Panel

The World Bank created an Inspection Panel in 1993 to furnish an “independent forum for private citizens who believe that they or their interests have been or could be directly harmed by a project financed by the World Bank.”⁹² 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.⁹³ The Panel then reports to the Board on its findings, and the Board decides what actions the Bank should take in response to these findings.⁹⁴ In its most recently published Annual Report, the Panel noted that its work is critical, largely because its work provides support for Bank compliance with environmental and social safeguard policies.⁹⁵

(a) Cartagena Water Supply, Sewerage and Environmental Management Project (Colombia)

On April 20, 2004, the Inspection Panel received a Request for Inspection related to the Cartagena Water Supply, Sewerage and Environmental Management Project in Colombia. The Requesters claimed that the Bank did not comply with its “Operational Directive 4.20 – Indigenous Peoples” by: failing to identify the affected communities as indigenous; failing to ensure that the Project’s adverse effects would be avoided or mitigated; and failing to safeguard their livelihood and reliance on fishing and farming as a subsistence living. The Requesters raise concerns about the impact of the Project on their culture and way of life as well as the impact of pollution on their health. The Requesters further question the design of the Project’s environmental assessment and the Bank’s consultation with locally affected people. They also raise concerns about the Bank’s supervisory efforts and scrutinize proposed submarine effluents into the Caribbean Sea.⁹⁶

The Requesters further allege that the environmental assessment failed to take into account the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and the 1999 Aruba Protocol to the Cartagena Convention on Land-Based Sources of Pollution, which Colombia signed on October 2, 2000. After visiting Colombia and conducting interviews with national, local and Project officials, the Panel reported that there are sharply differing views on alternatives for waste treatment and disposal as well as

⁹² World Bank Group, *The Inspection Panel, Overview*, at <http://wbln0018.worldbank.org/ipn/ipnweb.nsf/WOverview/overview?opendocument#1> (last visited Jan. 12, 2005).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ The Inspection Panel, World Bank Group, *Annual Report: August 1, 2001 to June 30, 2002*, at 3, available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/2002AnnualReport/\\$FILE/2002+Annual+Report.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/2002AnnualReport/$FILE/2002+Annual+Report.pdf) (last visited Feb. 23, 2005).

⁹⁶ *Excerpted from* World Bank, *Press Release: Colombia - Cartagena Water Supply, Sewerage and Environmental Management Project: Board of Executive Directors authorizes Inspection Panel to conduct investigation* (July 23, 2004), available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/ColEligPressRelease/\\$FILE/Col+Elig+Press+Release.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/ColEligPressRelease/$FILE/Col+Elig+Press+Release.pdf) (last visited Feb. 23, 2005).

the associated risks and costs.⁹⁷ Under these circumstances, the Inspection Panel recommended that an investigation be conducted. On July 13, 2004, the World Bank's Board of Executive Directors approved the Panel's recommendation to conduct an investigation.⁹⁸

(b) Mumbai Urban Transport Project (India)

On April 28, 2004, the Inspection Panel received a Request for Inspection regarding the Mumbai Urban Transport Project by the United Shop Owners Association, a non-governmental organization located in the city of Mumbai, India, on its own behalf and on behalf of 118 residents of Mumbai who claim to be adversely affected by the Project. On June 24, 2004, the Panel received a second Request for Inspection dated June 22, 2004, related to the same Project by three other local non-governmental organizations on their own behalf and on behalf of approximately 350 residents living in the area known as Gazi Nagar in the Kurla West District of Mumbai.⁹⁹

The Requesters claim that as a result of the Project they are being forced to relocate to the Mankhurd area, which they allege is a degraded environment unsuitable for relocation. According to the Requesters, the site is "considered amongst the highest polluted areas in the Mumbai city and it is near [a] dumping ground spread across 110 hectares of land." They also report that approximately 4000 tons of garbage from Mumbai are dumped daily on this site, "spreading many diseases like T.B.[sic], Malaria, Asthma, etc."¹⁰⁰ The Requesters further claim that the Bank has failed to supervise the design of the resettlement plan "with respect to their livelihoods, traveling distance, education of children and their admissions in respective medium schools, destruction of source of income, and their social, economical network and infrastructure." According to the Requesters, their rights to participation and consultation "were completely denied and no results obtained in our attempts to raise our concerns."¹⁰¹

In its report, the Panel noted that in projects requiring large scale resettlement of affected persons (approximately 1,200,000 people were to be displaced by the project), the environmental risks in a proposed resettlement site should be analyzed in the environmental assessment. The Panel found that "[i]n this case Management does not address the issue of environmental assessments for this Project component, but notes that the design of the sub-project component was not finalized by the time of Bank appraisal. This raises concerns about whether the environmental assessment for the selection of the Mankhurd site complies with Bank policy."

⁹⁷ *Excerpted from* The Inspection Panel, World Bank Group, *Report and Recommendation on Request for Inspection, Colombia: Cartagena Water Supply, Sewerage and Environmental Management Project (IBRD Loan No. 4507-CO)*, available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/70c64086027c73ba8525686e00020040/5e1cc1b048351b7385256ed70046c94d/\\$FILE/ColombiaEligibilityReport.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/70c64086027c73ba8525686e00020040/5e1cc1b048351b7385256ed70046c94d/$FILE/ColombiaEligibilityReport.pdf) (last visited Feb. 17, 2005).

⁹⁸ *Id.*

⁹⁹ *Excerpted from* The Inspection Panel, World Bank Group, *Report and Recommendation, India: Mumbai Urban Transport Project (IBRD Loan No. 4665-IN; IDA Credit No. 3662-IN)*, available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/70c64086027c73ba8525686e00020040/7f58a9e29bd68ff285256f2b004f679a/\\$FILE/FinalEligibilityRepSEPT.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/70c64086027c73ba8525686e00020040/7f58a9e29bd68ff285256f2b004f679a/$FILE/FinalEligibilityRepSEPT.pdf) (last visited Feb. 16, 2005).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

The Panel further noted that the requests, Management's Responses, the Panel's visit to India, interviews with state and Project officials, Bank staff, and affected persons, and subsequent correspondence confirmed that there are sharply differing views on the issues raised by both Requests. Under these circumstances, the Inspection Panel recommended in September 2004 that an investigation be conducted. The Board of Executive Directors has yet to make a decision on the recommendation.

(c) National Drainage Program Project (Pakistan)

On September 10, 2004, the Inspection Panel received a Request for Inspection, related to the National Drainage Program Project in Pakistan. The Request was submitted by seven individuals on their own behalf and on behalf of others who live in the area known as district Badin, Sindh Pakistan in the Indus River Basin. According to the Request, more than 50 villages in the district will suffer the permanent threat of flooding from the disposal of upstream saline effluents if the existing Left Bank Outfall Drain (LBOD) system is further expanded under the Project. The Requesters allege that the Project did not take into consideration the possible displacement of people that will result when the drainage system overflows during monsoon rainy seasons. They further claim that the expansion of drains under the NDP will entail forceful acquisition of land that would ruin their livelihood. Further, the Requesters claim that the NDP will cause the destruction of two Dhands (coastal wetlands) that are protected by the Ramsar Convention on Wetlands of International Importance. The Requesters also claim that the local communities, and especially the affected people of the coastal belt, have not been kept adequately informed as to project plans and environmental assessments. The Inspection Panel has yet to make a decision on the request.¹⁰²

(d) Yacyreta Hydroelectric Project (Argentina)

Several years ago, the Federación de Afectados por Yacyretá de Itapúa y Misiones (FEDAYIM), a non-governmental organization representing around 4,000 families that believe their lives and environment are being harmed by the Yacyreta Hydroelectric Project, requested that the Inspection Panel review the project. This group claimed the Bank violated its own policies and procedures in relation to the design and implementation of the Yacyretá project, which received World Bank loans totaling \$878 million between 1979 and 2002. In May 2004, the Panel announced its findings, which concluded that the Bank complied with its policies and procedures in some areas of concern, but violated others.¹⁰³

Concerning the major environmental issues raised in the request, the Panel found that the Yacyretá project reservoir did not cause flooding of urban creeks, contaminate the Parana River, or spread diseases. However, the Panel found that the dam was at times being operated at a

¹⁰² Excerpted from The Inspection Panel, World Bank Group, *Notice of Registration Re: Request for Inspection, Pakistan: National Drainage Program Project* (Sept. 17, 2004), available at [http://wbln0018.worldbank.org/IPN/ipnweb.nsf/\(attachmentweb\)/PAKNoticeofRegistration/\\$FILE/PAKNoticeofRegistration.pdf](http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(attachmentweb)/PAKNoticeofRegistration/$FILE/PAKNoticeofRegistration.pdf) (last visited Mar. 2, 2005).

¹⁰³ Excerpted from The Inspection Panel, World Bank Group, *Press Release: Argentina: World Bank Board Discusses Yacyreta Hydroelectric Project* (May 7, 2004), available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20235889~menuPK:64129469~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (last visited Mar. 10, 2005).

slightly higher level than provided for in the project's legal agreements. While the Panel found that the biophysical impacts from the major dam and reservoir were being managed competently, it also stated that a number of important environmental problems remain at the resettlement sites. In particular, there was inadequate evaluation of the environmental impacts of roads, water, waste, and drainage facilities at the resettlement sites.¹⁰⁴

Regarding social issues, the Panel reported that the Bank fell short on implementing its policy on the resettlement of families and businesses affected by the Yacyretá project. In particular, the Panel found that: a number of people were omitted from a 1990 census used to establish compensation and resettlement benefits; alternative resettlement sites were not considered; there was no transparent and independent procedure for hearing grievances; and the impacts of resettlement sites on adjacent areas were not fully assessed. The report also highlighted a need for improved project supervision, better census and survey data, wider public disclosure of information, and more effective consultations with affected groups. The management committee proposed an Action Plan, consisting of: support of a social communication program to aid affected communities; assistance in developing a dispute resolution mechanism; and an improved and comprehensive supervision and monitoring framework.¹⁰⁵

In July 2004, the Inter-American Development Bank confirmed the problems associated with the hydroelectric dam through its own independent investigation. Among the most serious problems documented, which the panel attributed directly to the Yacyretá project, were flooding of houses along the river, polluted creeks and water wells, elevated incidence of health problems, including diarrheas, parasites, and skin problems, inadequate resettlement housing, and child prostitution. Investigators also found many cases where affected people were arbitrarily denied compensation by the company, and they criticized poor monitoring of the project by IDB staff and officials.¹⁰⁶

G. World Health Organization (WHO)

The WHO recognizes the link between human rights and a healthy environment by focusing program resources on myriad environmental health programs.¹⁰⁷ 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.¹⁰⁸

In August 2004, WHO and UNICEF released a report entitled "Meeting The Millennium Development Goals (MDG) Drinking Water and Sanitation Target - A Mid-Term Assessment Of

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See International Rivers Network, *Inter-American Development Bank Investigation Confirms Chronic Problems at Yacyreta Dam* (July 13, 2004), on file with Earthjustice.

¹⁰⁷ See World Health Organization, *Protection of the Human Environment*, at http://www.who.int/phe/health_topics/en/ (last visited Jan. 13, 2005).

¹⁰⁸ *Id.*

Progress.” The report details the progress of individual countries, regions, and the world as a whole between the MDG baseline year of 1990 and the half-way mark of 2002. It makes two significant predictions on reaching the 2015 goals, based on progress to date. First, the global sanitation target will be missed by half a billion people – most of them in rural Africa and Asia – allowing waste and disease to spread, killing millions of children and leaving millions more on the brink of survival.¹⁰⁹

Second, the world is on track to meet the drinking water target.¹¹⁰ While the report points out that developing countries are at the highest risk, it also highlights some worrying trends in the industrialized countries, where coverage figures for clean water and basic sanitation facilities are estimated to have decreased by 2 percent between 1990 and 2002. The report argues that reversing this trend and moving towards universal coverage for water and sanitation will require more than money. National policies based on the principle of “some for all” rather than “all for some” have been the key to improvements in many countries. And at the local level, resources have to be redirected to include the poorest communities, with local government and the private sector working cooperatively to create affordable solutions.¹¹¹

Another report commissioned by the WHO and released in April 2004, entitled “Evaluation of the Costs and Benefits of Water and Sanitation Improvements at the Global Level,” outlines the potential economic benefits to the world, and particularly to developing countries, if the MDG and World Summit on Sustainable Development goals are met.¹¹²

In September 2004, the WHO released its updated guidelines for drinking-water quality. Developing and developed countries use the guidelines worldwide as the basis for regulation and setting standards to ensure the safety of drinking water. The revised 2004 guidelines describe a “Framework for Drinking-water Safety” and discuss the roles and responsibilities of different stakeholders, including the complementary roles of national regulators, suppliers, communities, and independent “surveillance” agencies. These guidelines have been comprehensively updated to take into account developments in risk assessment and risk management. They include expanded guidance for ensuring the microbial safety of drinking water, specifically through comprehensive, system-specific “water safety plans.”¹¹³

H. Organization for Economic Cooperation and Development (OECD)

In November 2004, the OECD held a Global Forum on Sustainable Development, engaging OECD and non-OECD countries to develop best practice guidelines for integrating

¹⁰⁹ Excerpted from WHO, *Press Release: World facing "silent emergency" as billions struggle without clean water or basic sanitation* (Aug. 26, 2004), available at <http://www.who.int/mediacentre/news/releases/2004/pr58/en/> (last visited Feb. 17, 2005).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See WHO, *Press Release: Investment in water and sanitation yields health and economic benefits* (Apr. 27, 2004), available at <http://www.who.int/mediacentre/news/releases/2004/pr28/en/> (last visited Jan. 13, 2005).

¹¹³ See WHO, *Press Release: WHO issues revised drinking water guidelines to help prevent water-related outbreaks and disease* (Sept. 21, 2004), available at <http://www.who.int/mediacentre/news/releases/2004/pr67/en/> (last visited Feb. 16, 2005).

economic, social and environmental policies. Focusing on development and climate change, the Forum addressed key issues “relating to mainstreaming responses to climate change by building them into routine economic development planning policies.”¹¹⁴ The primary focus of the forum was to mainstream adaptation to climate change within developing countries. However, the links between greenhouse emissions reduction and development were also discussed.¹¹⁵

II. REGIONAL

Like the above international bodies, developments from regional bodies during 2004 have continued to advance and solidify a customary international legal right to a clean and healthy environment.

A. European Union (EU)

1) Council of Ministers

In October 2004, the Council approved an agreement to reduce emissions of fluorinated greenhouse gases to preserve and protect the human environment. Fluorinated gases are extremely powerful and long-lived greenhouse gases used in refrigeration, air conditioning, fire-fighting, and various industrial processes. The reduction of these emissions is a requirement under the 1997 Kyoto Protocol, and will help the EU and its Member States meet their Kyoto 2012 emission targets and further reduce emissions after 2012. The agreement includes a directive addressing fluorinated gases used in air conditioning systems in vehicles, and a regulation tackling stationary applications based on a proposal made by the European Commission in August 2003.¹¹⁶

Also in October 2004, the Environment Council agreed on a proposed directive to minimize environmental impacts of waste produced by extractive industries (mining and quarrying). According to this directive, EU-wide rules shall aim to prevent water and soil pollution from the deposition of waste into heaps or ponds, the two most common storage methods. Particular emphasis is put on the long-term stability of such waste facilities so that consequences from possible accidents are minimized. Together with the revised Seveso II Directive on the control of major industrial accidents and a reference document on Best Available Techniques, the directive will ensure sound management of extractive waste throughout the EU when finalized.¹¹⁷

¹¹⁴ See OECD, *Global Forum on Sustainable Development: Development and Climate Change, Paris, 11-12 November 2004*, at http://www.oecd.org/document/5/0,2340,en_2649_34361_33751109_1_1_1_1,00.html (last visited Feb. 16, 2005).

¹¹⁵ See OECD, *Global Forum on Sustainable Development: Conclusions of the Chair* (2005), at 7, available at <http://www.oecd.org/dataoecd/60/7/34393852.pdf> (last visited Feb. 22, 2005).

¹¹⁶ Excerpted from European Commission, *Climate change: Commission welcomes political agreement in the Council to reduce emissions of fluorinated greenhouse gases* (Oct. 14, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1231&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹¹⁷ Excerpted from European Commission, *Mining waste: Commission welcomes political agreement in the Council on new rules to prevent pollution and accidents* (Oct. 14, 2004), available at

2) European Commission (EC)

In February 2004, the European Commission and the European Environment Agency launched an internet-based register of industrial air and water emissions. In October 2004, the Commission proposed to make it an even more comprehensive register by upgrading it to a European Pollutant Release and Transfer Register (PRTR). The European PRTR will include more pollutants, more industrial sources, and more types of emissions, and will be updated annually.¹¹⁸

In June 2004, the European Commission launched an action plan targeting diseases caused by environmental harm. The plan would develop an EU system integrating information on the status of the environment and human health. It identifies 13 actions, including initiatives on the relationships between environment and health as well as those between environmental exposure and epidemiological effects. The plan also focuses on research activities, such as asthma/allergy, neuro-developmental disorders, cancers, and endocrine disrupting effects. Additionally, it calls to raise awareness on the risks affecting citizens, and for the training of professionals in environment and health issues. The action plan was the Commission's main contribution to the Fourth Ministerial Conference on Environment and Health of the World Health Organization (WHO) that took place in Budapest in June 2004.¹¹⁹

In June 2004, the European Commission took an important step toward decreasing sulfur dioxide (SO₂) emissions from ships. Ships have become the single largest source of SO₂ in the EU, because the maritime sector has lagged behind land-based industry in terms of environmental performance. In reaching a political agreement on the Commission's marine fuel sulfur proposal, the Environment Council has agreed to reduce ships' SO₂ emissions in the EU by over 500,000 tonnes each year beginning in 2007, which will directly benefit human health and the environment.¹²⁰

Adopted by the European Commission in June 2001, a new European law, the Directive on Strategic Environmental Assessment (SEA), mandates that the environmental impacts of a wide range of public plans and programs be assessed under better and more open planning

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1229&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹¹⁸ ***EXCERPTED FROM EUROPEAN COMMISSION, INDUSTRIAL POLLUTION: EVEN MORE INFORMATION FOR THE PUBLIC (OCT. 8, 2004), AVAILABLE AT [HTTP://EUROPA.EU.INT/RAPID/PRESSRELEASESACTION.DO?REFERENCE=IP/04/1196&FORMAT=HTML&AGED=1&LANGUAGE=EN&GUILANGUAGE=EN](http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1196&format=HTML&aged=1&language=EN&guiLanguage=en) (LAST VISITED JAN. 13, 2005).***

¹¹⁹ *Excerpted from European Commission, Commission launches Environment and Health Action Plan 2004-2010 (June 9, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/728&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).*

¹²⁰ *Excerpted from European Commission, Clean ships get into gear after years of slow steaming (June 28, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/810&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).*

procedures. These measures were to be implemented by EU Member States by July 21, 2004. Local waste management plans and road-building plans must be reviewed according to the SEA Directive. The Directive will also apply to land use, agriculture, water management, tourism, industry and energy. When drawing up relevant plans or programs, public authorities will have to make an environmental report to identify, describe, and assess potential impacts on the environment. Impacts to be considered include those on biodiversity, fauna and flora, soil and water, climatic factors, landscape, and human health. The SEA Directive allows for public comment on the environmental report and on the draft plan or program. Both the environmental report and the outcome of the public consultation must be taken into account when the plans are decided upon. European citizens will now have greater participation in decision-making that will have environmental repercussions. The SEA Directive is seen as a major step toward sustainable development and democracy.¹²¹

In July 2004, the European Commission for the first time proposed action on flood risk management to improve protection against flooding. The Commission proposed a number of actions, including flood risk management plans for affected river basins and coastal zones, flood risk maps showing the areas at risk of flooding, and coordination of information exchange to ensure the contribution of all relevant EU policies and increase public awareness. Member States will cooperate and coordinate to develop and implement flood risk management plans at river basin level and within coastal areas to prevent problems being passed from one area to another. Flood risk maps will be developed as a tool for planning and communication. The Commission will facilitate coordination of information exchange on flood protection and the promotion of best practices as well as ensuring that all relevant EU policies contribute to flood protection. The Member States and the Commission together will be responsible for the overall coordination of the action plan.¹²²

In addition to new action plans, programs, directives, and laws designed to protect human rights and the environment, in 2004, the European Commission decided to pursue infringement proceedings against a number of countries including Greece, Luxembourg, Spain, Austria, and Germany in cases involving EU environmental law. In one of the nine cases filed against Greece, the Commission requested that Greece comply with a ruling by the European Court of Justice, in which the Court had condemned Greece for its failure to phase out electrical equipment containing polychlorinated biphenyls (PCBs). PCBs are industrial chemicals that were once widely used as flame retardants, but are now known to be carcinogenic. In three other cases, the Commission has referred Greece to the Court after Greece ignored earlier warnings.

¹²¹ See European Commission, *New Directive to improve public participation in environmental impact assessments* (July 20, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/975&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹²² See European Commission, *Flood protection: Commission proposes concerted EU action* (July 12, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/887&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

These three cases involve unsafe handling of sludge from a waste water plant in the area of Athens, an illegal landfill on Crete, and the failure to protect a rare viper species on Milos.¹²³

The six cases that the European Commission has decided to pursue against Luxembourg relate to gaps in legislation covering industrial accidents, inadequate treatment of urban wastewater, and the non-transposition of laws on emissions trading and integrated water management. In addition, Luxembourg has received a first written warning regarding its failure to create an air quality improvement plan.¹²⁴

The European Commission is pursuing infringement proceedings against Spain in seven cases involving EU environment law. The issues relate to waste disposal, urban wastewater, and construction projects that pose a threat to human health and the environment. The Commission is asking Spain to comply with a ruling by the European Court of Justice, which condemned Spain over a number of uncontrolled waste disposal sites.¹²⁵

Four cases against Austria include a decision by the European Commission referring Austria to the European Court of Justice over gaps in its nature protection legislation, which fails to respect the EU's Birds and Habitats Directives. Further warnings will be sent for failure to fully align Austrian legislation with EU laws on the prevention of major industrial accidents and on car recycling. Austria will also receive a warning for its failure to take action to improve air quality in some regions.¹²⁶

The European Commission has also decided to pursue infringement proceedings against Germany in four cases concerning EU environment law. The Commission plans to send Germany warnings for incomplete legislation on car recycling, water management, missing plans to improve air quality in some of its regions, and insufficient regulation of substances that deplete the ozone layer.¹²⁷

¹²³ See European Commission, *Greece: Commission pursues legal action in nine cases for breach of EU environmental law* (July 20, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/977&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹²⁴ See European Commission, *Luxembourg: Commission pursues legal action in six cases of breaches of EU environmental law* (July 20, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/976&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹²⁵ See European Commission, *Spain: Commission pursues legal action over breaches of EU environmental law* (July 20, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/973&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹²⁶ See European Commission, *Austria: Commission pursues legal action for breaches of environmental legislation* (July 16, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/942&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹²⁷ See European Commission, *Germany: Commission pursues legal action for breaches of EU environmental law* (July 16, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/941&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

In addition to infringement proceedings, the European Commission has sent first written warnings to nine Member States that have not informed the Commission of their plans to limit the use of the pesticide methyl bromide. The pesticide is being phased out under EU law because it is known to damage the ozone layer, which protects humans, animals, and plants from the sun's dangerous ultraviolet radiation.¹²⁸

The European Commission is also taking legal action against 13 Member States for non-compliance with two important EU laws on water. These laws seek to improve the quality of all water bodies in Europe, from lakes to rivers to coastal waters, for the benefit of Europe's citizens and their environment. Nine Member States – Belgium, Finland, Germany, Italy, Luxembourg, the Netherlands, Portugal, the United Kingdom, and Sweden – have received final written warnings, which call on them to urgently adopt national legislation to comply with the EU Water Framework Directive. This milestone law aims to ensure good quality of all water resources in the EU through a new, integrated cross-border approach to water management. The Directive had set a deadline of December 2003 for governments to incorporate these policies into national law. The Commission has also sent first written warnings to France, Greece, Ireland, Italy, Portugal, Spain, and the United Kingdom for failing to meet a December 2000 deadline for installing proper treatment for waste-water discharges from cities and towns with more than 15,000 inhabitants. Inadequate waste-water treatment is a major cause of water pollution and presents a serious risk to human health and the environment.¹²⁹

The European Commission has sent France, Belgium, Netherlands, Austria, Italy, Portugal, and Sweden a second written warning for failing to comply with an EU law aimed at promoting the use of low sulfur petrol and diesel fuels. The Commission has also sent first written warnings to the UK, Luxembourg, and Belgium for violating an EU law aimed at protecting the ozone layer.¹³⁰

The European Commission also decided to refer Italy to the European Court of Justice with regard to a hydro-electric project in Lombardy that involves abstracting water from the Schiesone River (Sondrio). The Commission is concerned that this project will lead to the deterioration of important fluvial habitats within a site that is nominated for special protection under the EU's Habitats Directive.¹³¹

¹²⁸ See European Commission, *Protecting the ozone layer: Commission takes legal action against nine Member States* (July 9, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/878&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹²⁹ See European Commission, *Water policy: Commission takes legal action against 13 Member States* (July 8, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/870&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹³⁰ See European Commission, *Air pollution: Commission takes legal action against 9 Member States* (Apr. 5, 2004), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/457&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited Jan. 13, 2005).

¹³¹ See European Commission, *Commission takes Italy to Court to prevent hydro-electric plant from damaging river habitats* (Apr. 1, 2004), available at

3) European Court of Human Rights (Council of Europe)

(a) *Oneryildiz v. Turkey*

In the case of *Oneryildiz v. Turkey*, the European Court of Human Rights decided its first environmental case involving loss of life. On November 30, 2004, the Grand Chamber found that the Turkish authorities failed to prevent the deaths of nine of the applicant's close relatives and destruction of his property caused by a methane explosion at a municipal waste dump, therefore violating the applicant's right to life and property under Articles 1 and 2 of the European Convention of Human Rights.¹³² The Court determined that national authorities not only failed to take the appropriate steps to protect the lives of their citizens, but also neglected their responsibilities in the aftermath of the explosion. As a result of these violations, the Court ordered that Turkey compensate the applicant for damages and costs.¹³³

(b) *Taşkin and Others v. Turkey*

On November 10, 2004, the European Court issued its decision in the case of *Taşkin and Others v. Turkey*, concerning permits granted to operate a gold mine in Ovacik. The Court held that national authorities had violated the applicants' right to respect for private and family life and to a fair trial under Articles 6 and 8 of the European Convention, both by the authorization of a permit to operate a gold mine using the cyanide leaching process and the related decision-making processes.¹³⁴ Upholding an earlier ruling made by Turkey's Supreme Administrative Court, the Court noted that the mine's operating permit did not serve the public interest and negatively impacted the "applicants' effective enjoyment of the right to life and to a healthy environment."¹³⁵

B. Organization of American States (OAS)

In January 2004, OAS launched a campaign entitled "Sustainable Development and Biocultural Conservation in the Brazil-Suriname Border Region."¹³⁶ The purpose of the project

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/439&format=HTML&aged=1&language=EN&uiLanguage=en> (last visited Jan. 13, 2005).

¹³² See European Court of Human Rights, *Press Release: Grand Chamber Judgment in the Case of Öneriyildiz v. Turkey* (Nov. 30, 2004), available at <http://www.echr.coe.int/Eng/Press/2004/Nov/GrandChamberjudgmentÖneriyildizvTurkey301104.htm> (last visited Feb. 27, 2005).

¹³³ *Id.*

¹³⁴ See European Court of Human Rights, *Press Release: Grand Chamber Judgment in the Case of Taskin and Others v. Turkey* (Nov. 10, 2004), available at <http://www.echr.coe.int/Eng/Press/2004/Nov/ChamberjudgmentTaskin&OthersvTurkey101104.htm> (last visited Feb. 28, 2005).

¹³⁵ *Taskin and Others v. Turkey*, Eur. Ct. H.R., No. 46117/99 (2004), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Ta%u015Fkin&sessionid=1600915&skin=hudoc-en> (last visited Feb. 28, 2005).

¹³⁶ See OAS, *Multilateral Project Launched in Suriname* (Jan. 26, 2004), available at http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=SU-012604 (last visited Jan. 13, 2005).

is to work in partnership with the indigenous peoples of the region in order to contribute to the conservation of their culture and the sustainable development of their natural resources.¹³⁷

In February 2004, the OAS organized a meeting to move forward with the Health and Environment Ministers of the Americas (HEMA) process, an initiative to develop an “agenda to prevent and minimize the negative impacts to the environment and human health.”¹³⁸ The meeting’s objectives were to: build awareness of this major hemispheric health and environment initiative; present fifteen project initiatives identified by the Task Force as priority activities; explore possible sources of financial and technical support for priority activities; and share experiences in health and environment work by international organizations.¹³⁹ Among the participants were representatives of UNEP, the World Bank, the Pan American Health Organization (PAHO), and the Inter-American Development Bank (IDB), showing their commitment to collaboration and implementation of health and environment initiatives throughout the Americas.¹⁴⁰

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

(a) Belize Maya

In its recent decision in the *Belize Maya* case, the Commission found that Belize violated the Mayan communities’ right to use and enjoy their property by granting concessions to third parties to exploit natural resources within Mayan lands without informed consent and with resulting environmental damage.¹⁴¹ Indigenous people’s international human right to property, the Commission noted, is based in international law, and does not depend on domestic recognition of property interests.¹⁴² The Commission broadly defined indigenous property rights as not limited “exclusively by entitlements within a state’s formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and tradition.”¹⁴³ The Commission went on to emphasize “the distinct nature of the right to property as it applies to indigenous people, whereby the land traditionally used and occupied by these communities plays a central role in their physical, cultural and spiritual vitality.”¹⁴⁴ Additionally, in response to the community’s claims that the logging and oil development have caused long-term and irreversible environmental harm to the lands on which they rely for

¹³⁷ *Id.*

¹³⁸ See OAS, *About HEMA*, available at http://www.oas.org/hema/english/about_hema.htm (last visited Mar. 1, 2005).

¹³⁹ Excerpted from OAS, *Press Release: Meeting at OAS Advances Health and Environment Ministers of the Americas Initiative* (Feb. 13, 2005), available at http://www.oas.org/oaspage/press_releases/press_release.asp?sCodigo=E-022/04 (last visited Mar. 1, 2005).

¹⁴⁰ *Id.*

¹⁴¹ *Maya Indigenous Communities of the Toledo District v. Belize*, Case 12.053, Inter-Am. C.H.R. Report 40/04 (2004) at ¶¶ 153, 194, available at <http://www.cidh.org/annualrep/2004eng/Belize.12053eng.htm> (last visited Mar. 1, 2005).

¹⁴² *Id.* at ¶117

¹⁴³ *Id.*

¹⁴⁴ *Id.* at ¶155.

subsistence, the Commission recommended that Belize mitigate the damages resulting from the logging concessions.¹⁴⁵

(b) San Mateo de Huanchor (Peru)

On August 17, 2004, the Commission requested that Peru take precautionary measures to ensure the life and personal integrity of the San Mateo community, whose residents and local environment have been contaminated by toxic mine tailings containing heavy metals such as arsenic, lead, mercury, and cadmium.¹⁴⁶ Recognizing the human rights and environment linkage in pollution-related impacts on human health, the Commission requested that Peru initiate a public health assistance program, including medical assistance provided to affected people. Additionally, the Commission requested that Peru prepare the environmental impact study required for the toxic waste removal and, upon completion of the study, initiate the tailings dump removal. Other measures requested included the preparation of a timeline to facilitate monitoring of compliance.¹⁴⁷ The Commission's decision sets an important precedent on the State's responsibility with respect to toxic waste dumps that affect surrounding communities.

2) Inter-American Court of Human Rights

(a) Sarayaku Indigenous Community (Ecuador)¹⁴⁸

In May 2003, the IACHR issued an order for precautionary measures in favor of the indigenous Sarayaku community of Ecuador. However, the Government of Ecuador failed to comply with those measures.¹⁴⁹ In June 2004, the Commission submitted to the Inter-American Court of Human Rights an application for the adoption of provisional measures in favor of the Kichwa indigenous people of the Sarayaku community and its members. On July 6, 2004, the Court issued provisional measures, ordering the Ecuadorian government to protect their citizens' right to life and right to access and movement throughout their territory. In addition, the Ecuadorian government is required to investigate the cases of torture and attempted rape that occurred on December 4, 2003, en route to a march to protest the planned oil project within their communities.¹⁵⁰ Although the recognition of international legal protection constitutes a major victory for the Sarayaku communities, Sarayaku's community leaders, their lawyers, and other collaborators continue to receive numerous threats. Government authorities have also publicly

¹⁴⁵ *Id.* at ¶157(3).

¹⁴⁶ *See Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, U.N. CHR, 61st Sess., Agenda Item 10 of the provisional agenda, at 10, U.N. Doc. E/CN.4/2005/45 (2004).

¹⁴⁷ *Id.*

¹⁴⁸ This development is an update to a case study that was included in the issue paper prepared for the Commission's 60th Session.

¹⁴⁹ *Id.*

¹⁵⁰ *See Amazon Watch, Violence Erupts Against Sarayacu*, at http://www.amazonwatch.org/view_news.php?id=745 (last visited Mar. 2, 2005).

threatened to militarize the indigenous territories to quell resistance against the Argentinian oil company leading the project.¹⁵¹

As a member of the Organization of American States, Ecuador has accepted the jurisdiction of the Inter-American Court. If Ecuador refuses to comply with its recent order for provisional measures to protect the Sarayaku communities, the Court then has the ability to impose economic sanctions.¹⁵²

C. North American Commission on Environmental Cooperation

The North American Agreement on Environmental Cooperation (NAAEC), known as the “environmental side agreement” to the North American Free Trade Agreement (NAFTA), established the North American Commission on Environmental Cooperation (NACEC) comprising a Council, Secretariat, and Joint Public Advisory Committee.¹⁵³

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.”¹⁵⁴ Many of these submissions seek review of situations where the alleged failure to enforce environmental laws has directly affected human rights.¹⁵⁵ In 2004, the NACEC received numerous citizen submissions on enforcement matters.

1) Alca-Iztapalapa II¹⁵⁶

This submission asserts that Mexico is failing to effectively enforce its environmental laws with respect to hazardous waste pollution at a particular footwear materials factory which the submitter claims has affected his health and the health of his family.¹⁵⁷ In August 2004, the Secretariat determined that the submission warrants development of a factual record to gather additional information.¹⁵⁸

¹⁵¹ See Autonomous Territory of the Original Kichwa Nation of Sarayaku, *Inter-American Court makes pronouncement in favor of Sarayaku* (July 7, 2004), at <http://www.sarayacu.com/oil/news040707.html#eng> (last visited Feb. 18, 2005).

¹⁵² See The Pachamama Alliance, *New Moon Update: International Court Recognize and Protect Rights of Sarayaku* (July 2004), at <http://www.pachamama.org/updates/index.php?month=7&year=2004> (last visited Feb. 18, 2005).

¹⁵³ 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 (last visited Mar. 1, 2005).

¹⁵⁴ *Id.* at arts. 14-15.

¹⁵⁵ See NACEC, *Current Status of Filed Submissions*, at <http://www.cec.org/citizen/status/> (last visited Mar. 1, 2005).

¹⁵⁶ This development is an update to a development that was included in the issue paper prepared for the Commission’s 60th Session.

¹⁵⁷ See NACEC, *Alca-Iztapalapa II, Submission ID SEM-03-004*, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=93> (last visited Mar. 1, 2005).

¹⁵⁸ *Id.*

2) Coal-Fired Power Plants

In September 2004, the Secretariat received a submission from a coalition of American and Canadian environmental groups, claiming that the United States is failing to effectively enforce the federal Clean Water Act against coal-fired power plants for mercury emissions that are contaminating thousands of rivers, lakes, and other waterbodies throughout the United States and across the border in Canada.¹⁵⁹ According to the petitioners, since 1993, the number of fish consumption advisories for mercury has risen from 899 to 2347. They also allege that the U.S. Environmental Protection Agency “is allowing both nonpoint and point source discharges of mercury from coal-fired power plants that are contributing to a steady degradation of the nation’s waterways as evidenced by increasing mercury fish advisories and the effective withdrawal of existing uses (fishable) of many of these water bodies.” In March 2005, the Secretariat accepted a response from the U.S. government and will now determine if an investigation is warranted.¹⁶⁰

3) Montreal Technoparc¹⁶¹

This submission, filed by several Canadian and United States environmental NGOs, asserts that Canada is failing to effectively enforce the Canadian Fisheries Act against the City of Montreal with regard to discharge of toxic pollutants from the city’s Technoparc site into the St. Lawrence River.¹⁶² The submitters cited information on the adverse effects of the discharges on human health and aquatic ecosystems.¹⁶³ The Secretariat determined that a factual record was necessary and, in February 2005, requested information relevant to the factual record via its public website.¹⁶⁴

4) Quebec Automobiles

In March 2004, the Secretariat received a submission alleging that the province of Quebec is failing to effectively enforce articles 96.1 and 96.2 of its Regulation respecting the Quality of the Atmosphere (RQA), and articles 19.1, 20 and 51 of the Quebec Environment Quality Act regarding emissions of hydrocarbons, carbon monoxide, and nitrogen oxides from post-1985 light vehicle models.¹⁶⁵ The Submitter claims that this alleged failure has significant negative impacts on the environment and public health; for example, carbon monoxide emissions from cars that do not comply with the RQA have poisoned people and caused at least one death

¹⁵⁹ See NACEC, *Coal-Fired Power Plants*, Submission ID SEM-04-005, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=103> (last visited Mar. 1, 2005).

¹⁶⁰ *Id.*

¹⁶¹ This development is an update to a development that was included in the issue paper prepared for the Commission’s 60th Session.

¹⁶² See NACEC, *Montreal Technoparc*, Submission ID SEM-03-005, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=94> (last visited Mar. 1, 2005).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See NACEC, *Quebec Automobiles*, Submission ID SEM-04-007, at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=105> (last visited Mar. 1, 2005).

in Quebec.¹⁶⁶ In January 2005, the Secretariat received a response from the Canadian government and is now considering whether to recommend a factual record.¹⁶⁷

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.¹⁶⁸ 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. Constitutions¹⁶⁹

Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right. Of the approximately 193 countries of the world, there are now 117 whose national constitutions mention the protection of the environment or natural resources.¹⁷⁰ One hundred and nine of them recognize the right to a clean and healthy environment and/or the state's obligation to prevent environmental harm.¹⁷¹ Of these, 56 constitutions explicitly recognize the right to a clean and healthy environment,¹⁷² and 97

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ See I.C.J. Statute, art. 38.

¹⁶⁹ See *infra* Appendix 1 (providing a cumulative list of these countries and a brief description of the relevant provisions).

¹⁷⁰ See *infra* Appendix 1.

¹⁷¹ Afghanistan, Andorra, Angola, Argentina, Armenia, Austria, 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, Democratic Republic of Congo, Ecuador, El Salvador, Equatorial Guinea, Eritrea (draft), Ethiopia, Finland, France, 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, North Korea, Norway, Palau, Palestine, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, 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, Uruguay, Uzbekistan, Venezuela, Vietnam, Yugoslavia, Zambia.

¹⁷² Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, Colombia, Congo, Costa Rica, Croatia, Cuba, Czech Republic, Democratic Republic of Congo, Ecuador, El Salvador, Ethiopia, Finland, France, 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,

constitutions make it the duty of the national government to prevent harm to the environment.¹⁷³ Fifty-six constitutions recognize a responsibility of citizens or residents to protect the environment,¹⁷⁴ while 14 prohibit the use of property in a manner that harms the environment or encourage land use planning to prevent such harm.¹⁷⁵ Twenty 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.¹⁷⁶ Sixteen constitutions provide an explicit right to information concerning the health of the environment or activities that may affect the environment.¹⁷⁷

1) Uruguay

On October 31, 2004, Uruguay voted to provide constitutional protection for the right to water.¹⁷⁸ By a margin of more than 62%, the citizens of Uruguay voted in favor of a Constitutional amendment protecting public ownership and management of water for drinking and sanitation. The referendum, entitled “Constitutional Water Reform in Defense of Water,” amended the constitution to protect water as a natural resource and human right for the benefit of the population through a sustainable and participative public administration. The amendment states that “water is a natural resource essential to life,” and that access to piped water and sanitation services are “fundamental human rights.”¹⁷⁹

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.

¹⁷³ Afghanistan, Andorra, Angola, Argentina, Armenia, Austria, Bahrain, Belarus, Benin, Bolivia, Brazil, Bulgaria, Cambodia, Cameroon, Cape Verde, Chad, Chechnya, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Democratic Republic of Congo, 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, North Korea, Palau, Palestine, 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.

¹⁷⁴ Algeria, Argentina, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, China, Colombia, Congo, Cuba, Czech Republic, Democratic Republic of Congo, Finland, Ghana, Guatemala, Guyana, Haiti, India, Kazakhstan, Kyrgyzstan, Laos, Lithuania, Macedonia, Madagascar, Mali, Moldova, Mongolia, Mozambique, Palestine, 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.

¹⁷⁵ Albania, Armenia, Belarus, Burundi, Chile, Czech Republic, Moldova, Mongolia, Romania, Russia, Slovakia, Switzerland, Ukraine, Uzbekistan.

¹⁷⁶ Angola, Argentina, Azerbaijan, Belarus, Brazil, Chechnya, Chile, Congo, Costa Rica, Ecuador, France, Haiti, Kyrgyzstan, Moldova, Mongolia, Paraguay, Poland, Russia, Spain, Ukraine.

¹⁷⁷ Albania, Azerbaijan, Belarus, Colombia, Czech Republic, Ecuador, Eritrea (draft), Georgia, Kazakhstan, Latvia, Moldova, Norway, Russia, Slovakia, Ukraine, Yugoslavia.

¹⁷⁸ See Raúl Pierri, *Referendum Gives Resounding ‘No’ to the Privatisation of Water* (Nov. 1, 2004), available at <http://www.ipsnews.net/interna.asp?idnews=26097> (last visited Feb. 26, 2005); see also Marina Jiménez, *Uruguay Guarantees Public Water Supply* (Nov. 2, 2004), available at <http://www.waterconserve.info/articles/reader.asp?linkid=36050> (last visited Feb. 26, 2005).

¹⁷⁹ *Id.*

2) France

In a joint session of both houses of the French parliament held on February 28, 2005, lawmakers adopted a Constitutional Amendment to protect the environment.¹⁸⁰ The amendment, proposed by President Jacques Chirac and dubbed the “Environment Charter,” declares that the French people have a right to “live in an environment which is balanced and respects their health.”¹⁸¹ Speaking at debates on the Amendment in May 2004, Justice Minister Dominique Perben stated that, “It’s time politicians responded to the concerns of our citizens about the protection of the environment. It’s not a case of giving up economic and social development, but of making this compatible with preserving the environment.”¹⁸²

B. Courts

1) India

(a) India Supreme Court

Protecting the rights to life, water and health, the India Supreme Court, in its decision dated October 14, 2003, established a Monitoring Committee on Hazardous Wastes to implement the Court’s orders on handling and treating of hazardous wastes.¹⁸³ Noting that there are several serious and chronic situations relating to the management of hazardous wastes, the Committee has pursued solutions to problems in Gujarat, Madhya Pradesh, Kerala, and Delhi.¹⁸⁴

The Committee directed that non-complying factories be shut down. The Committee found that seventy-five factories in Western India were discharging highly acidic untreated effluent into the groundwater, causing several villages to be without a source of safe water. At the suggestion of the Committee, the Supreme Court ordered several industrial plants – among them Hindustan Coca-Cola, Binani Zinc, Kerala Mines and Minerals, and Kerala Newsprint – to supply untainted drinking water to the affected villages.¹⁸⁵

The Committee has also begun to enforce the rights of the people of India under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The Committee initiated return of hazardous wastes that have been wrongly imported to India. It sent back zinc waste imported from Bangladesh, directed the return of PCB-contaminated old transformer components to Germany, and oversaw the return of a container full of garbage back to Ireland.¹⁸⁶

¹⁸⁰ See The Tocqueville Connection, *French Lawmakers Add Environmental Protections to Constitution* (Feb. 28, 2005), available at <http://www.ttc.org/200502281650.j1sgohp27475.htm> (last visited Mar. 2, 2005).

¹⁸¹ See World Campaign, *Environment, Human Rights!* (May 31, 2004), at <http://www.worldcampaign.net/mesarch.cgi?v=1086033960> (last visited Mar. 2, 2005).

¹⁸² *Id.*

¹⁸³ See ENS-Newswire, *India’s Supreme Court Panel Cracks Down on Hazardous Waste* (Nov. 19, 2004), at <http://www.ens-newswire.com/ens/nov2004/2004-11-19-01.asp> (last visited Feb. 21, 2005).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

The Committee has been working closely with the officials of pollution control boards from the Indian states. Over a thousand factories were closed until proper waste disposal procedures were implemented, and until the pollution control boards gave them authorization to reopen.¹⁸⁷ Many companies were charged stiff fines for improper treatment and disposal of hazardous wastes. More than 100 million rupees (U.S. \$2.2 billion) has been spent in remediation, removal, and proper disposal of hazardous wastes in just three Indian states.¹⁸⁸

Finally, the Committee has set up Local Area Environment Committees comprising Pollution Control Board officials, industry representatives, and nongovernmental organizations to continue the monitoring efforts and ensure that the Supreme Court's orders are implemented.¹⁸⁹ While there is much work still to be done, India has taken important steps in defending the rights to life, water and health.

(b) Bhopal District Court

The Bhopal District Court defended the right to life in 2004. On January 6, 2005, the Chief Judicial Magistrate of Bhopal District Court of India ordered U.S.-based Dow Chemical Corporation to show cause why its subsidiary, Union Carbide, should not be required to appear to face criminal charges including "culpable homicide not amounting to murder" related to its operation of a Bhopal pesticide plant that exploded in 1984.¹⁹⁰ As a result of the explosion, more than 27 tons of methyl isocyanate and other deadly gases were released from the pesticide factory and spread throughout Bhopal, exposing approximately half a million people to the lethal gases.¹⁹¹ Approximately 22,000 people have died as a result of exposure to the toxic chemicals and another 120,000 are suffering serious long-term health effects.¹⁹² Thousands of tons of toxic waste – including 1,3,5 trichlorobenzene, dichloromethane, chloroform, lead and mercury – continue to contaminate the groundwater near the site of the Union Carbide factory.¹⁹³

2) Bangladesh

The courts of Bangladesh have been protecting the rights to life, health and water in a number of cases brought by Bangladesh Environmental Lawyers Association (BELA).¹⁹⁴ One

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ See Earthrights International, Press Release: Indian Judge Orders Dow to Explain Shielding of Subsidiary in Bhopal Criminal Case (Jan. 11, 2005), available at <http://www.earthrights.org/news/bhopalorder1.06.05.shtml> (last visited Feb. 28, 2005); see also *Unofficial Transcript of Chief Judicial Magistrate, Bhopal's Order Of January 6, 2005*, available at <http://www.earthrights.org/bhopal/bhopalorder1.6.05.shtml> (last visited Feb. 28, 2005).

¹⁹¹ *Id.*

¹⁹² See *The Short Story*, at http://www.studentsforbhopal.org/what_happened.htm (last visited on Feb 28, 2005).

¹⁹³ *Id.*

¹⁹⁴ See Taslima Islam, *Public Interest Litigation on Environmental Issues*, Holiday (Jan. 23, 2004) at <http://www.weeklyholiday.net/230104/heri.html> (last visited Mar. 2, 2005); see also Roland Burke, BBC News, *Developers Add to Flood Misery* (Aug. 13, 2004), available at http://news.bbc.co.uk/2/hi/south_asia/3559674.stm (last visited Mar. 2, 2005).

case involved the unauthorized cutting of hills within the Chittagong City Corporation.¹⁹⁵ The court in that case ordered additional briefing including requiring the government to report steps taken to prevent the illegal cutting.¹⁹⁶ Another involved interference with the natural drainage in Dhaka because developers were illegally filling lakes, rivers and wetlands to provide additional space for housing development.¹⁹⁷ In this case, BELA was successful in stopping the developers.¹⁹⁸

3) Costa Rica

On May 26, 2004, the Supreme Court of Costa Rica ruled that the Customs Office violated Article 50 of the Costa Rican Constitution – the right to a healthy and balanced environment – by: allowing tons of shark fins to be unloaded at private docks without inspectors present; and taking an unnecessarily long time to address a complaint filed by the Sea Turtle Restoration Project requesting that officials apply additional precautionary measures to prevent the further unloading of sharks fins in Costa Rica.¹⁹⁹ The court called for an end to shark finning – where a shark’s fins are sliced off and its body is discarded in the ocean – stating that customs officials “should take all necessary measures to prevent shark finning and sanction ... all those persons who commit this act.”²⁰⁰

4) Malaysia

In an out-of-court settlement, a court in Malaysia protected the right to health of the residents of the village of Chemor.²⁰¹ The residents sued the owner of a rubber factory over pollution caused by the release of noxious fumes for more than nine years.²⁰² Under the terms of the court-approved settlement agreement, the rubber factory must relocate its operations to a new site before March 30, 2005, or entirely cease its operations.²⁰³ In addition, the factory has agreed to reduce its emissions and treat its anaerobic ponds and effluent processors.²⁰⁴ Further, the factory must allow the Department of the Environment to test their emissions, ensuring that the factory is meeting the agreed upon standards.²⁰⁵

¹⁹⁵ See Islam, *supra*, n. 194.

¹⁹⁶ *Id.*

¹⁹⁷ See Burke, *supra*, n. 194.

¹⁹⁸ *Id.*

¹⁹⁹ See Steve Barry, *High Court Rules on Shark-Finishing Issue*, TICO TIMES (Aug. 11, 2004), *on file with Earthjustice*.

²⁰⁰ *Id.*

²⁰¹ See Chan Li Leen, *Residents Discontinue Legal Action*, THE STAR (May 11, 2004), *available at* <http://www.elaw.org/news/partners/text.asp?id=2422> (last visited Mar. 3, 2005).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

5) Canada

(a) Fines for Environmental Damage

In a decision issued on June 11, 2004, Canada's Supreme Court vindicated the right to life by paving the way for provincial governments to bring suits against companies causing environmental damage. In *British Columbia v. Canadian Forest Products Ltd.*, the Canadian Supreme Court stated, "it is open to the Crown in a proper case to take action as *parens patriae*, for compensation and injunctive relief on account of public nuisance or negligence causing environmental damage to public lands."²⁰⁶ Because the Crown brought its claim for damages as a "landowner of a tract of forest" rather than in its capacity as a trustee of a public good, and likewise failed to present evidence quantifying the damage to the environment, the Supreme Court restored the decision of the trial court, finding that the trial court properly "rejected the Crown's claim for financial compensation for 'environmental loss' on the facts of this case."²⁰⁷

(b) Use of Land Claimed By Aboriginal Peoples

Canada's Supreme Court also made strides in protecting the rights of indigenous peoples to life, information and participation. In two related decisions, the Canadian Supreme Court ruled that provincial governments have a duty to consult with aboriginal peoples about the use of their traditional territory even if a title has not been recognized.²⁰⁸ In the first case, the Court, by unanimous decision, held that British Columbia did not adequately consult the Haida Nation before issuing a timber license on traditional land.²⁰⁹ In the second case, also by unanimous decision, the Supreme Court held that British Columbia should have consulted the Taku River Tlingit First Nation before approving the reopening of a mining road on traditional land.²¹⁰ The Court stated:

The duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution. The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.²¹¹

²⁰⁶ *British Columbia v. Canadian Forest Products Ltd.*, 2 S.C.R. 74 (2004), available at http://www.lexum.umontreal.ca/csc-scc/en/pub/2004/vol2/html/2004scr2_0074.html (last visited Mar. 2, 2005).

²⁰⁷ *Id.*

²⁰⁸ See *Canada's Supreme Court sides with First Nations* (Nov. 19, 2004), at <http://www.indianz.com/News/2004/005438.asp> (last visited Feb. 28, 2005).

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (Nov. 18, 2004), available at <http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2004scc073.wpd.html> (last visited Feb. 28, 2005).

The Court's ruling is limited in two respects. First, it is not necessary to obtain consent from indigenous peoples before proceeding; consultation is all that is necessary.²¹² Second, the court's ruling does not apply to private companies.²¹³

6) United States

(a) United States Supreme Court

On June 29, 2004, the U.S. Supreme Court upheld the ability of non-U.S. citizens to bring claims in U.S. courts alleging violations of the laws of nations under the Alien Tort Claims Act (ATCA). While denying the claim of the petitioner in *Sosa v. Alvarez-Machain*, the Court stated that the ATCA's jurisdictional grant was based on "the understanding that the common law would provide a cause of action for the modest number of international law violations with a potential for personal liability."²¹⁴ The Court's decision confirms the availability of a remedy in U.S. courts to torture victims and others who suffer the most serious human rights abuses, and allows U.S. federal courts to review cases brought under the ATCA on a case-by-case basis.²¹⁵ This may include cases involving the rights to life and health implicated in some environmental suits.

(b) U.S. District Court in Washington State

Relying on the citizen suit provision of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Confederated Tribes of the Colville Reservation in Washington State brought suit in the District Court for the Eastern District of Washington against Teck Cominco, the owners of a lead and zinc smelter 10 miles north of the U.S.-Canadian border.²¹⁶ The smelter, in operation since the early 1900s, has deposited an estimated 10 million to 20 million tons of smelting byproduct – containing lead, arsenic and mercury – into the Columbia River and Lake Roosevelt in Washington.²¹⁷ The tribes' complaint, which implicated the rights to life, water and health, asked the court to enforce the fines and penalties imposed on Teck Cominco by the U.S. Environmental Protection Agency.²¹⁸

Teck Cominco claimed that it is not subject to CERCLA and that the U.S. District Court has no jurisdiction. However, on November 8, 2004, the District Court for the Eastern District of Washington denied Teck Cominco's motion to dismiss the suit, stating that the U.S. presumption against extraterritoriality "does not apply where conduct in a foreign country produces adverse

²¹² See *Canada's Supreme Court sides with First Nations*, *supra*, n. 208.

²¹³ *Id.*

²¹⁴ *Sosa v. Alvarez-Machain*, 124 S.Ct. 2739, 2744 (2004), available at <http://www.supremecourtus.gov/opinions/03pdf/03-339.pdf> (last visited Feb. 27, 2005).

²¹⁵ See Human Rights First, *Press Release: Supreme Court Denies Claim of Alvarez-Machain, But Upholds Important Human Rights Law* (June 29, 2004), available at http://www.humanrightsfirst.org/media/2004_alerts/0629.htm (last visited Feb. 27, 2005).

²¹⁶ *Pakootas v. Teck Cominco Metals, Ltd.*, 2004 WL 2578982 at *1 (E.D.Wash. 2004).

²¹⁷ See Nicholas K. Geranios, *Teck Cominco Seeks Dismissal of Suit Over Pollution in Lake Roosevelt* (Aug. 27, 2004), available at http://seattlepi.nwsourc.com/local/188145_roosevelt27.html (last visited Feb. 27, 2005).

²¹⁸ *Pakootas*, *supra*, n. 216.

effects within the United States.”²¹⁹ The Court also found that: “[b]ecause the fundamental purpose of CERCLA is to ensure the integrity of the domestic environment, we expect that Congress intended to proscribe conduct associated with the degradation of the environment, regardless of the location of the agents responsible for said conduct.”²²⁰

C. Governments

1) Indonesia

Indonesia’s President Megawati Sukarnoputri introduced a new law making the crime of illegal logging a capital offense.²²¹ This is the first law in independent Indonesia ever to prescribe the death penalty as punishment for a crime of commerce. While the law is pending in the House of Representatives, a temporary law signed by the president is now in effect.²²²

Illegal logging has been linked to human rights abuses, loss of biodiversity, deforestation, climate change, and civil wars. According to the Ministry of Forestry, rampant illegal logging cost the state approximately Rp355.8 billion (U.S. \$33 million) in 2002 and 2003. Indonesia loses an estimated 2.6 million hectares of natural forest annually, most of which is cut down illegally. Further, over the past few years, more than 300 companies in the timber-processing industry have closed due to decreases in supply, largely due to illegal logging.²²³

The Indonesian government has prosecuted some illegal loggers, but is overwhelmed by the number of cases. Police investigated 246 cases involving 169 suspects in the first quarter of 2004 up from 125 cases in the same period in 2003, according to national police director of special crimes Brigadier-General Suharto.²²⁴

Minister of Forestry M. Prakosa blames lack of law enforcement by the police, the port authority, and the navy for the scale of the illegal logging. The ministry has gradually lowered logging quotas from 6.5 million cubic meters in 2003 to 5.74 million cubic meters in 2004 and 5.45 million cubic meters in 2005. In addition, domestic timber and pulp-and-paper companies are being required to address issues related to biodiversity and the livelihoods of indigenous communities.²²⁵

2) Iraq

The Iraq Minister of the Environment, Dr. Mishkat Al Moumin, is committed to fostering the right to a clean and healthy environment, thereby defending the rights to life, water and

²¹⁹ *Id.* at *16.

²²⁰ *Id.* at *17.

²²¹ See Bill Guerin, *Illegal loggers: Shoot them, Jakarta Says*, ASIAN TIMES (July 7, 2004), available at http://www.atimes.com/atimes/Southeast_Asia/FG07Ae03.html (last visited Feb. 28, 2005).

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

health.²²⁶ Appointed as the Minister of the Environment in June 2004, Dr. Al Moumin has been forging international alliances to address Iraq's environmental challenges. Since her appointment in June, she has been meeting with UNEP officials as well as officials of the United States, Germany, Japan, and other international donor groups to develop environmental initiatives.²²⁷

Minister Al Moumin has stated, "I ... believe strongly that environmental problems are international problems and that is why I am trying to gain international support. I believe the international community has an obligation to help the Iraqi people who have suffered for decades under the former regime." The Ministry of the Environment will focus on: providing clean potable water to the Iraqi people; improving air quality, biodiversity, and chemical pollution; radiation; and restructuring of Iraq's environmental laws and policies.²²⁸

3) Brazil

Strides were made in Brazil related to the right to health. In July 2004, a management plan to protect the Arvoredo Marine Reserve – an archipelago off the coast of Florianopolis in southern Brazil – was approved by the Brazilian Ministry of the Environment.²²⁹

4) Liberia

Vindicating the rights to health and water, a solid framework of environmental laws – including protection of the environment and the sustainable management of Liberia's natural resources – was passed in Liberia in 2004.²³⁰

5) South Africa

South Africa is taking steps to protect the right to health by enacting the "National Environmental Management: Air Quality Act, 2004."²³¹ The new law will provide for strict ambient air quality standards and requires industrial polluters to achieve emission standards based on the "best available technology."²³²

²²⁶ See U.S. Department of the Interior, *Secretary Norton, Iraqi Environment Minister Discuss Cooperative Efforts* (Oct. 7, 2004), at <http://www.doi.gov/news/041007a> (last visited Feb. 28, 2005).

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ See ELAW, *Advocates in Brazil Conserve Arvoredo Biological Marine Reserve* (Summer 2004), available at <http://www.elaw.org/news/advocate/default.asp?article=2601> (last visited Mar. 3, 2005).

²³⁰ See ELAW, *Protecting Natural Resources in Liberia* (Spring 2004), available at <http://www.elaw.org/news/impact/text.asp?id=2688> (last visited Mar. 3, 2005); see also ELAW, *New Environmental Law for Liberia* (Spring 2004), available at <http://www.elaw.org/news/advocate/default.asp?article=2462> (last visited Mar. 3, 2005).

²³¹ National Environmental Management: Air Quality Bill, Amendments of August 2004 (Aug. 23, 2004), available at <http://www.elaw.org/resources/text.asp?id=2568> (last visited Mar. 3, 2005).

²³² See ELAW, *South Africa to Pass Strict Air Quality Standards* (Summer 2004), available at <http://www.elaw.org/news/advocate/default.asp?article=2601> (last visited Mar. 3, 2005).

CASE STUDIES

Around the globe in 2005, 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 abound for new activities that are certain to have similar devastating effects. Efforts to protest or alert people to environmental threats are continuously met with deprivations of civil liberties and due process.

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

Corporations, international institutions, and 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 systems have provided enforcement, they almost always have employed a rights-based approach to environmental protection, although not to the exclusion of other approaches, thereby strengthening the principle as an international legal norm.

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

IV. Africa

A. Cameroon

1) Illegal Logging

Illegal and destructive logging practices in Cameroon forests pose a severe threat to the land on which the indigenous Baka pygmies depend for food, shelter, and medicine as well as cultural and spiritual survival.²³³ As one of the largest logging conglomerates in Africa, Vicwood-Thany, a French-owned company, is largely responsible for the destruction of these ancient forests. According to Cameroon's Environment and Forest Ministry, "Logging as practised by this company puts in jeopardy the whole forestry policy and the sustainable

²³³ See Greenpeace, *Cameroon's Forests of the Great Apes* (April 2002), at www.greenpeace.org.uk/MultimediaFiles/Live/FullReport/4785.pdf (last visited Mar. 7, 2005).

management of our resources... this company is the most disorganised of all those visited.”²³⁴ Since March 2000, Vicwood-Thantry has been fined over U.S. \$1.3 million for illegal logging practices, such as tax evasion, logging outside legal boundaries, logging after permits have expired, cutting undersized trees, and logging in unallocated concession areas.²³⁵

In response to the declining prices of cocoa and coffee in the mid-1980s, the government increased its export of ancient forest products to help overcome its growing deficit and economic crisis.²³⁶ However, lax regulatory guidelines in destination countries have allowed Vicwood-Thantry to operate and profit from its illegal activities.²³⁷ Vicwood-Thantry’s logging practices have had devastating impacts, particularly for the Baka indigenous community. Large-scale deforestation has killed many of the animals on which the Baka depend for food, and forced the Baka to relocate without adequate compensation.²³⁸ Additionally, the Baka’s spiritual leader, the Jengi Spirit, lives within the forests that are being cut down, violating the Baka’s right to religion and culture.²³⁹

In July 2004, the European Commission initiated a licensing scheme designed to curtail illegal logging.²⁴⁰ Under the terms agreed upon at the 2002 World Summit on Sustainable Development in Johannesburg, South Africa, the scheme introduces a legally binding licensing system with participating countries, ensuring that only legally produced timber is imported by EU member states.²⁴¹ However, experts and environmental organizations are skeptical about the licensing scheme’s potential for success. Only three timber producing countries have decided to participate – Ghana, Indonesia and Malaysia – and only one form of processed timber, plywood, is on the list for processed products that require a license.²⁴²

²³⁴ *Id.*

²³⁵ See Greenpeace, *Partners in Crime: the UK and the Destruction of the Forest of Great Apes* (Nov. 2002), at <http://www.greenpeace.org.uk/MultimediaFiles/Live/FullReport/4791.pdf> (last visited Mar. 7, 2005).

²³⁶ See Paul Salopek, *The Silencing of Africa’s Great Forests*, THE CHICAGO TRIBUNE (Jan. 22, 2003), available at <http://www.thetruthseeker.co.uk/article.asp?ID=53> (last visited Mar. 7, 2005).

²³⁷ See Robert Nurden, *Baka Beyond* (Apr. 22, 2001), at http://www.theecologist.org/archive_article.html?article=123&category=63 (last visited Mar. 7, 2005).

²³⁸ *Id.*

²³⁹ See Paul Salopek, *supra*, n. 236.

²⁴⁰ See Chris Melville, *EU Introduce Voluntary Scheme to Eradicate Illegal Logging*, WMRC DAILY ANALYSIS (July 21, 2004), on file with Earthjustice.

²⁴¹ *Id.*

²⁴² *Id.*

B. Kenya

1) Mau Forest²⁴³

The Ogiek people in Kenya live under the threat of eviction from their ancestral homeland because of the government's desire to open the Mau Forest region to development and resettlement by landless peoples.²⁴⁴ Reliant primarily on hunting and honey gathering, the Ogiek are one of the last remaining indigenous communities in Kenya²⁴⁵ with only 20,000 remaining in the Mau Forest, where they continue their traditional way of life.²⁴⁶ In the late 1990s, the Kenyan government attempted to evict the Ogiek people from the Tinet region of the Mau forest, allegedly to allow for logging operations and tea and flower plantations.²⁴⁷ The Ogiek sued the government in May 1999, seeking a declaration that the proposed eviction violated their rights to residence, equal protection, and freedom from discrimination.²⁴⁸ In February 2000, Kenya's high court summarily dismissed the Ogiek's lawsuit on the grounds that the tribe was exploiting forest resources in contravention of federal conservation statutes.²⁴⁹ The court declared that the evictions were necessary to save the Kenyan people from environmental disaster.²⁵⁰

After President Kibaki's victory in December 2002, there was hope that the new Rainbow Coalition government would reverse the decision to excise the forest regions.²⁵¹ It has failed to do so, and the Ogiek people continue to face the risk of eviction.²⁵² Additionally, in May 2004, it was reported that 4,500 acres of land designated for relocating 600 landless Ogiek people had been secretly divided and distributed among influential politicians and members of society, in violation of Kenyan law.²⁵³ This incident highlights serious concerns regarding the future of the Ogiek people if the government is successful in removing them from their ancestral land.

²⁴³ This case study was included in the issue paper prepared for the Commission's 57th Session.

²⁴⁴ Survival International, *Kenya: Government destroys the Ogiek's forest* (Nov. 30, 2001), at <http://www.survival-international.org/news.php?id=86> (last visited Mar. 3, 2005).

²⁴⁵ See Global Response, *Protect Forests and Indigenous Peoples/Kenya*, at <http://www.globalresponse.org/gra.php?i=1/02&j=printable> (last visited Mar. 2, 2005).

²⁴⁶ *Id.*

²⁴⁷ See Alphonso Van Marsh, *Small Kenyan Tribe Battles Government Over Fate of Forest*, CNN (Oct. 23, 1999), at <http://www.cnn.com/WORLD/africa/9910/23/kenya.forest/index.html> (last visited Mar. 2, 2005).

²⁴⁸ *Id.*

²⁴⁹ See Tervil Okoko, *Kenya's Indigenous Honey Hunters Lose Their Forest Home*, ENS (Mar. 24, 2000), available at <http://www.ogiek.org/news/news-post-00-03-1.htm> (last visited March 2, 2005).

²⁵⁰ *Id.*

²⁵¹ See Nation, *State Might Rethink Move on Forests, Court Told* (Mar. 25, 2003), available at <http://www.ogiek.org/news/news-post-03-03-2.htm> (last visited Mar. 2, 2005).

²⁵² See Survival International, *Ogiek at risk of eviction* (Mar. 1, 2004), at <http://www.survival-international.org/news.php?id=190> (last visited Mar. 3, 2005).

²⁵³ See Ogiek.org, *Ogiek Families "Robbed" of their Land* (May 10, 2004), at <http://www.ogiek.org/news/news-post-04-12-5.htm> (last visited Mar. 2, 2005).

C. Liberia

1) Industrial Logging²⁵⁴

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. Almost half of the remaining forest is located in Liberia.²⁵⁵

Liberia's rainforest, recognized as a global biodiversity hotspot, is under great pressure, mainly from industrial logging. This logging has an enormous impact on indigenous rural communities in Liberia, who depend on the land and the forest for their livelihoods as well as food, clean water, medicinal plants, and construction materials. In response to international campaigns and documented links between Liberian logging companies and illicit arms and timber traders throughout Europe and North America, the U.N. Security Council imposed sanctions on Liberian timber in September 2003. In December 2004, the Security Council renewed the sanctions for an additional year, after discovering that the National Transition Government had not yet met the required conditions for lifting the measures.²⁵⁶

D. Nigeria

1) Genetically Modified Food

The Nigerian government recently implemented the Universal Basic Education Program to provide every Nigerian child with fundamental education. The Education Program also includes a food aid program, the School Feeding Program, addressing other basic needs which aren't being met. The School Feeding Program, a program of the U.N. World Food Program (WFP),²⁵⁷ was agreed upon in a Memorandum of Understanding (MOU) on genetically modified organisms (GMOs) signed between the Nigerian government, the International Institute for Tropical Agriculture, and U.S. Agency for International Development (USAID) in May 2004. Through this agreement, USAID committed to investing in agricultural biotechnology research and development in Nigeria.²⁵⁸

Considering that the human health effects of GMO production and consumption are still unknown, the Nigerian government's decision to implement the food aid program undermines the rights of the Nigerian people to informed choice between GM foods and GM-free food, to safe food,

²⁵⁴ This case study was included in the issue paper prepared for the Commission's 59th Session.

²⁵⁵ See Whitley Award, *Silas Siakor - 2002 Sting and Trudie Styler Award for Human Rights and the Environment*, at http://www.whitley-award.org/old/Articles/projects/human_rights/SilasSiakor.html (last visited February 19, 2005).

²⁵⁶ See United Nations, *Security Council renews Sanctions on Arms, Travel, Timber, Diamonds, Unanimously Adopting Resolution 1579* (2004), at <http://www.un.org/News/Press/docs/2004/sc8275.doc.htm> (last visited Feb. 19, 2005).

²⁵⁷ See *UBE and Nigerian children in 2005*, BUSINESS DAY (Jan. 5, 2005), at <http://www.businessdayonline.com/index.php?fArticleId=5826> (last visited Mar. 7, 2005).

²⁵⁸ See GMWatch, *USAID to pay Nigeria to spread GMOs* (June 5, 2004), at <http://www.gmwatch.org/archive2.asp?arcid=3428> (last visited Mar. 7, 2005).

to health and potentially to life. Sir William Asscher, the Chairman of the British Medical Association Board of Science and Education, “recommend[s] a precautionary approach ...because any adverse effect could be permanent and could pose serious risks to the environment and human health.”²⁵⁹ Similarly, the Indian Council of Medical Research (ICMR), in a report dated July 2004, “has raised some concerns over the safety of genetically modified food” as to the “potential adverse effect like allergenicity and toxic effects.”²⁶⁰

The School Feeding Program now faces serious opposition by Nigerian Environmental Rights Action (NERA) and other environmental and human rights groups worldwide. The Executive Director of NERA, Nnimmo Bassey, stated that “the WFP feeding program must not be allowed to become a way by which our children are hooked into a feeding pattern that is only sustainable with imported GM foods.”²⁶¹ Additionally, Environmental Rights Action/Friends of the Earth Nigeria denounced the presence of GMOs in aid programs, demanding that the WFP “immediately recall all food aid containing GMOs.”²⁶² Further, the Secretary of the All-Nigerian Consumer Movement Union, Lanre Oginni, urged the Nigerian government to cancel the 2004 MOU on GMOs between the U.S. and Nigerian agencies.²⁶³

2) Oil in the Niger Delta²⁶⁴

For several decades, Nigeria’s reliance on oil and on the foreign corporations that extract it, including the Royal Dutch/Shell Group of Companies and the Chevron Corporation, has resulted in severe environmental degradation of the Niger Delta, Africa’s largest wetland, and various human rights abuses. Gas flaring and pipeline leaks have led to acid rain and have destroyed the resources that once sustained millions of Delta region inhabitants who farmed and fished in the now bleak environment.²⁶⁵ The transnational oil companies have rarely completed clean-ups of the numerous and often massive oil spills, or compensated affected communities. Organized protests by such communities against these practices have generally been met with brutal suppression through military force.

In May 1999, victims of ChevronTexaco’s human rights abuses in the Niger Delta filed a lawsuit in federal court in the United States against ChevronTexaco in *Bowoto v.*

²⁵⁹ See Planet Ark, *British Medical Association Urges Moratorium on Planting Genetically Modified Foods*, at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=667> (last visited Mar. 7, 2005).

²⁶⁰ See Ashok B. Sharma, *ICMR Wants Overhaul Of GM Foods Regulation*, THE FINANCIAL EXPRESS (July 26, 2004), available at http://www.financialexpress.com/fe_full_story.php?content_id=64406 (last visited Mar. 7, 2005).

²⁶¹ See Nnimmo Bassey, *Feeding GMOs to School Kids?*, at <http://www.eration.org/index.php?page=modules&name=articles&action=view&artid=21> (last visited Mar. 7, 2005).

²⁶² See Godwin Haruna, *Environmentalists Condemn GMO in Food Aid*, THIS DAY NIGERIA (Feb. 17, 2005), available at <http://allafrica.com/stories/200502180379.html> (last visited Mar. 7, 2005).

²⁶³ See *Nigerian Government urged to cancel GM agreement with United States*, SUNDAY TIMES (NIGERIA) (July 4, 2004), available at <http://www.gmwatch.org/archive2.asp?arcid=4066> (last visited Mar. 7, 2005).

²⁶⁴ This case study was included in the issue paper prepared for the Commission’s 57th Session.

²⁶⁵ See Friends of the Earth Australia, *Oil Production in Nigeria*, at http://www.foe.org.au/nc/nc_nigeria_back.htm (last visited Mar. 7, 2005).

ChevronTexaco.²⁶⁶ The case cites two incidents of human rights abuses by the defendant, specifically: the shooting of peaceful protestors at Chevron’s Parabe off-shore platform; and the destruction of two villages by soldiers in Chevron helicopters and boats.²⁶⁷ The suit was filed under the Alien Tort Claims Act, which allows lawsuits in U.S. federal courts for certain violations of international law provided that the accused reside in or visit the United States.

On March 23, 2004, Judge Susan J. Illston denied ChevronTexaco’s motion for summary judgment, allowing the lawsuit to proceed. ChevronTexaco argued in its motion that the case should be dismissed because the acts were committed by its subsidiary for which it is not legally responsible. However, the judge found that ChevronTexaco and its subsidiary acted in an “extraordinarily close relationship” and that ChevronTexaco attempted to cover up the actions of its subsidiary after they had occurred.²⁶⁸

Violence in the Niger Delta continues, and on February 4, 2005, Nigerian soldiers killed four villagers protesting at the main export terminal operated by ChevronTexaco.²⁶⁹ ChevronTexaco had called in Nigerian soldiers when approximately 200 protesters stormed the Escravos plant and demanded promised concessions that have never been delivered. Although \$320 billion dollars worth of oil has been pumped out of the Niger Delta, the local population remains among the poorest in Nigeria.²⁷⁰

E. South Africa

1) Toxic Pollution²⁷¹

The South African Petroleum Refinery (SAPREF) – owned and operated by Royal Dutch Shell and British Petroleum (BP) – is the largest crude oil refinery in South Africa.²⁷² Since the 1960s, Shell and BP have been operating SAPREF in South Durban, Africa’s busiest port and South Africa’s third largest city.²⁷³ From the 1960s to 1980s, SAPREF conducted business with minimal environmental regulation or oversight by the South African government.²⁷⁴ During that period, the South Durban facility emitted toxic chemicals such as hydrogen sulfide, sulfur dioxide, and benzene, exposing the marginalized black, Indian, and mixed-race South Durban

²⁶⁶ See Earthrights International, *Bowoto v. ChevronTexaco*, at <http://www.earthrights.org/chevron/index.shtml> (last visited Mar. 7, 2005).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ See IRIN, *Nigeria: Soldiers Kill Four Protesters at Oil Terminal, Activists Say* (Feb. 4, 2005), at http://www.irinnews.org/report.asp?ReportID=45401&SelectRegion=West_Africa&SelectCountry=NIGERIA (last visited Mar. 7, 2005).

²⁷⁰ *Id.*

²⁷¹ This case study was included in the issue paper prepared for the Commission’s 60th Session.

²⁷² See MBendi, *Refining in Africa*, at <http://www.mbendi.co.za/indy/oilg/ogrf/af/p0005.htm> (last visited Jan. 6, 2005).

²⁷³ See Africa Action, *Africa: Shell and Its Neighbors*, at <http://www.africaaction.org/docs03/shel0305.htm> (last visited Jan. 6, 2005).

²⁷⁴ *Id.*

community to a variety of toxic chemicals.²⁷⁵ In July 2001, a leak was discovered in an underground SAPREF Pipeline transporting 10 million liters of petroleum per day through Bluff, a residential area in the Durban South Basin, and along Bluff Nature Reserve. Despite remediation efforts taken over the next three years, the 4 millimeter hole in the pipeline released over a million liters of petroleum. After being shut down for inspection, the pipeline revealed 98 defects involving a 70% or more decrease of wall thickness. Additional pipelines studied revealed similar defects.²⁷⁶

South Durban residents' right to life and health continue to be violated because they live in an area contaminated by toxic air pollution, which has caused respiratory illnesses, general immune deficiencies, and in some cases, leukemia. In 1995, the South Durban Community Environmental Alliance (SDCEA) was created to address the public health disaster in South Durban,²⁷⁷ and to ensure that SAPREF adheres to South Africa's constitutional right to a healthy environment.²⁷⁸ In April 2003, SDCEA's chairman and other activists went to London, England, to participate in Royal Dutch Shell's annual shareholders' meeting.²⁷⁹ The activists, who each own a single share in Royal Dutch Shell, addressed the sub-standard environmental conditions in South Durban, and pointed out that Shell has the ability to reduce the chemical emissions from SAPREF as evidenced by the significantly lower emissions at a similar Shell refinery in Denmark.²⁸⁰ They urged Shell to comply with the South African Constitution, which guarantees citizens "an environment that is not harmful to [their] health and well being."²⁸¹

As a result of local advocacy efforts in South Africa and other communities around the world, Shell has sought recognition as a "compassionate corporate citizen" by vowing not to dig for oil in areas that were designated by UNESCO as World Heritage sites, and by giving \$140 million per year for social programs.²⁸² Almost one-half of the \$140 million is now designated for use in Africa.²⁸³ Additionally, an air quality bill (the National Environmental Management:

²⁷⁵ See *South African Environmental Justice Struggles against "toxic" petrochemical industries in South Durban: The Engen Refinery Case*, at <http://www.umich.edu/~snre492/brian.html> (last visited Jan. 6, 2005).

²⁷⁶ See groundWork, *Shell International's Legacy of Pollution and Damage*, at <http://www.groundwork.org.za/Pamphlets/Shell.asp> (last visited Jan. 6, 2005).

²⁷⁷ See GAIA Campaigner, *South Durban Community Environmental Alliance*, at <http://www.no-burn.org/campaignervol3/memfocus.html> (last visited Jan. 6, 2005).

²⁷⁸ *Id.*

²⁷⁹ See Brett Horner, *A Breath of Fresh Air*, at <http://www.suntimes.co.za/2003/05/25/news/durban/ndbn14.asp>, (last visited Jan. 6, 2005); see also groundWork, *Shell Challenged at AGM by Community Activist Shareholders*, at http://www.groundwork.org.za/Press%20Releases/shell_challenged_at_agm.htm (last visited Jan. 6, 2005).

²⁸⁰ See Africa Action, *supra*, n. 273.

²⁸¹ See Melbourne Independent Media Center, *Shell Failing the Challenge: Shell Challenged by Community Activist Shareholders at its AGM*, at <http://www.melbourne.indymedia.org/print.php?id=46707> (last visited Jan. 6, 2005); see also groundWork, *Press Release: 23 February 2004*, at http://www.groundwork.org.za/Press%20Releases/AirSthDbn23_02_04.htm (last visited Jan. 6, 2005).

²⁸² See Elizabeth Becker, *Shell Strives to Clean Up Its Act*, NEW YORK TIMES (Dec. 3, 2003), *on file with Earthjustice*.

²⁸³ *Id.*

Air Quality Bill) has been introduced in the National Parliament.²⁸⁴ The South Durban community was allowed to attend a session before Parliament to address its concerns about this bill in early February 2004.

Also in 2004, the Durban eThekweni Municipality completed a two-year pipeline integrity study. The report has not yet been released, despite numerous requests made by the Durban community and the Department of Agriculture and Environment to make the report public.²⁸⁵ Existing laws in South Africa have proven insufficient to hold Shell and BP accountable for the toxic air pollution in South Durban.²⁸⁶

F. Tanzania

1) Water Access²⁸⁷

Tanzania has been subject to privatization conditions in IMF and World Bank structural adjustment lending, including water privatization for the capital city 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. Women often walk up to 15 km each day to fetch water of uncertain quality. Although IMF and World Bank conditions continue to pressure the government to privatize, an agreement between government and multinational water company bidders as to the final content of the bidding document does not currently exist. 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.²⁸⁸

On February 16, 2005, the Dar es Salaam Water and Sewerage Authority (Dawasa) and China's Anneng Construction Corporation signed a contract to build 80 kilometers of new privately-owned distribution pipes. The U.S. \$12.85 billion scheme will overhaul the entire Dar es Salaam water supply network over the next two years, hopefully putting an end to the chronic water shortages.²⁸⁹

²⁸⁴ See groundWork, *Press Release: 23 February 2004*, *supra*, n. 281.

²⁸⁵ See groundWork, *Press Release: 4 October 2004*, at <http://www.groundwork.org.za/Press%20Releases/04oct04stthDbn.asp> (last visited January 6, 2005).

²⁸⁶ See groundWork, *Press Release: 23 February 2004*, *supra*, n. 281; see also Africa Action, *supra*, n. 273.

²⁸⁷ This case study was included in the issue paper prepared for the Commission's 59th Session.

²⁸⁸ See Public Citizen, *Critical Mass Energy and Environment Program: Tanzania*, at http://www.citizen.org/cmep/Water/cmep_Water/reports/tanzania/index.cfm (visited February 19, 2005).

²⁸⁹ See IPP Media, *13 bn/- Project to Ease Dar Water Woes*, at <http://www.ippmedia.com/ipp/guardian/2005/02/08/31975.html> (last visited Feb. 19, 2005).

V. Asia

A. Burma

1) Natural Gas Pipeline²⁹⁰

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

The environmental damage resulting from the project as well as the actions taken by the Burmese army in enabling the project to continue violate numerous human rights. The Burmese military, which provides security services to Unocal, has allegedly used force to commit serious abuses, including forced labor, forced relocation, torture, murder, and rape. Unocal states that it is not accountable for these actions and, despite the consequences, has defended its participation in the project by claiming that the pipeline construction has provided much-needed employment to villagers.²⁹¹

Several years ago, Burmese citizens sued the Burmese government and Unocal in a U.S. federal court and in a California state court for alleged human rights abuses associated with the construction of this gas pipeline. Following a series of setbacks to Unocal's position in both of these lawsuits, in December 2004, Unocal agreed to settle the claims of the Burmese villagers.²⁹² Although the terms of the settlement are confidential, the plaintiffs' lawyers state that Unocal will compensate the plaintiffs and provide funds, enabling plaintiffs and their communities to develop programs to improve living conditions, health care, and education, and protect the rights of people who reside in the pipeline region.²⁹³ It is hoped that this historic settlement will have a lasting positive impact on the behavior of multinational corporations.²⁹⁴

²⁹⁰ This case study was included in the issue paper prepared for the Commission's 57th and 60th Sessions.

²⁹¹ See EarthRights International, *We are not Free to Work for Ourselves: Forced Labor and Other Human Rights Abuses in Burma*, at <http://www.earthrights.org/pubs/fl2002overview.shtml> (last visited Jan. 11, 2005); see also Asia Times, *Foreign Crimes Come Home to the U.S.* (Dec. 16, 2004), available at http://www.atimes.com/atimes/Southeast_Asia/FL16Ae01.html (last visited Jan. 16, 2005).

²⁹² See Earthrights International, *Earthrights International In the News*, at <http://www.earthrights.org/> (last visited Jan. 21, 2005); see also Asia Times, *Foreign Crimes Come Home to the U.S.* (Dec. 16, 2004), available at http://www.atimes.com/atimes/Southeast_Asia/FL16Ae01.html (last visited Jan. 16, 2005).

²⁹³ See Earthrights International, *Earthrights International Home Page*, at <http://www.earthrights.org/> (last visited Jan. 21, 2005)

²⁹⁴ See, e.g., Asia Times, *Foreign Crimes Come Home to the U.S.* (Dec. 16, 2004), available at http://www.atimes.com/atimes/Southeast_Asia/FL16Ae01.html (last visited Jan. 16, 2005).

B. China

1) Three Gorges Dam²⁹⁵

We have reported in past years that residents in the village of Yaowan on the northern bank of the Yangtze River were dreading the arrival of demolition teams that would flatten their settlement and force them to move elsewhere.²⁹⁶ Many people in the reservoir area, 600 km (375 miles) long, have complained that the government's resettlement program is unfair and plagued by corruption, but the government has not responded to their grievances. Approximately 820,000 people have already been resettled, and it is estimated that a total of 1.17 million must move before the Three Gorges Dam project is completed in 2009.²⁹⁷ Among the rights implicated by this project are liberty of movement and the right to choose one's residence, the right to inviolability of the home, the right of refugees to request and receive protection and humanitarian assistance from their government, and the right to be consulted for free and informed consent prior to being displaced.

In addition to the human rights violations related to resettlement, recent reports indicate that the project has had drastic environmental impacts. Slow currents caused by the dam have decreased the river's flushing and self-cleaning abilities. With seven million tons of excrement dumped into the Yangtze River each year, waters in the reservoir above the dam are increasingly polluted.²⁹⁸ Some belts of rubbish in the reservoir are hundreds of meters long.²⁹⁹ Fish stocks are moving upstream into cleaner tributaries, and overall populations are decreasing. While commercial fishermen worry about the future viability of their trade, environmentalists are concerned about endangered species such as the Chinese sturgeon and the Chinese paddlefish.³⁰⁰ In addition, once the 185 meter deep dam is completed, the instability caused by the dam's high water level may result in more earthquakes and landslides.³⁰¹

In November 2004, the Chinese government admitted that pollution in the Three Gorges section of the Yangtze River worsened in the third quarter of the year, contradicting earlier claims that water quality had remained basically unchanged since the dam's reservoir was filled. Pollutants that exceeded allowable limits include phosphorus, petroleum, and certain types of bacteria. The government did not report specific figures, and officials from the Three Gorges

²⁹⁵ This case study was included in the issue paper prepared for the Commission's 55th, 59th, and 60th Sessions.

²⁹⁶ See The Economist, *Dam Shame: China's Three Gorges Dam* (July 6, 2002), available at <http://irn.org/programs/threeg/index.asp?id=020711.damshame.html> (last visited Jan. 10, 2005); see also Probe International, *Three Gorges Probe*, at <http://www.probeinternational.org/pi/3g/index.cfm> (visited Jan. 10, 2005).

²⁹⁷ See China Daily, *Three Gorges Dam Project Sparks New Relocation* (Mar. 22, 2004), available at http://www.chinadaily.com.cn/english/doc/2004-03/22/content_316824.htm (last visited Jan. 15, 2005).

²⁹⁸ See Tim Johnson, Knight Ridder, *China's dammed Yangtze River a cesspool of sewage, poison* (Apr. 27, 2004), available at <http://www.realcities.com/mld/kwashingon/8532870.htm> (last visited Jan 10, 2005).

²⁹⁹ See Xinhua, *Floating rubbish in Three Gorges reservoir affects navigation* (June 11, 2004), at <http://www.china.org.cn/english/travel/98005.htm> (last visited Jan 10, 2005).

³⁰⁰ See Bill Savadove, South China Morning Post, *Fisheries scientists fear scale of impact* Oct. 6, 2004, available at <http://www.threegorgesprobe.org/tgp/index.cfm?DSP=content&ContentID=11553> (last visited Jan 10, 2005).

³⁰¹ See Green Nature, *Three Gorges Dam Issues*, at <http://greennature.com/article1773.html> (last visited Jan. 15, 2005).

Project Corporation, the state-owned company set up to build the dam, declined to comment.³⁰² The Corporation has, however, promised to invest money to build an effective clean-up boat for the Yangtze River. The boat will be used to begin removal of the 100 to 200 thousand cubic meters of waste that have collected in front of the dam. The boat is expected to be operational by August 2005.³⁰³

C. India

1) Mangrove Destruction

Destruction of mangrove forests in the Kanyakumari district of Tamil Nadu on the southern tip of India directly contributed to loss of human life during the tsunami of December 2004.³⁰⁴ As of January 10, 2005, more than 800 bodies had been recovered in the small district as a result of the natural disaster.³⁰⁵ Environmental groups cite previous tsunamis in the area during 1881 and 1941 that were far less devastating due to the buffer that the mangroves provided.³⁰⁶ Other communities in Tamil Nadu reported minimal loss of life due to mangrove forest protection.³⁰⁷

In India, the aquaculture and tourism industries have reduced the country's mangrove forest areas to less than one-third their original size.³⁰⁸ Mangrove forest destruction has also increased salinity in the surrounding environment creating problems for subsistence farmers.³⁰⁹ Through loss of a protective natural mangrove barrier, the people of Kanyakumari have been deprived of their right to life.

³⁰² See Bill Savadove, South China Morning Post, *Three Gorges pollution is getting worse* (Nov. 3, 2004), available at <http://www.threegorgesprobe.org/tgp/index.cfm?DSP=content&ContentID=11785> (last visited Jan 10, 2005); see also Probe International, *Who's Behind China's Three Gorges Dam*, at <http://www.probeinternational.org/probeint/ThreeGorges/who.html> (last visited Jan 15, 2005).

³⁰³ See Xinhua, *China to build clean-up boat for Three Gorges*, at <http://www.threegorgesprobe.org/tgp/index.cfm?DSP=content&ContentID=11718> (last visited Jan 10, 2005).

³⁰⁴ See P.K. Surendran, *CRZ violations led to high casualty*, TIMES INDIA (Dec. 31, 2004), on file with Earthjustice.

³⁰⁵ See M.G. Radhakrishnan et al., *The Waves That Devoured*, INDIA TODAY 36 (Jan. 10, 2005), on file with Earthjustice.

³⁰⁶ See The Hindu, *NGOs favour natural protective barriers* (Feb. 1, 2005), on file with Earthjustice.

³⁰⁷ See Janaki Kremmer, *The coastal trees and shrubs saved hundreds of lives in India by protecting villages from the waves*, THE CHRISTIAN SCIENCE MONITOR (Jan. 10, 2005), available at <http://www.csmonitor.com/2005/0110/p07s01-wosc.html> (last visited Mar. 3, 2005).

³⁰⁸ See Devinder Sharma, *Outside View: Tsunami, Mangroves & Economy*, UPI, at <http://www.washtimes.com/upi-breaking/20050109-105932-8248r.htm> (last visited Mar. 3, 2005).

³⁰⁹ See Mari Marcel Thekaekara, *Society: Environment: Corrupted defence[sic] reports from Tamil Nadu*, THE GUARDIAN (Jan. 5, 2005), on file with Earthjustice.

D. Indonesia

1) Freeport Mines³¹⁰

Over the last several decades, US-based Freeport McMoRan, Inc. and Freeport-McMoRan Copper & Gold, Inc. have operated the Grasberg Mine, an open-pit copper, gold, and silver mine situated in Jayawijaya Mountain, an indigenous cultural site located in Irian Jaya, Indonesia. The mining operation continues to violate, among others, the rights to life, humane treatment, health, environment, and culture of the Amungme indigenous people of Irian Jaya as well as the general population of Indonesia.³¹¹ Freeport's activities have led to: air and water pollution; habitat destruction; displacement of the Amungme people; disturbance of a sacred site; and violent abuses committed by Indonesian troops who guard the mines.³¹²

In October 2003, there was an uproar in the international human rights community after eight Grasberg Mine employees died due to "slippage" at the mine.³¹³ Calls for an investigation into Freeport McMoRan's actions intensified in November 2003, when it was reported that Freeport knew that the landslide was impending but did nothing to prevent it.³¹⁴ Even more disturbing was the discovery that Freeport McMoRan moved equipment out of the way of the landslide's path, while failing to move or warn those working in the area.³¹⁵ In January 2004, Freeport McMoRan reduced its sales forecasts for 2004 by nearly one-third, because the company had to suspend production while it repaired damage due to another landslide in December 2003.³¹⁶ No loss of life was reported in the incident, although it did serve to underscore the potential for future disasters.

2) Mine Tailing Pollution³¹⁷

In Indonesia, Newmont Mining Corporation runs the Minahasa Raya and Nusa Tenggara mines.³¹⁸ At Minahasa Raya in North Sulawesi, Newmont has dumped 4 million tons of toxic mine waste into the coastal waters of Buyat Bay since 1996. Newmont's method of waste

³¹⁰ This case study was included in the issue paper prepared for the Commission's 57th Session.

³¹¹ See Abigail Abrash Walton, Carnegie Council on Ethics and International Affairs, *Mining a Sacred Land - Freeport in West Papua* (Spring 2004), available at <http://www.minesandcommunities.org/Company/freeport12.htm> (last visited Mar. 8, 2005).

³¹² *Id.*

³¹³ See Rendi A. Witular, *Six Missing in Slippage in Fremont Mine*, JAKARTA POST (Oct. 10, 2003), available at http://www.indonesia-house.org/Humanitarian/Hum1003/101003six_missing_in_Slippage_in_freeport.htm (last visited Mar. 8, 2005).

³¹⁴ See Matthew Moore, *Fatal Error Left Miners at Mercy of Landslide*, SYDNEY MORNING HERALD (Nov. 1, 2003), available at <http://www.minesandcommunities.org/Company/freeport10a.htm> (last visited Mar. 8, 2005).

³¹⁵ *Id.*

³¹⁶ John McBeth, *Indonesian Miner Cuts Outlook - December Landslide Forces Freeport-McMoRan Unit To Scale Back Production*, THE WALL ST. JOURNAL (Jan. 26, 2004), available at <http://www.minesandcommunities.org/Action/press250.htm> (last visited Mar. 8, 2005).

³¹⁷ This case study was included in the issue paper prepared for the Commission's 59th and 60th Sessions.

³¹⁸ See Project Underground, *Newmont Mining Corporation Under Fire for Environmental and Human Rights Abuses*, at http://moles.org/ProjectUnderground/mining/newmont/n_hr abuses0502.html (last visited Jan. 9, 2005).

disposal is banned in the United States because of the toxicity and extreme damage 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 health conditions such as skin diseases, cramps, and trembling.³¹⁹ On a recent visit to the community, New York Times reporters found ample evidence of health problems. According to their accounts, one doctor found that 80% of the sixty people he had seen showed symptoms of mercury and arsenic poisoning.³²⁰

A study released by the Indonesian Forum for the Environment (Walhi) in June 2003 revealed that mine tailings from Newmont's Minahasa Raya mine contain four times the government-allowed level of cyanide.³²¹ Additionally, data showed that Newmont had released over four million tons of mine tailings into Buyat Bay and the surrounding coast, further degrading the marine ecosystem and reducing the catch for local fisherman. The author of the study reported that local residents have not received any compensation for the environmental, social, and human health damages they have incurred as a result of Newmont's irresponsible and widespread tailings disposal.³²²

In response to the above study, the Indonesian government conducted an independent test of Newmont's tailings, concluding that the Newmont Mining Corporation engaged in illegal environmental practices.³²³ The mine was closed in June 2004.³²⁴ Police are planning to question top executives at Newmont Indonesia, specifically Newmont Indonesia's director and staff, who are expected to provide details of the company's disposal system.³²⁵

³¹⁹ See Dirty Gold, *Buyat Bay, Indonesia*, at http://www.nodirtygold.org/buyat_bay_indonesia.cfm (last visited Jan. 9, 2005).

³²⁰ See Mines and Communities Website, *Spurred by Illness, Indonesians Lash Out at U.S. Mining Giant*, at <http://www.minesandcommunities.org/Action/press428.htm> (last visited Jan. 10, 2005).

³²¹ See Moch N. Kurniawan, *Newmont endangers people, ecosystem*, JAKARTA POST (June 19, 2003), available at <http://www.minesandcommunities.org/Company/newmont2.htm> (last visited Jan. 9, 2005).

³²² *Id.*

³²³ See Wildlifeneews, *Indonesians Demand Gold Mine Clean-up*, at <http://www.naturalworldtours.co.uk/articles2004/september/september1104k.htm> (last visited Jan. 9, 2005).

³²⁴ See Global Response, *Clean Up and Compensate for Mining Damages/Indonesia*, at <http://www.globalresponse.org/gra.php?i=3/04> (last visited Jan. 15, 2005).

³²⁵ See Global Response, *GRAAction # 3/04: Clean Up and Compensate for Mining Damages/Indonesia* (Aug. 19, 2004), at <http://www.globalresponse.org/history.php?record=1984> (last visited Jan. 15, 2005).

E. Malaysia

1) Hydroelectric Dam³²⁶

In July 2004, the Malaysian government confirmed that it would move forward with the stalled construction of the Bakun Hydroelectric dam in the Malaysian state of Sarawak.³²⁷ However, the government conceded that changes would have to be made to the project's size due to the lack of demand for the 2,400 MW of electricity the dam had been scheduled to produce. Despite ex-Prime Minister Mahathir Mohamed's promise in 2001 that the dam would eventually be completed, critics had hoped that the economic unfeasibility of the project would be enough to cause the Malaysian government to cancel its plans after the original idea of transferring electricity to peninsular Malaysia via an underwater cable was scrapped due to technical hurdles.³²⁸ So far, 1,000 MW of electricity have been allocated for consumption to a planned \$2 billion, 500,000-tonne-per-year aluminum smelter in Sarawak.³²⁹ The smelter is due for completion in 2007 and environmental groups are additionally concerned about the potential for environmental and human rights abuses the plant may cause.³³⁰

Numerous groups have campaigned for an end to the Bakun Dam project. These include indigenous Malaysian communities, the opposition Democratic Action Party, and the Coalition of Concerned NGOs on Bakun, which includes over 40 Malaysian NGOs, Friends of the Earth, International Rivers Network, and Earth Island Institute.³³¹ Critics claim that the dam will not only flood an area of the rainforest roughly the size of Singapore but will also flood species of flora and fauna used for medicine, food, fiber, and other social uses, and create adverse impacts on water levels and salt water intrusion in the river downstream, potentially affecting tens of thousands of people in Sarawak. It will also cause degradation of fish habitat and loss of fisheries resources downstream and in the inundated area.³³²

F. Thailand

1) Pak Mun Dam

In 1994, the Electricity Generating Authority of Thailand (EGAT) completed construction of the Pak Mun Dam on the Mun River. Adverse effects of the dam have seriously impacted the local community that has traditionally relied on the fishing industry for its livelihood. Since the dam's construction, the number of fish species as well as fish populations

³²⁶ This case study was included in the issue paper prepared for the Commission's 58th Session.

³²⁷ See *Malaysia Says Changes Needed to Giant Bakun Dam*, REUTERS (July 28, 2004), available at <http://forests.org/articles/reader.asp?linkid=33900> (last visited Mar. 1, 2005).

³²⁸ See Earth Island Institute, *The Bakun Dam*, at <http://www.earthisland.org/borneo/borneo/sarawak6.html> (last visited Mar. 1, 2005).

³²⁹ See *Malaysia Says Giant Bakun Dam Under Review*, REUTERS (July 26, 2004), available at <http://www.minesandcommunities.org/Action/press386.htm> (last visited Mar. 1, 2005).

³³⁰ *Id.*

³³¹ Tony Allison, *Malaysia's Bakun project: Build and Be Damned* (Oct. 28, 2000), at <http://www.atimes.com/reports/BJ28Ai01.html> (last visited Mar. 1, 2005).

³³² *Excerpted from Coalition of Concerned NGOs Against Bakun, International Campaign to Stop the Bakun Hydroelectric Dam*, at <http://www.suaram.org/bakun/> (last visited Mar. 1, 2005).

have declined dramatically, reducing the number of local households that subsist on fisheries in the upstream region from 95.6% to 66.7%. Many local families have been forced to relocate because compensation offered by the Thai government was inadequate to purchase alternate land.³³³ According to a Thai research group, the dam has “destroyed relationships in the fishing communities and diminished the honor and dignity of fishermen.”³³⁴

Throughout 2000, environmental activists and local villagers gathered to demonstrate at the World Bank and Thai Government House in Bangkok, demanding that the dam be permanently decommissioned.³³⁵ The protestors’ efforts helped initiate an independent review by the World Commission on Dams (WCD). The WCD report documented that “56 species of fish in the Mun River have completely disappeared [and] the actual catch in the reservoir and upstream [was] 60 percent to 80 percent less than in the pre-dam era, resulting in an economic loss to villagers of about \$1.4 million per annum.”³³⁶ The WCD concluded that the dam produced marginal amounts of power, barely 40 MW compared to its stated capacity of 136 MW.³³⁷

In June 2001, the Thai government opened the dam gates for a one-year period to study the effects on fisheries, social conditions, and the electricity supply. While the dam gates were open, over 150 species of fish returned to the Mun River,³³⁸ formerly submersed lands became fertile again, and villagers began to grow vegetables and other crops. Villagers were also able to “use the rapids and riverbanks to hold ceremonies such as the Songkran festival and the Wan Nao, which ha[d] not been conducted since closing the dam gates.”³³⁹ However, at the end of this one-year period, the gates were closed, reversing the environmental and cultural restoration process.

In July 2003, EGAT re-opened the gates from July through October. Local fishermen and academics from Ubon Ratchathani University argued that if the dam’s eight gates were opened from April through July, this period would “allow more migratory fish from the Mekong River to live, feed, and spawn in the Mun tributary.”³⁴⁰ In 2004, EGAT agreed to change the four-month opening period.

³³³ See World Commission on Dams, *Pak Mun Dam Mekong River Basin Thailand* (Nov. 2000), at viii, available at <http://www.dams.org/docs/kbase/studies/csthmain.pdf> (last visited Mar. 7, 2005).

³³⁴ See Thai Baan Research, *Villager Research on the Impacts of Opening Pak Mun Dam* (Oct. 2002), <http://www.nadir.org/nadir/initiativ/aggp/free/imf/asia/mundam.htm> (last visited Mar. 7, 2005).

³³⁵ See Ubon Ratchathani, *A Thai dam, A Mistake, A Debt* (Aug. 9, 2000), at 1, available at <http://www.hartford-hwp.com/archives/25/051.html> (last visited Mar. 7, 2005).

³³⁶ *Id.* at 2.

³³⁷ *Id.*

³³⁸ See Thai Baan Research, *Villager Research on the Impacts of Opening Pak Mun Dam* (Oct. 2002), available at <http://www.nadir.org/nadir/initiativ/aggp/free/imf/asia/mundam.htm> (last visited Mar. 8, 2005).

³³⁹ *Id.*

³⁴⁰ See Kultida Samabuddhi, *Pak Moon Dispute*, BANGKOK POST (June 8, 2004), available at 2004 WL 76412984.

VI. Europe

A. Azerbaijan, Georgia and Turkey

1) BTC Pipeline³⁴¹

When completed, the Baku-Tbilisi-Ceyhan (BTC) pipeline, developed and operated by an international consortium of 11 partners led by British Petroleum (BP), will traverse 1056 miles – from Baku, the capital of Azerbaijan, through T’bilisi, Georgia, to Ceyhan, Turkey – carrying crude oil from the landlocked Caspian Sea to the Mediterranean Sea.³⁴² En route, it will run through subsistence farmlands,³⁴³ mountainous regions of seismic instability, buffer zones of a national park, an important natural spring water source in Georgia, and many areas rich in cultural heritage.³⁴⁴ In addition to threatening tourism and mineral water exports, the BTC pipeline will imperil groundwater, drinking water, wetlands, bird migration areas, lakes, and rivers.³⁴⁵ Further, the pipeline will pass through conflict-prone regions, causing international security concerns.³⁴⁶ The Turkish portion of the pipeline will be guarded by the Gendarmerie, which was condemned by the Council of Europe in July 2002 for continuing human rights abuses.³⁴⁷

In April 2003, as political and business leaders gathered in Paris for the Organization for Economic Cooperation and Development’s (OECD) Forum, environmental organizations submitted complaints to the governments of Britain, France, Germany, Italy, and the United State, charging that the 11 participants in the BTC-sponsoring consortium have breached the OECD *Guidelines for Multinational Enterprises*.³⁴⁸ While the *Guidelines* are not legally enforceable, they measure corporate social responsibility.³⁴⁹ The groups alleged, among other things, that the consortium has asked for or taken exemptions from environmental laws, undermined mitigation for environmental threats, and failed to involve communities affected by

³⁴¹ This case was included in the issue paper prepared for the Commission’s 60th Session.

³⁴² See, e.g., Jim Lobe, *Foreign Crimes Come Home to the U.S.*, Asia Times (Dec. 16, 2004), available at http://www.atimes.com/atimes/Southeast_Asia/FL16Ae01.html (last visited Mar. 8, 2005).

³⁴³ See Carol Welsh, *FoE Visits the Project of the Century*, at <http://www.foe.org/camps/intl/worldbank/BTCarticle.pdf> (last visited Jan. 24, 2005).

³⁴⁴ *Id.*

³⁴⁵ See Bankwatch, *WWF’s Position Statement in Connection with Baku-Tbilisi-Ceyhan Pipeline*, available at http://www.bankwatch.org/issues/oilclima/baku-ceyhan/downloads/cmnt_wwf_02-03.pdf (last visited Jan. 24, 2005).

³⁴⁶ See Friends of the Earth, *Developmental, Human Rights and Environmental Impacts of the Baku-Tbilisi-Ceyhan Oil Pipeline: Memorandum from Concerned Non-Governmental Organizations to Department for International Development, Foreign and Commonwealth Office, H.M. Treasury & UK Export Credits Guarantee Department* (Nov. 2002) at § 9, available at <http://www.foe.org/camps/intl/worldbank/memorandum-1102.pdf> (last visited Jan. 24, 2005).

³⁴⁷ *Id.*

³⁴⁸ See Friends of the Earth International, *Groups File Claim Against BP and Pipeline Partners in 5[sic] Countries: “Green” Company Violating International Norms in Controversial Caspian Oil Pipeline*, at <http://www.foei.org/media/2003/0429.html>, (last visited Jan. 24, 2005).

³⁴⁹ *Id.*

the construction and placement of the pipeline.³⁵⁰ The groups appealed for an immediate moratorium on construction and financial support. Nonetheless, the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD) approved U.S. \$500 million in financing for the project seven months later.³⁵¹

In June 2004, whistleblowers reported a series of failures associated with the pipeline's construction that could potentially lead to a major leak. According to these former senior workers, BP jeopardized the safety of the pipeline and the affected people by: cutting off villages' water supplies, flooding farmland, and creating oil leaks due to construction activities; failing to conduct proper inspections; and permitting workers to handle toxic substances without health and safety equipment.³⁵² Additionally, pipes were left exposed for longer than specifications allow and trenches were filled with materials that might allow uncontrolled movement of the pipes. A senior engineer stated that "[s]afety violations were occurring at all times, including workers in deep unprotected and unstable areas."³⁵³ In front of a parliamentary inquiry in November 2004, several of these accounts were confirmed by senior BP executives, who also admitted that BP did not inform them of major safety problems with a controversial coating.³⁵⁴

A month later, BP was forced to temporarily stop work on the pipeline in the ecologically vulnerable Borjomi region of Georgia after failing to obtain permits required by Georgian law.³⁵⁵ Although the suspension was lifted just a month later, increasing uncertainties regarding BP's reputation appear more lasting. On December 1, 2004, Italy's largest bank, Banca Intesa, decided to sell its \$60 million stake in the BTC pipeline in an effort to disassociate itself with the controversy. Banca Intesa's decision was significant, considering that the long-term viability of the pipeline depends on private financial support.³⁵⁶

³⁵⁰ *Id.*

³⁵¹ See Bank Information Center, *Baku-Tbilisi-Ceyhan (BTC) Pipeline Project, Azerbaijan/Georgia/Turkey*, at www.bicusa.org/bicusa/issues/bakutbilisiceyhan_btc_pipeline_project_azerbaijangeorgiaturkey/index.php (last visited Jan. 24, 2005).

³⁵² See Philip Thornton, *Exposed: BP, its pipeline, and an environmental timebomb*, INDEPENDENCE (June 26, 2004), available at <http://www.bakuceyhan.org.uk/Independent%20-%20environmental%20timebomb.mht> (last visited Mar. 18, 2004).

³⁵³ *Id.*

³⁵⁴ See Baku-Ceyhan Campaign, *The full story: Pipeline corrosion threat covered up by BP*, available at <http://www.bakuceyhan.org.uk/fullstory.htm> (last visited Mar. 18, 2005).

³⁵⁵ See Bank Information Center, *BTC Oil Pipeline Halted in Western Georgia* (July 27, 2004), at http://www.bicusa.org/bicusa/issues/bakutbilisiceyhan_btc_pipeline_project_azerbaijangeorgiaturkey/1535.php; see also Bank Information Center, *BTC Resumes in Georgia, Georgian Protesters Clash With Police Over Pipeline Route* (Aug. 10, 2004), at http://www.bicusa.org/bicusa/issues/bakutbilisiceyhan_btc_pipeline_project_azerbaijangeorgiaturkey/1563.php (last visited Jan. 24, 2005).

³⁵⁶ See Bank Information Center, *Italy's Largest Bank Pulls Out of BTC Pipeline* (Dec. 1, 2004), at <http://www.carbonweb.org/documents/PR011204.htm> (last visited Jan. 24, 2005).

B. Italy

1) Illegal Waste Dumping

In the region of Campania in Southern Italy, the mafia has historically been involved in the waste disposal industry, creating illegal dumpsites for hazardous material and burning toxic waste.³⁵⁷ This method presents a seemingly attractive alternative for companies needing to dispose of toxic waste, considering that the mafia charges almost 90% less than legitimate waste management companies.³⁵⁸ Health officials are now calling the Campania region the “triangle of death,” because people in the area are twice as likely as the rest of the Italian population to develop cancer.³⁵⁹ There are at least 5,000 illegal dumpsites in the region, and it is estimated that it could take at least eight years to incinerate the accumulated waste.³⁶⁰ The government has responded by building more incinerators and landfills, primarily in the same area.³⁶¹

Because the mafia generally operates through acts and threats of violence, public officials are often reluctant to address the illegal waste industry. The burning and improper disposal of hazardous waste thus continues, resulting in direct and indirect exposure to the contaminants. The toxic waste has contaminated local groundwater supplies, polluting livestock and posing additional threats to meat and dairy consumers. Additionally, the mafia sold some of its waste to farmers disguised as fertilizer. After discovering that they had had used toxic waste on their grazing fields, the farmers destroyed nearly 10,000 of their animals.³⁶² The European Commission (EC) has issued numerous warnings to Italy on the matter.³⁶³ In response to Italy’s inaction, in January 2005, the EC announced it would take further steps, including referring Italy to the European Court of Justice for breaches of EU environmental law. The EC is also threatening substantial financial penalties.³⁶⁴

³⁵⁷ See Barbie Nadeau, *Under the Volcano II*, NEWSWEEK (Nov. 8, 2004), available at <http://www.msnbc.msn.com/id/6370006/site/newsweek> (last visited Mar. 4, 2005).

³⁵⁸ See Francesca Colombo, *Environment-Italy: Mafia Dominates Garbage Industry*, INTER PRESS SERVICE NEWS AGENCY (June 24, 2003), at <http://ipsnews.net/africa/interna.asp?idnews=18952> (last visited Mar. 4, 2005); see also The Guardian, *Cancer Cluster* (Oct. 14, 2004), on file with Earthjustice.

³⁵⁹ See Barbie Nadeau, *supra*, n. 357.

³⁶⁰ *Id.*

³⁶¹ See Shanghai Star, *Trash Riot Protest Against Italy’s Eco-Mafia* (Sept. 9, 2004), available at <http://app1.chinadaily.com.cn/star/2004/0909/fe22-2.html> (last visited Mar. 4, 2005).

³⁶² See Barbie Nadeau, *supra*, n. 357.

³⁶³ See Nieuwsbank, *Italy: Commission pursues legal action for breaches of EU environmental legislation*, (Jan. 18, 2005), at <http://www.nieuwsbank.nl/en/2005/01/18/r023.htm> (last visited Mar. 4, 2005).

³⁶⁴ *Id.*

C. Russia

1) Nuclear and Chemical Contamination³⁶⁵

Chelyabinsk, the capital of the Chelyabinsk province in Russia and the site of one of the former Soviet Union's major nuclear manufacturing centers, still suffers from extreme contamination and pollution.³⁶⁶ Over the past 55 years, the Mayak Complex, which was once a main military production center, contaminated the region with highly dangerous nuclear and chemical wastes. Between 1949 and 1956, liquid wastes in the Tech-Iset-Tobul river system exposed over 124,000 people living along the riverbank to radiation. Then in 1957, a nuclear waste storage tank exploded at the Mayak Complex contaminating a total area of 23,000 square km and releasing twice the amount of radiation as the Chernobyl accident.³⁶⁷ In 1967, a lake used to divert radioactive waste dried up and the contaminated dust was blown over a 2,200 square kilometer radius.³⁶⁸ The Soviet government kept the matter secret until 1992 when Boris Yeltsin signed a decree revealing the harms.³⁶⁹

Following decades of nuclear and chemical accidents and releases, the impacts on human health have been devastating. For example, instances of birth defects and sterility throughout the province have increased significantly.³⁷⁰ Moreover, although twenty-two provincial villages were evacuated after the 1957 explosion, the contaminated city of Muslimova was not evacuated and its residents continued to rely solely upon the Tech-Iset-Tobul river system for drinking water.³⁷¹ As a result, the numbers of birth defects and deaths caused by cancer in Muslimova skyrocketed, and cancer mutations were 15 times more likely than that of the average Russian.³⁷² A 1991 report on the health of the people living on the banks of the Techa River showed that: the incidence of leukemia had increased by 41 percent since 1950; the incidence of other cancers rose by 21 percent between 1980-1990; and circulatory diseases rose by 31 percent in the same period.³⁷³

³⁶⁵ This case study was included in the issue paper prepared for the Commission's 58th Session.

³⁶⁶ See Log TV, *The Most Contaminated Spot on the Planet: Chelyabinsk Nuclear Disasters*, at <http://www.logtv.com/films/chelyabinsk/cheldis.html> (last visited Mar. 1, 2005).

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ See Tan Cheng Li, *Chelyabinsk Nuke Horrors Revealed*, at <http://www.logtv.com/films/chelyabinsk/chelya.html> (last visited Mar. 1, 2005).

³⁷⁰ See Log TV, *The Most Contaminated Spot on the Planet: Forty Years of Nuclear Contamination in Chelyabinsk, Russia*, at <http://www.logtv.com/films/chelyabinsk/fortyyears.html> (last visited Mar. 1, 2005).

³⁷¹ See Andrei Ivanov, *Radioactive Village to be Evacuated – Someday* (Aug. 26, 1997), at <http://www.albionmonitor.com/9708a/hotvillage.html> (last visited Mar. 1, 2005).

³⁷² See Log TV, *The Most Contaminated Spot on the Planet: Forty Years of Nuclear Contamination in Chelyabinsk, Russia*, at <http://www.logtv.com/films/chelyabinsk/fortyyears.html> (last visited Mar. 1, 2005).

³⁷³ *Id.* Figures may be even higher given these percentages are based purely on the number of death certificates issued and do not take into account the number of people still living with the effects of the environmental damage from the nuclear plant.

In January 2003, Russia announced that it was shutting down the Mayak reprocessing plant at Chelyabinsk.³⁷⁴ Inside sources report that the closure was due to U.S. pressure over concerns regarding the safety of nuclear materials reprocessed at the plant. Russia now plans to use the facility to store nuclear waste that, for economic reasons, it is aggressively importing from around the world. Local environmentalists have serious concerns about the country's plans to store radioactive waste as it could turn the region into a nuclear waste dump.³⁷⁵

In 2004, the Chelyabinsk provincial administration allocated approximately \$96,000 to address the consequences of the accidents in the region. The funds were divided between socio-economic rehabilitation of the population and territory; healthcare for those who suffered from radiation including their children and grandchildren; rehabilitation and protective measures for the agriculture of the contaminated regions; technical agricultural equipment; social-psychological rehabilitation; and information services.³⁷⁶ The administration also set aside \$358,800 for construction in the region and promised to allocate \$414,000 earned from reprocessing spent nuclear fuel rods for housing development.³⁷⁷

2) Oil and Gas Projects on Sakhalin Island

In the early 1990s, a consortium of companies, including Shell and ExxonMobil, constructed two oil and gas extraction projects on the Sakhalin Island, a far eastern Russian territory. Since their construction, the Sakhalin projects have caused huge environmental impacts such as “a massive herring die-off near Shell’s offshore drilling platform and sharp decreases of saffron cod in northeastern Sakhalin where waste from the project is dumped into the waters.”³⁷⁸ Also, “the noise from the construction has forced caribou herders to lead their herds away from their traditional calving places,” and “higher mortality rates of newborn caribou have been recorded.”³⁷⁹ Finally, the pipeline for Sakhalin II project is being constructed directly over an ancient cemetery of the indigenous Nivkh people.³⁸⁰

The impacts of these and future activities on the fish and caribou herds on which the indigenous Sakhalin people depend violate their rights to life, health, culture, and livelihood. Shell’s present plans to expand its project include: construction of two off-shore oil and gas platforms and undersea pipelines that would be trenched directly through habitat of the critically endangered Western Pacific Grey Whale; 800 km of oil and gas pipelines would run through the whole island trenching key salmon spawning streams and watersheds in the region that has 1/3 of the world’s

³⁷⁴ See AFP, *Russian Nuclear Plant Allegedly Closes After US Pressure* (Jan. 14, 2003), available at <http://www.logtv.com/films/chelyabinsk/chelya4.html> (last visited Mar. 1, 2005).

³⁷⁵ See *Russia Shuts Down Infamous Site of Nuclear Disaster*, CHICAGO TRIBUNE (Jan. 14, 2003), available at <http://www.logtv.com/films/chelyabinsk/chelya3.html> (last visited Mar. 1, 2005).

³⁷⁶ See RIA Novosti, *Nuclear disaster victims to receive compensation*, May 19, 2004, at http://www.bellona.no/en/international/russia/nuke_industry/siberia/mayak/34156.html (last visited Mar. 1, 2005).

³⁷⁷ *Id.*

³⁷⁸ See Pacific Environment, *Indigenous Peoples Launch Protest Against Sakhalin Oil Projects* (Jan. 20, 2005), at http://www.pacificenvironment.org/russia/sakhalin_protest.htm (last visited Mar. 7, 2005).

³⁷⁹ *Id.*

³⁸⁰ *Id.*

remaining salmon stocks; and construction of a liquefied natural gas (LNG) production plant and an oil and LNG terminal in Aniva Bay that would result in tons of waste dumped into surrounding waters. The potential risks are exacerbated by the fact that this is one of the most seismically active areas in the world.³⁸¹

The people of Sakhalin Island have held numerous meetings with government and company representatives, and have written letters of concern to Shell and ExxonMobil as well as to the international banks that support the projects, including the European Bank for Reconstruction and Development, U.S. Export-Import Bank, and Japan Bank for International Cooperation.³⁸² In January 2005, the Sakhalin people blockaded roads leading to the oil production sites after company representatives did not respond to their demands to sign a memorandum, including requirements to consent to an impartial and independent cultural impact assessment and establish an independent compensation fund.³⁸³ Within a few days, the Russian Federation's Ministry of Regional Development sent an inquiry to the Sakhalin Vice Governor, and the organizers announced a temporary suspension of the protest actions.³⁸⁴

In response to Shell's plans to seek financing for Phase 2 of its project, the community began a letter-writing campaign to the U.S. Export-Import Bank and the European Bank for Reconstruction and Development, asking them to withhold their financing.³⁸⁵

D. Spain

1) Oil Leak Off Spanish Coast³⁸⁶

On November 19, 2002, the oil tanker Prestige broke in two and sank off the coast of Spain.³⁸⁷ As is typical in this under-regulated industry, the tanker was Liberian-owned, 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.

The scenic shores of Galicia in northwest Spain were blackened by 63,000 tons of leaked oil from the vessel. Galicia, where local people depend on fishing and summer tourism for their livelihood, was hit the hardest. Before the Prestige sank, more boats than the rest of the active

³⁸¹ See Pacific Environment, *Sakhalin, Oil and the Brink of Extinction*, at <http://www.pacificenvironment.org/russia/sakhalin.htm> (last visited Mar. 7, 2005).

³⁸² See Pacific Environment, *Indigenous Peoples Launch Protest Against Sakhalin Oil Projects*, *supra*, n. 378.

³⁸³ See Pacific Environment, *Sakhalin Protest: Updated Newsfeed*, at http://www.pacificenvironment.org/russia/sakhalin_protest/index.html (last visited Mar. 7, 2005).

³⁸⁴ See Pacific Environment, *Indigenous Peoples Launch Protest Against Sakhalin Oil Projects*, *supra*, n. 378.

³⁸⁵ See Global Response, *Protect Whales and Fishery from Oil Development/Russia*, at <http://www.globalresponse.org/gra.php?i=1/04> (last visited Mar. 7, 2005).

³⁸⁶ This case study was included in the issue paper prepared for the Commission's 59th and 60th Sessions.

³⁸⁷ See Project Underground, *Drillbits and Tailings: Oil Tanker Destroys Livelihoods in Spain*, at http://moles.org/ProjectUnderground/drillbits/7_10/2.html (last visited Jan. 24, 2005).

EU fishing fleet combined were based in Galicia, and the Galician fishing industry was worth more than US \$300 million per year.³⁸⁸ The industry sustained entire communities along the coast. As the oil spread along the Spanish coast toward Portugal and France, the consequences for northwestern Spain worsened daily and local governments were forced to suspend fishing and shellfish gathering for six months, putting more than 21,500 fishermen temporarily out of work.³⁸⁹ According to NGO reports, an estimated quarter million birds died as a result of the accident.³⁹⁰ The oil poisoned plankton, fish eggs, crustaceans, and may lead to carcinogenic effects in fish and higher food chain animals. Experts predict marine life will suffer for the next ten years.³⁹¹

Since the disaster, Texas attorney Anthony Buzbee filed a \$300 million lawsuit against the American Bureau of Shipping (ABS) in Houston on behalf of the Basque region. Groups like ABS inspect and classify ships as seaworthy and insurable. The Spanish government filed a similar case eight days later against ABS, seeking another \$700 million. Both cases allege ABS negligently failed to adequately inspect the Prestige's ballast tanks.³⁹² ABS countersued the Spanish government, claiming that the government's decision not to supply the Prestige with a safe harbor worsened the effects of the oil spill.³⁹³ In August 2004, the American Bureau of Shipping (ABS) suffered a major loss when the court dismissed the company's countersuits.³⁹⁴

E. Turkey

1) Toxic Ship Dismantling

Due to the environmental threats associated with their transport, single-hull tankers carrying heavy fuel oil have been banned from EU ports by the EU and the International Maritime Organization (IMO).³⁹⁵ As a result, many of these vessels are being dismantled in non-EU member countries, such as Turkey, where standards to protect workers and the environment from the toxic materials onboard are less stringent.³⁹⁶ Referred to as ecological timebombs,

³⁸⁸ *Id.*

³⁸⁹ See Universidad Politecnica De Cartagena, *Sub Finds Oil Coming From Sunken Tanker*, at <http://www.upct.es/~srvidiom/natalia/sub.htm> (last visited Jan. 24, 2005).

³⁹⁰ See Scoop, *Prestige Disaster Devastating Effect on Seabirds* (Nov. 20, 2003), at <http://www.scoop.co.nz/mason/stories/SC0311/S00074.htm> (last visited Jan. 24, 2005).

³⁹¹ See Wikipedia, *Prestige Oil Spill*, at [http://en.wikipedia.org/wiki/Prestige_\(ship\)](http://en.wikipedia.org/wiki/Prestige_(ship)) (last visited Jan. 24, 2005).

³⁹² See Josh Harkinson, *Ship Wrecked*, HOUSTON PRESS (Feb. 12, 2004), available at <http://www.houstonpress.com/issues/2004-02-12/feature.html/1/index.html> (last visited Jan. 24, 2005).

³⁹³ See Frontline World, *The Paper Trail examining the Case of the Prestige* (Jan. 2004), available at <http://www.pbs.org/frontlineworld/stories/spain/memos.html> (last visited Jan. 24, 2005).

³⁹⁴ See IMO, *Information Resources on the "Prestige", Information Sheet No. 35* (Jan. 13, 2005), available at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D11005/Prestige%2813January2005%29.doc (last visited Mar. 3, 2005).

³⁹⁵ See BBC News, *EU to Ban Single-Hull Tankers* (Dec. 6, 2002), at <http://news.bbc.co.uk/2/hi/europe/2551721.stm> (last visited Mar. 5, 2005); see also Transport Europe, *IMO Agreement on the Withdrawal of Single Hull tankers* (Dec. 19, 2003), on file with Earthjustice.

³⁹⁶ See Greenpeace, *Tanker Phase-out Poses New Environmental Disaster in the Mediterranean* (Dec. 8, 2004), at http://www.greenpeace.org/mediterranean/news/details?item_id=676305 (last visited Mar. 4, 2005); see also BBC

these ships often contain hazardous wastes – including asbestos, PCBs, dioxins, heavy metals, and contaminated oil and ballast water – that could impact human health and the environment if not treated and disposed of properly.³⁹⁷

Over the next five years, Turkey is slated to receive more than 2,000 ships for dismantling from EU countries.³⁹⁸ Despite the fact that Turkey is a member of the Organization for Economic Co-operation and Development (OECD), an international organization that requires environmentally sound management of hazardous waste, there is evidence that the toxic ships are not being handled properly.³⁹⁹ Materials containing asbestos have been found lying around shipbreaking sites. Additionally, Turkey has failed to comply with requirements to disclose information regarding materials onboard the ships or to document resources that will be used to safely handle the toxic materials. In December 2004, members of Greenpeace Turkey demonstrated outside the EU building in Ankara, Turkey, protesting the EU's complacency regarding the matter.⁴⁰⁰ The protesters alleged that present conditions violate the right of Turkey's citizens to safe working conditions, health, and a healthy environment, and demanded an explanation from the EU representation in Ankara.⁴⁰¹

VII. Island Nations

A. Australia

1) Uranium Mining⁴⁰²

In South Australia, the byproducts of uranium mining have left aboriginal communities at risk. In 1995, Australia's federal government announced plans to bury nuclear waste from Sydney in the wild desert lands of South Australia near Woomera. A small group of aboriginal elders concerned about local groundwater contamination have resisted the proposed radioactive waste dump. While many of the region's water sources remain unexplored and lack surveyed documentation, they have sustained the aboriginal people and desert wildlife for thousands of years. The risk of nuclear waste contaminating scarce water sources in a region known as the driest state of the country is severe.⁴⁰³

Monitoring, *Greenpeace Protests Against EU Practice of Dumping Toxic Waste in Turkey* (Dec. 8, 2004), *on file with Earthjustice*.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ See Greenpeace, *Shipbreaking: Turkey*, at <http://www.greenpeaceweb.org/shipbreak/turkey.asp> (last visited Mar. 4, 2005).

⁴⁰⁰ See Greenpeace, *Tanker Phase-out Poses New Environmental Disaster in the Mediterranean*, *supra*, n. 396.

⁴⁰¹ See BBC Monitoring, *supra*, n. 396.

⁴⁰² This case study was included in the issue paper prepared for the Commission's 60th Session.

⁴⁰³ See Goldman Prize, *Recipients*, at <http://www.goldmanprize.org/recipients/recipients.html> (last visited Jan. 24, 2005).

In June 2004, an Australian Federal appeals court stopped the forced acquisition by federal authorities, stating that there was no “urgent necessity for the acquisition.”⁴⁰⁴ The following month, Australia’s Prime Minister abandoned the dump plan, facing strong opposition in an election year.⁴⁰⁵ Australia’s nuclear authorities are now discussing a deal in which the U.S. Department of Energy would take the nuclear waste.⁴⁰⁶

In Northern Australian territories, problems were documented at a Rio Tinto mine in Kakadu National Park, where workers at the mine were exposed to drinking and bathing water with uranium levels 400 times greater than Australia’s maximum safety standard. A series of leaks running into a feeder creek system of Kakadu’s wetlands was responsible for the severe contamination. The mine was shut down shortly after federal and regional authorities began investigating the incidents.⁴⁰⁷

In September 2004, the Northern Territory’s government announced plans to prosecute mine operator Energy Resources Australia (ERA) over the contamination resulting from Ranger mine. Since 1981, there have been more than 120 leaks, spills, and operating breaches at Ranger.⁴⁰⁸ The operators of the controversial mine appeared in court in Darwin on February 4, 2005, to answer the charges brought against them. Environmental groups are calling on ERA to abandon further development plans at the mine and instead detail its rehabilitation and exit plans.⁴⁰⁹

B. Papua New Guinea

1) Mining Activities on Misima

A mining operation on the small island of Misima in Papua New Guinea has caused severe environmental harm, killing a coastal coral shelf and destroying the subsistence fish resources in the area.⁴¹⁰ From 1989 to 1994, the mining company Placer Dome dumped approximately 53 million tons of soft waste rock and soil into the ocean via a process called submarine tailings disposal (STD), a method prohibited in many countries including Placer Dome’s home country of Canada. Additionally, in several instances, pipe breaks along the STD

⁴⁰⁴ See Geocities, *Australian Court Upsets Government Plan for Desert Nuclear Waste Dump*, at <http://www.geocities.com/nonucleardump/news12.htm> (last visited Jan. 24, 2005).

⁴⁰⁵ See Melbourne Indymedia, *Federal Government Considering Offshore Nuclear Waste Dump* (July 14, 2004), at <http://www.melbourne.indymedia.org/news/2004/07/73865.php> (last visited Jan. 24, 2005).

⁴⁰⁶ See ABC Online, *U.S. to Take Nuclear Waste From Australia* (Jan. 21, 2005), at <http://www.abc.net.au/am/content/2005/s1286163.htm> (last visited Jan. 25, 2005).

⁴⁰⁷ See Australian Conservation Foundation, *Kakadu Turns 25 as Uranium Leak Scandal Deepens*, at <http://www.acfonline.org.au/asp/pages/document.asp?IdDoc=1902> (last visited Feb. 28, 2005).

⁴⁰⁸ See Australian Conservation Foundation, *Safety Meltdown: ACF Welcomes Historic Legal Moves Against Kakadu Uranium Mine*, at <http://www.acfonline.org.au/asp/pages/document.asp?IdDoc=2174> (last visited Feb. 28, 2005).

⁴⁰⁹ See Australian Conservation Foundation, *Uranium Miner Faces Court on Kakadu Contamination Charges*, at <http://www.acfonline.org.au/asp/pages/document.asp?IdDoc=2322> (last visited Feb. 28, 2005).

⁴¹⁰ See Catherine Coumans, *Placer Dome Case Study: Misima Mine* (April, 2002), available at http://www.miningwatch.ca/issues/Placer_Dome/PD_Case_Study_Misima.pdf (last visited Mar. 3, 2005).

system allowed cyanide and heavy metals to leak into the shallow zone of the marine environment.⁴¹¹

The local water supply has also been affected by the mining operation. The Misima mine operates at a central mountain on the small island where waste dumps and mine pits pollute the headwaters of creeks and rivers serving as freshwater sources for most of the island's inhabitants. Environmental harm caused by the mining activities has impacted an estimated one-third of the island, including creeks and rivers in the south that are contaminated by sediments and pollutants from the mine.⁴¹² In August 2004, a large number of fish were found dead in Milne Bay due to cyanide poisoning.⁴¹³ The local population was outraged, and in September 2004, indigenous Misimian landowners sent out an international plea to the Papua New Guinea government and Placer Dome to remediate the environmental harms inflicted on the communities affected by the mine.⁴¹⁴

VIII. North America

A. Jamaica

1) Bauxite Mining

In Clarendon, Jamaica, emissions from bauxite mines and alumina plants operated by the Jamaican government and Alcoa, a U.S. based company, are responsible for environmental degradation to land, air and water as well as serious human health harms.⁴¹⁵ Throughout the mining industry's half century of operations, residents living near the Alcoa facilities have suffered from numerous illnesses, including elevated rates of asthma, sinusitis, hypertension, allergies, and birth defects. Residents also cite crop failures and stunted fruit growth as evidence of toxic pollution. Jamaican authorities refuse to acknowledge the legitimacy of these claims, suggesting that they are primarily based on economic motivations.⁴¹⁶

On December 22, 2004, Alcoa announced that its affiliate and the Government of Jamaica had signed an agreement to expand the alumina refinery in Clarendon, Jamaica, by more than 1.5 million metric tons per year (mtpy). The expansion will more than double the refinery's total capacity to at least 2.8 million mtpy. In addition, Alcoa's ownership in the refinery will increase from 50% to 70%, leaving the Jamaican government with the remaining 30%.⁴¹⁷

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ See The National, Papua New Guinea, *Cyanide Poisoning Kills Fish at Misima* (Aug. 11, 2004), at <http://www.minesandcommunities.org/Action/press406.htm> (last visited Mar. 7, 2005).

⁴¹⁴ See MiningWatch Canada, *Placer Dome Leaves Legacy of Destruction on Tiny Pacific Island: International Condemnation of Placer's Façade of Sustainability* (Sept. 22, 2004), at http://www.miningwatch.ca/issues/Placer_Dome/Misima_NGO_rls.htm (last visited Mar. 4, 2005).

⁴¹⁵ See Carol J. Williams, *Jamaica: Dust-Up Swirls Around Key Jamaica Industry*, LOS ANGELES TIMES (Oct. 25, 2004), available at http://www.corpwatch.org/print_article.php?id=11614 (last visited Mar. 4, 2005).

⁴¹⁶ *Id.*

⁴¹⁷ See Alcoa, *Alcoa, Government of Jamaica Agree to Expand Jamalco Alumina Refinery By More Than 1.5 Million Mtpy; AWAC Ownership Moves To 70 Percent* (Dec. 23, 2004), available at http://www.alcoa.com/jamaica/en/news/releases/jamalco_refinery.asp (last visited Mar. 17, 2005).

Without consideration of the environmental and human health impacts, this new initiative will further contribute to violations of the community's right to health, clean air, clean water, and subsistence.

B. Mexico

1) Abandoned Lead Smelter

Lead and other heavy metal byproducts left untreated at an abandoned lead smelter, Metales y Derivados (Metales), continue to poison the local environment surrounding Colonia Chilpancingo (Colonia).⁴¹⁸ Residents blame daily exposure to these toxins, located just 130 meters from the 10,000 residents of Colonia, for various illnesses. Contaminated water from Metales runs through the roads of the community,⁴¹⁹ wind carries lead dust into the residents' lungs and homes,⁴²⁰ and rain mixes with the toxins and finds its way into a school playground.⁴²¹ Daily exposure to lead and other heavy metals causes the residents of Colonia to suffer from various illnesses including nosebleeds, skin rashes, respiratory ailments, throat and eye irritation, elevated lead levels in the blood high enough to cause seizures and death, and babies born with anencephaly.⁴²²

In 1994, Mexico's environmental agency, PROFEPA, ordered Metales to shut down its operations permanently.⁴²³ The abandoned site contains close to 24,000 tons of hazardous waste, 7,000 tons of which is lead slag.⁴²⁴ Arsenic, antimony and cadmium comprise the remaining 17,000 tons.⁴²⁵ Although PROFEPA closed Metales for failing to dispose of waste properly, the agency itself failed to address the waste left behind. The only action taken since 1995 occurred when PROFEPA constructed a cinderblock barrier around the plant and covered the mounds of lead slag with tarps. These measures were vastly inadequate, and the toxic chemicals have since eaten through the tarps and the cinderblock wall.⁴²⁶

⁴¹⁸ See Katherine Stapp, *Environment: Cleaning Up Lead Contamination on Mexico-U.S. Border*, IPS (Aug. 6, 2004), *on file with Earthjustice*.

⁴¹⁹ See Marc Lifsher, *Groups Use NAFTA in Move to Clean Up Border Plant*, WALL ST. JOURNAL (Oct. 21, 1998), at CA1, *on file with Earthjustice*.

⁴²⁰ See Luke Turf, *Trade and Turmoil/10 Years of NAFTA; Environmental Rules Lack Teeth with No Means of Enforcement, Regulations Often Ignored*, THE TUCSON CITIZEN (June 19, 2003), *on file with Earthjustice*.

⁴²¹ See Monica Campbell, *Mexican Workers Struggle to Find NAFTA Benefits*, BOSTON GLOBE (Oct. 12, 2003), at E.6, *on file with Earthjustice*.

⁴²² See Anna Gorman, *California, U.S. Factory Leaves a Toxic Smell; Neighbors of a Tijuana plant shut by Mexican officials in 1994 worry about fumes and hope for a bi-national cleanup*, LOS ANGELES TIMES (July 28, 2003), at B1, *on file with Earthjustice*.

⁴²³ Secretariat, North American Commission on Environmental Cooperation, *Metales y Derivados Final Factual Record (SEM-98-007)*, at 22, at <http://www.cec.org/files/pdf/sem/98-7-FFR-e.pdf> (last visited Mar. 2, 2005).

⁴²⁴ See Katherine Stapp, *supra*, n. 418.

⁴²⁵ See Hazwaste, *EPA to assist in cleanup of abandoned Mexico Smelter*, GREENWIRE (June 23, 2004), *on file with Earthjustice*.

⁴²⁶ See Mark Lifsher, *supra*, n. 419.

Although Metales' parent company, New Frontiers, Inc., is incorporated in the United States and headquartered in San Diego,⁴²⁷ U.S. authorities say they have no jurisdiction over a plant located in Mexico,⁴²⁸ and Mexico does not have an established budget to clean up toxic hazards left in abandoned sites.⁴²⁹ However, U.S. and Mexican authorities have committed some funds to initiate remediation of the site.⁴³⁰ Mexico plans to contribute \$500,000 and the U.S. Environmental Protection Agency will provide \$85,000.⁴³¹ As of December 2004, PROFEPA removed 300 tons of lead sludge, which were then shipped back to the United States. The Mexican authorities will use the remaining funds to remove 2,000 additional tons of waste.⁴³² Despite these actions, it will cost \$7 million dollars to properly rehabilitate Metales.⁴³³ The people of Colonia's exposure to lead pollution infringes their right to clean air; the toxic run-off from rain mixing with the abandoned sludge affects their right to clean water; and the continuing, constant exposure to lead and other heavy metals threatens their right to life.

2) La Parota Dam

When completed, La Parota Dam will provide electricity to the tourist town of Acapulco, Mexico, and will eventually be linked to power grids in the United States. However, local communities oppose the building of the dam because it will flood the lands of 25,000 farmers and destroy the Papagayo watershed region.⁴³⁴ Intense opposition to the construction of the La Parota Dam has led to the arbitrary arrest of community activists in Acapulco.

On July 27, 2004, Marco Antonio Suástegui Muñoz and Francisco Hernández Valeriano were detained by the State Judicial Police on charges that they held an electricity engineer from the Federal Electricity Commission (CFE) against his will at a protest blockade, even though both men maintain that they were not present at the event.⁴³⁵ Although both individuals have been released, the charges have yet to be dropped. The arrests appear to be part of a larger

⁴²⁷ *Id.* at 20.

⁴²⁸ See News Desk, *Shifting the blame: While campaigners have begun to focus attention on cross-border polluters, a lack of effective legislation means that prosecuting offenders can be difficult*, GEOGRAPHICAL MAGAZINE (Jan. 1, 2005), on file with Earthjustice.

⁴²⁹ See Anna Gorman, *supra*, n. 422.

⁴³⁰ See Joe Cantlupe and Dana Wilkie, *Cleanup slated at toxic plant; U.S.-Mexico plan targets closed facility in Tijuana*, SAN DIEGO UNION TRIBUNE (Feb. 16, 2004), on file with Earthjustice.

⁴³¹ See Joe Cantlupe and Sandra Dibble, *Cleanup Approaches for Abandoned Smelter; Mexico to Sign Agreement on Long-awaited Project*, SAN DIEGO UNION-TRIBUNE (June 23, 2004), on file with Earthjustice.

⁴³² Secretaria del Medio Ambiente y Recursos Naturales (SEMARNAT), *BEJC Boletín Informativo No. 1*, December 2004, at <http://www.environmentalhealth.org/BEJCBoletínMetalesyDerivados.pdf> (last visited Mar. 2, 2005).

⁴³³ See Joe Cantlupe, *Cleanup Approaches for Abandoned Smelter*, *supra*, n. 431.

⁴³⁴ See Rosa Rojas, *Damnificados Integran Frente Contra las Presas*, LA JORNADA (Oct. 2, 2004), available at <http://www.jornada.unam.mx/2004/oct04/041002/015n1pol.php?origen=politica.php&fly=1> (last visited Mar. 8, 2005).

⁴³⁵ See Amnesty International, *UA: Mexico Update* (Dec. 17, 2004), at <http://www.amnesty.ie/user/content/view/full/3392/> (last visited Mar. 8, 2005).

government crackdown on leaders of community groups that oppose the government's development schemes.⁴³⁶

3) Protecting the Rights of Environmental Defenders to Protest Illegal Logging near Copper Canyon

In 2004, Tarahumara Indian anti-logging activists Isidro Baldanegro and Hermenegildo Rivas led efforts to halt logging by outsiders of their indigenous community's old growth pine forests in a remote area near Mexico's Copper Canyon. Baldanegro succeeded in obtaining an injunction to halt the logging, and then local powerbrokers succeeded in having both activists falsely charged with possession of a firearm and marijuana. The activists remained in prison for over a year, while the arresting officers repeatedly failed to attend the court proceedings and present evidence.⁴³⁷

Lawyers from a private law firm in the United States orchestrated a broad-based campaign to publicize the matter and to protect and enforce Baldanegro's and Rivas' human rights to freedom of speech, assembly, and participation. Among other things, the lawyers traveled to Mexico to meet with the judge in the case; utilized diplomatic and political contacts; generated interest and involvement on the part of staff and members of the Sierra Club, Amnesty International, Greenpeace, and Mexican and Latin American environmental NGO's; got articles about the case published in Mexican newspapers; and urged the Attorney General of Mexico and other Mexican officials to meet to discuss the case. In March 2005, Mexican Attorney General Macedo de la Concha held a press conference to announce that Mexico was dropping the charges against the two activists. The arresting officers were charged criminally for their wrongful arrest of Baldanegro and Rivas, and the activists were unconditionally released from prison.⁴³⁸

C. United States

1) Expansion of Nevada Mine

In June 2000, the Bureau of Land Management (BLM) approved Cortez Gold Mine's plans to expand its exploration efforts on land surrounding the company's mine in the Horse Canyon area of Nevada.⁴³⁹ Horse Canyon is located at the center of the Western Shoshone territory and immediately adjacent to the sacred Mt. Tenabo.⁴⁴⁰ BLM approved the expansion despite Western Shoshone protests and despite the area's recognition as a site of cultural and religious importance under the National Historic Preservation Act.⁴⁴¹ By allowing Cortez to

⁴³⁶ See Jessie Hahn, *Update on Indigenous Resistance to Construction of La Parota Dam near Acapulco, Guerrero* (Oct. 8, 2004), at <http://www.globalexchange.org/countries/mexico/2688.html> (last visited Mar. 8, 2005).

⁴³⁷ *Documentation on file with Marcia Newlands, Esq., Heller Ehrman LLP, Seattle, Washington, USA.*

⁴³⁸ *Id.*

⁴³⁹ See *Nevada Tribe Protests BLM decision on Cortez gold mine*, ASSOCIATED PRESS (Dec. 13, 2004), available at <http://www.krnv.com/Global/story.asp?s=2684681&nav=8faOU820> (last visited Mar. 8, 2005).

⁴⁴⁰ See Western Shoshone Defense Project, *Western Shoshone and Allies Challenge Department of Interior Decision to Open Spiritual and Cultural Area to Further Destruction by Gold Mining* (Nov. 30, 2004), at <http://www.wsdp.org/press.htm#113004> (last visited Mar. 8, 2005).

⁴⁴¹ *Id.*

move forward with its plans, BLM ignored warnings that the project will dry up streams, pollute ground and surface water, cause substantial toxicological threats to wildlife, and most likely become listed as a costly contaminated site under the U.S. “Superfund” law.⁴⁴²

Cortez now has access to an additional 200 acres for exploration and condemnation drilling for proposed waste dumps and a heap leach pad.⁴⁴³ The proposed expansion will adversely affect, if not destroy, sacred places that the Western Shoshone use for hunting, gathering, religious, and cultural purposes,⁴⁴⁴ considering that the expansion of gold mines requires drilling that impacts the entire mountain.⁴⁴⁵ Additionally, the processes used in gold mining divert and pollute massive quantities of water, leaving behind cyanide ponds that leak and poison the surrounding environment.⁴⁴⁶ Sodium cyanide, a salt used in the gold extraction process, is a deadly poison when dissolved in water.⁴⁴⁷

In November 2004, the Western Shoshone Defense Project, Great Basin Mine Watch, and the Te-Moak Tribe filed a petition for review with the Bureau of Land Management.⁴⁴⁸ The petition challenges BLM’s decision to approve the expansion of mining exploration by Cortez Gold Mines in and around Horse Canyon.⁴⁴⁹ The petition requests that the project be stayed and that the State Director remand the decision to BLM for full compliance with federal law.⁴⁵⁰

2) Red Dog Mine, Alaska

Red Dog Mine, operated by Teck Cominco in northwestern Alaska, is the world’s largest producer of zinc.⁴⁵¹ In 2001, the mine was responsible for producing 432 million pounds of toxic waste dust, which accounted for 83% of all toxic substances within Alaska.⁴⁵² The State of Alaska financed a haul road extending to the sea, where a dock, storage facilities and port are located.⁴⁵³ Loaded trucks drive from the mine to the storage facilities on average every 15 minutes.⁴⁵⁴ The transportation corridor, including the haul road and port site, is an area used by

⁴⁴² See Brenda Norrell, *Gold Mine Exploration Begins on Western Shoshone Lands*, INDIAN COUNTY TODAY (Jan. 26, 2005), available at <http://www.enm.com/biz.html?id=158> (last visited Mar. 8, 2005).

⁴⁴³ *Id.*

⁴⁴⁴ See Western Shoshone Defense Project, *supra*, n. 440.

⁴⁴⁵ See Brenda Norrell, *supra*, n. 442.

⁴⁴⁶ *Id.*

⁴⁴⁷ See Renate Domnick, *Shiny Gold-Poisoned Land* (Oct. 3, 2003), at <http://www.gfbv.it/3dossier/ind-nord/shoshon-en.html> (last visited Mar. 8, 2005).

⁴⁴⁸ See Western Shoshone Defense Project, *supra*, n. 440.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ See ACAT, *Red Dog and Subsistence: Analysis of Reports on Elevated Levels of Heavy Metals in Plants Used for Subsistence near Red Dog Mine, Alaska* (May 2004), at 5, available at http://www.akaction.org/REPORTS/Red_Dog_Report/ACATRedDogReportFinal.pdf (last visited Mar. 8, 2005).

⁴⁵² See ACAT Report at 8.

⁴⁵³ See ACAT Report at 5.

⁴⁵⁴ See ACAT Report at 6.

residents for gathering subsistence food.⁴⁵⁵ As a result, the residents of nearby villages face contamination from the dust containing lead, cadmium, and other heavy metals.⁴⁵⁶

Three Inupiaq Eskimo villages are in close proximity to the Red Dog Mine region, two of which suffer serious impacts. The village of Kivalina is located 50 miles southwest of the mine.⁴⁵⁷ Since most of the village's subsistence comes from animals and natural resources, toxic releases cause major health problems.⁴⁵⁸ The village's water supply and many animal species are found within the watershed of the mine and near the port.⁴⁵⁹ Since the mine opened, residents have noticed a serious decline in the quality of their drinking water as well as a decrease in the quantity of animals and fish.⁴⁶⁰ Point Hope is another village located 80 miles northwest of the mine.⁴⁶¹ The villagers there maintain cultural traditions dependent on the abundance of marine resources.⁴⁶² Because their water source is derived from the same watershed as the mine, their drinking water and fish populations are contaminated with lead and cadmium.⁴⁶³

Considering that subsistence activities are the central focus of the economy and culture of these indigenous communities,⁴⁶⁴ the villagers' rights to culture, clean air and water, health, life, and a healthy environment are infringed by the release of toxins from the mine. The Alaska Community Action on Toxins (ACAT), a non-profit public interest organization, is working in collaboratoin with the Inupiaq Eskimos to: eliminate the production and release of harmful chemicals; ensure community right-to-know; achieve policies based on the precautionary principle; and support the rights and sovereignty of indigenous peoples.⁴⁶⁵ Over the years, the villagers have expressed their concerns to Teck Cominco that discharges from the mine were polluting the village's drinking water and impacting fish populations, but never received a response. Consequently, they filed a suit in March 2004, asserting nearly 4,000 violations of permits issued under the U.S. Clean Water Act.⁴⁶⁶

⁴⁵⁵ See ACAT Report at 6.

⁴⁵⁶ See ACAT Report at 13.

⁴⁵⁷ See ACAT Report at 11.

⁴⁵⁸ See ACAT Report at 12.

⁴⁵⁹ See ACAT Report at 12.

⁴⁶⁰ See ACAT, *New Report Points to Red Dog Mine As Source of Lead and Other Toxins in Subsistence Foods* (June 9, 2004), available at http://www.akaction.org/Reports/Red_Dog_Report/Media_Release_Red_Dog.pdf (last visited Mar. 7, 2005).

⁴⁶¹ See ACAT Report at 12.

⁴⁶² See ACAT Report at 12.

⁴⁶³ See ACAT Report at 12.

⁴⁶⁴ See ACAT Report at 11.

⁴⁶⁵ See ACAT, *Who We Are*, at http://akaction.org/Who_We_Are.htm (last visited Mar. 7, 2005).

⁴⁶⁶ See ACAT Report at 12.

3) Yucca Mountain Project, Nevada

Since 1978, the U.S. government has been looking for a central site to store radioactive waste generated by nuclear weapon and atomic energy production. In July 2002, President George W. Bush approved the Department of Energy's proposal to construct a storage facility at Yucca Mountain, Nevada.⁴⁶⁷ In response to the Administration's decision, public interest groups and the State of Nevada have voiced opposition due to safety concerns. Environmental and human rights organizations are particularly concerned about potential environmental catastrophes that could occur during the transportation of nuclear materials from existing sites to Yucca Mountain. The Department of Energy has estimated that the proposed consolidation of nuclear waste currently stored in 128 separate locations will require 1 to 6 shipments a day for the next 24 years.⁴⁶⁸

The State of Nevada has attempted to derail the proposed nuclear waste storage facility through a series of lawsuits challenging the Department of Energy's proposal. Most recently, in July 2004, Nevada won a court decision that "invalidated a requirement that the [facility] be able to contain radioactive materials safely for at least 10,000 years, suggesting the period should be longer by possibly hundreds of thousands of years."⁴⁶⁹ Although the decision was a victory for opponents of the Yucca Mountain Project, representatives of the Department of Energy claim that the agency is exploring their options and plans to proceed with the construction of the facility.⁴⁷⁰

4) Oil Exploration in Alaska⁴⁷¹

Each proposal to drill in the Arctic National Wildlife Refuge's coastal plain carries with it a threat to the Gwich'in Nation's way of life. The coastal plain is home to over 250 species, including the 129,000-strong Porcupine Caribou herd, which uses the coastal plain as its spring calving and nursery grounds.⁴⁷² Numbering over seven thousand, the people of the Gwich'in nation depend on the Porcupine Caribou herd for their subsistence and culture.⁴⁷³ The Gwich'in use the caribou for "food, clothing, shoes, shelters, medicines, blankets, sleds, and tools."⁴⁷⁴ The Gwich'in Nation has been fighting this battle since the 1980s when oil corporations renewed

⁴⁶⁷ See Office of Civilian Radioactive Waste Management, *Yucca Mountain Project*, at <http://www.ocrwm.doe.gov/ymp/index.shtml> (last visited Mar. 9, 2005).

⁴⁶⁸ See 60 Minutes, *Yucca Mountain* (July 25, 2004), at <http://www.cbsnews.com/stories/2003/10/23/60minutes/main579696.shtml> (last visited Mar. 9, 2005).

⁴⁶⁹ See Steve Tetreault, *Yucca Mountain Decision: State Claims Court Win*, LAS VEGAS REVIEW JOURNAL (July 10, 2004) at http://www.reviewjournal.com/lvrj_home/2004/Jul-10-Sat-2004/news/24284768.html (last visited Mar. 9, 2005).

⁴⁷⁰ *Id.*

⁴⁷¹ This case study was included in the issue paper prepared for the Commission's 58th Session.

⁴⁷² See Drillbits and Tailings, *Gwich'in Peoples of Alaska Hang in the Balance of US Presidential Elections*, at http://www.moles.org/ProjectUnderground/drillbits/5_18/1.html (last visited Mar. 1, 2005); see also *Gwich'in Nation Official Internet Site*, at <http://www.alaska.net/~gwichin/background.html> (last visited Mar. 1, 2005).

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

their efforts to drill the ANWR's coastal plain. The Gwich'in stress that "this issue is about the basic inherent fundamental human rights of the Gwich'in to continue to live their ancestral way of life."⁴⁷⁵

In June 2004, U.S. Representative Richard Pombo proposed another bill to open the ANWR to oil exploration, but no further action was taken on the bill in the 108th Congress.⁴⁷⁶ On March 16, 2005, the U.S. Senate voted in favor of drilling in ANWR, making drilling in the Alaskan refuge far more likely than before. In order for drilling to take place, the Senate must pass a measure explicitly authorizing the opening of the wildlife refuge to drilling, which has previously been prohibited. The House of Representatives must also explicitly authorize drilling.⁴⁷⁷ Opposition to these measures is expected to be strong, especially by environmentalists and human rights advocates who oppose the idea of opening the ANWR to oil exploration because of the serious threats to wildlife and Gwich'in culture.⁴⁷⁸

IX. Central and South America

A. Argentina

1) Deforestation on Indigenous Lands

Argentina's soy revolution has created a major conflict between indigenous communities and governmental and corporate interests that stand to profit from using indigenous lands for soy production. In the case of the Wichi Indians, their land was considered worthless until recent advances in planting techniques and climate change brought more water to the region.⁴⁷⁹ Taking advantage of soaring land prices, in June 2004, the Argentinean government decided to sell the land on which the Wichi people had lived for thousands of years.

The Wichi Indians and their livelihoods are entirely dependent on the forest in which they live; they sell honey, wood products, and crafts made of vegetable fibers and seeds from the forest, and hunt there for subsistence.⁴⁸⁰ In 1995, the government classified approximately 25,000 hectares of land as a nature reserve, protecting the Wichi people from the agricultural expansion.⁴⁸¹ In 2004, the government stripped the reserve of its protected status and sold the

⁴⁷⁵ See *Gwich'in Nation Official Internet Site*, at <http://www.alaska.net/~gwichin/background.html> (last visited Mar. 1, 2005).

⁴⁷⁶ See National Council for Science and the Environment, *IB10111 - Arctic National Wildlife Refuge (ANWR): Controversies for the 108th Congress* (Dec. 15, 2004), at <http://www.ncseonline.org/NLE/CRS/abstract.cfm?NLEid=38549> (last visited Mar. 1, 2005).

⁴⁷⁷ See David Stout, *Senate Votes to Allow Drilling in Arctic Reserve* (Mar. 16, 2005), available at <http://www.nytimes.com/2005/03/16/politics/16cnd-arctic.html?ex=1111640400&en=387221dfca3a645e&ei=5070> (Mar. 18, 2005).

⁴⁷⁸ See North Alaska Environmental Center, *Arctic Wilderness Bill Reintroduced* (Feb. 3, 2005), at http://www.northern.org/artman/publish/Arctic_Wilderness_Bill.shtml (last visited Mar. 1, 2005).

⁴⁷⁹ See Hilary Burke, *Farmland Fight Moves to Isolated Argentine Woods* (Aug. 18, 2004), at <http://www.planetark.com/dailynewsstory.cfm/newsid/26639/story.htm> (last visited Mar. 7, 2005).

⁴⁸⁰ See Marcela Valente, *Sale of Nature Reserve Angers Longtime Residents* (Aug. 12, 2004), *on file with Earthjustice*.

⁴⁸¹ *Id.*

land to three main agribusiness interests.⁴⁸² The companies sent bulldozers through the forests, destroying everything in their paths.⁴⁸³ The Wichi are now forced to live on 10 hectares of land,⁴⁸⁴ although they require at least 2000 hectares to sustain themselves.⁴⁸⁵

The environmental and cultural impacts of deforestation constitute violations of the Wichi people's rights to subsistence, food, water, culture, and property.⁴⁸⁶ The community filed a lawsuit invoking indigenous rights to land, participation in the management of natural resources, and the right to live in a healthy environment. On behalf of the Wichi indigenous community, environmental groups have also filed legal claims, calling the sale of the reserve invalid for failure to consult the community as required by Argentina's Constitution. The case is currently pending in the judicial providence of Salta.⁴⁸⁷

B. Colombia⁴⁸⁸

1) Aerial Spraying Program

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 larger anti-narcotics initiative called Plan Colombia. In 2001 and 2002, the governments sprayed 86,070 and 125,738 hectares respectively,⁴⁸⁹ and between 2000 and 2004, they sprayed a total of 523,689 hectares.⁴⁹⁰ Modeling of spray drift by the U.S. Environmental Protection Agency indicates that the Plan Colombia spraying, as currently implemented, may kill native vegetation and adjacent food croplands of an area equal to that of the drug crops sprayed.⁴⁹¹

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

⁴⁸² See Marcela Valente, *Sale of Nature Reserve*; see also Planet Ark, *Farmland Fight Moves to Isolated Argentine Woods* (Aug. 18, 2004), at <http://www.planetark.com/dailynewsstory.cfm/newsid/26639/newsDate/18-Aug-2004/story.htm> (last visited Mar. 7, 2005).

⁴⁸³ *Id.*

⁴⁸⁴ See Marcela Valente, *Soy Crops Steadily Encroaching on Indigenous land* (June 4, 2004), available at http://www.globalecho.org/view_article.php?aid=480 (last visited Mar. 7, 2005).

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ See Marcela Valente, *Provincial Gov't Auctions Off Nature Reserve for Farming* (June 24, 2004), at <http://ipsnews.org/interna.asp?idnews=24363> (last visited Mar. 7, 2005).

⁴⁸⁸ This case study was included in the issue paper prepared for the Commission's 58th, 59th and 60th Sessions.

⁴⁸⁹ Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report* (Mar. 2005), available at <http://www.state.gov/g/inl/rls/nrcrpt/2005/vol1/html/42363.htm> (last visited Mar. 14, 2005).

⁴⁹⁰ *Id.*

⁴⁹¹ Report from EPA Administrator Johnson to US Secretary of State (Aug. 19, 2002) at 51.

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

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

In addition to the potential environmental and human health impacts caused by sprayings, indigenous and afro-Colombian peoples have not been invited to participate in a consultation process. In accordance with the International Labor Organization Convention 169, the Colombian government is obligated to consult with indigenous and tribal peoples when implementing activities that affect them directly.⁴⁹² In 2001, an Amazonian indigenous group responded to the government's failure to comply with consultation requirements by suing the responsible government agencies, including the president. In May 2003, the Colombian Constitutional Court issued its decision, upholding the group's right to consultation by requiring the agencies to consult indigenous peoples affected by the spraying program. Despite the court ruling, the government has yet to comply with the consultation requirements. Throughout 2004, aerial sprayings were conducted without prior consultation, affecting the indigenous Arhuacos, Koguis, and Kankuamos in the Sierra Nevada de Santa Marta,⁴⁹³ and afro-Colombian peoples in the Choco region.⁴⁹⁴

C. Ecuador

1) Groundwater Pollution in Amazon⁴⁹⁵

The Oriente region of Ecuador consists of 32 million acres of tropical rainforest, home to 95,000 indigenous people who are currently facing extinction due to the actions of an oil company.⁴⁹⁶ ChevronTexaco dumped some 18.5 billion gallons of toxic oil waste in the region between 1971 and 1992, and left behind large open pits of toxic waste.⁴⁹⁷ In November 1993,

⁴⁹² Convention concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 28 ILM 1382.

⁴⁹³ See Programa de las Naciones Unidas para el Desarrollo, *Histórico encuentro de la Comunidad Internacional con Indígenas de la Sierra Nevada de Santa Marta*, available at <http://www.pnud.org.co/noticias/Jun282004IndigenasSierra.htm> (last visited Mar. 14, 2005).

⁴⁹⁴ See *Las Fumigaciones en Choco* (Jan. 19, 2005), available at <http://www.codhes.org.co/dbreves2.php?breve=492&PHPSESSID=d0eb53c6219e85c09d7f031e9fc07ac4> (last visited Mar. 14, 2005).

⁴⁹⁵ This case study was included in the issue paper prepared for the Commission's 58th Session.

⁴⁹⁶ See Amazon Watch, *The Chevron-Texaco Toxic Legacy*, at <http://www.amazonwatch.org/amazon/EC/toxico/> (last visited March 1, 2005)

⁴⁹⁷ *Id.*

Oriente residents filed a class action lawsuit, *Aguinda v. Texaco*, in the U.S. District Court in New York under the Alien Tort Claims Act, requesting damages of at least \$1 billion.⁴⁹⁸ In 2000, U.S. District Judge Jed Rakoff granted Texaco's motion to dismiss on the grounds of *forum non conveniens* but required Texaco to submit to the jurisdiction of the Ecuadorian legal system. In August 2002, the Second U.S. Circuit Court of Appeals upheld the lower court's decision that ChevronTexaco must submit to Ecuadorian jurisdiction.⁴⁹⁹

The right to water is implicated in this historic case now being heard in the Superior Court of Lago Agrio in Ecuador over whether ChevronTexaco is responsible for \$6 billion to clean up toxic chemicals alleged to be polluting the groundwater of the Ecuadorian Amazon.⁵⁰⁰ Filed in October 2003, the suit claims that drilling by Texaco Petroleum polluted the soil and groundwater in 11,000 acres of the Ecuadorean Amazon from 1974 to 1990, when Texaco was the chief operator of Ecuador's oil industry.⁵⁰¹ While ChevronTexaco acknowledges that it deposited residual wastes from oil drilling, the company denies that it polluted the area and claims that a \$40 million mitigation program it completed in 1998 relieves it of any further responsibility for damage in the area.⁵⁰²

The court trial began in October 2003.⁵⁰³ On January 7, 2004, Dr. Efrain Novillo was elected as the new President of the Superior Court of Lago Agrio and shortly thereafter ordered judicial inspections to determine if the drinking water in the area was contaminated by Texaco oil operations.⁵⁰⁴ The inspections began in February 2004 at 122 sites in the Ecuadorian jungle and are still ongoing.⁵⁰⁵ In June 2004, ChevronTexaco demanded that Ecuador's state-owned oil company, Petroecuador, pay the fees and costs of defending the lawsuit.⁵⁰⁶

⁴⁹⁸ Amazon Watch, *The Chevron-Texaco Toxic Legacy*, at http://www.amazonwatch.org/amazon/EC/toxico/index.php?page_number=5 (last visited Mar. 1, 2005)

⁴⁹⁹ *Id.*

⁵⁰⁰ See Amazon Defense Coalition – Amazon Watch, *Press Release: The Chevron-Texaco Toxic Legacy* (Jan. 12, 2004), available at <http://www.texacorainforest.org/jan122004.htm> (last visited Feb. 26, 2005); see also T. Christian Miller, *Ecuador: Texaco Leaves Trail of Destruction*, LOS ANGELES TIMES (Nov. 30, 2003), available at <http://www.globalpolicy.org/socecon/tncs/2003/1130texacoecuador.htm> (last visited Feb. 26, 2005); Amazon Defense Coalition – Amazon Watch, *Press Release: The Chevron-Texaco Toxic Legacy* (Jan. 28, 2005), available at http://www.amazonwatch.org/amazon/EC/toxico/view_news.php?id=887 (last visited Feb. 26, 2005).

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.*

⁵⁰⁶ See *Chevron Demands that Petroecuador Pay Costs From Lawsuit*, REUTERS (June 16, 2004), available at http://www.enn.com/news/2004-06-16/s_24923.asp (last visited Feb. 26, 2005).

D. Peru

1) Camisea⁵⁰⁷

The Camisea Gas Field Project is an effort to build an infrastructure to extract and transport natural gas from the Camisea gas field in Peru to the Pacific Coast.⁵⁰⁸ The field has an estimated 8.7 trillion cubic feet of gas reserves and 600 million barrels of oil and liquid gas reserves. Project plans call for production of 400 million cubic feet of gas and 20,000 barrels of liquid petroleum per day to be transported by two trans-Andes pipelines to processing plants on the Pacific Coast. The international consortium responsible for the project has a 40-year concession to exploit gas and a 30-year concession to extract oil. The lengthy duration of this project is likely to guarantee ongoing environmental damage to delicate ecosystems and indigenous communities.⁵⁰⁹

Environmental and human rights groups concerned about these impacts celebrated a victory in August 2003, when the U.S. Export-Import Bank voted to deny financing for the Camisea project. The Bank rejected an application for a \$214 million loan guarantee on the basis that Camisea did not meet the Bank's environmental standards. Non-profit organizations and community organizers applauded the Bank's decision to deny U.S. taxpayer support of the massive overseas environmental destruction that this gas development project would cause.⁵¹⁰ However, a month later, the Inter-American Development Bank (IDB) approved financing, committing \$75 million in direct loans and \$60 million in syndicated loans for the project. By supporting Camisea, the IDB and other funders paved the way for the destruction of one of the world's most pristine rainforests and threaten the physical survival of isolated indigenous populations.⁵¹¹

Under scrutiny from civil society and indigenous organizations, IDB delayed the Camisea loans in March of 2004.⁵¹² Unfortunately, this presented only a small set-back for the pipeline project, which began operating in August 2004.⁵¹³

⁵⁰⁷ This case study was included in the issue paper prepared for the Commission's 59th and 60th Sessions.

⁵⁰⁸ See Planet Ark, *Peru's Camisea – Economic Boom or Environmental Bane?* (Dec. 4, 2002), at <http://www.planetark.org/dailynewsstory.cfm/newsid/18873/story.htm> (last visited Feb. 18, 2005); see also Amazon Watch, *The Camisea Natural Gas Project*, at <http://www.amazonwatch.org/amazon/PE/camisea/> (last visited Feb. 18, 2005).

⁵⁰⁹ See Amazon Alliance, *The Impacts of the Camisea Gas Project on the Isolated Indigenous Peoples of the Nahua Kugapakori Reserve*, at <http://www.amazonalliance.org/camiseaimpact.html> (last visited Feb. 12, 2005).

⁵¹⁰ See Project Underground, *Drillbits and Tailings: Camisea Gas Project Denied Funding by US Ex-Im Bank* (Sept. 4, 2003), at http://www.moles.org/ProjectUnderground/drillbits/8_06/2.html (last visited Feb. 15, 2005).

⁵¹¹ See Amazon Watch, *Inter-American Development Bank Blasted for Backing Risky Camisea Project in Peru* (Sept. 10, 2003), at http://www.amazonwatch.org/amazon/PE/camisea/view_news.php?id=721 (last visited Feb. 15, 2005).

⁵¹² See Amazon Watch, *Asociacion InterEtnica de Desarrollo de la Selva Peruana (AIDSESP) Amazon Watch – Environmental Defense* (Mar. 24, 2004), at http://www.amazonwatch.org/view_news.php?id=760 (last visited Feb. 14, 2005).

⁵¹³ See Institute of the Americas, *News and Events*, at <http://www.gotech.net/GoTouch/newsletter.cfm?ID=6769&PV=1#Section1> (last visited Feb. 14, 2005); see also

2) Lead Smelter in La Oroya⁵¹⁴

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.⁵¹⁵ Because lead inhibits neurological development, the thousands of children poisoned by the smelter will likely be impaired for life.⁵¹⁶ Despite these statistics, the company and government have failed to address the root cause of the problem – poor environmental controls at the smelter.⁵¹⁷

A broad coalition of NGOs is raising awareness of La Oroya's plight. As a result, a Peruvian congressman has called for legislation to declare the city a national health disaster area and require government action to reduce the hazard. Additionally, Peruvian environmental law organizations representing clients in La Oroya have filed suit to force the Ministry of Health to take action.⁵¹⁸ Independent assessments of the threat to human health are currently being conducted by the U.S. Centers for Disease Control and Prevention and the University of St. Louis.

Though Peruvian officials acknowledge the serious environmental and human health problem in La Oroya, the government is not acting to protect the thousands of citizens harmed by the contamination. Sacrificing the health of children to economic interests, the government recently responded to Doe Run's threats to close the smelter if forced to comply with contractual obligations to install environmental controls.⁵¹⁹ In December 2004, the Peruvian authorities issued a Presidential Decree, effectively postponing the deadline for Doe Run's compliance with the Environmental Management Plan, and thus delaying the installation of control technology necessary to protect public health in La Oroya.⁵²⁰

Tenaris, *Camisea Pipeline Starts Up* (Dec. 8, 2004), at <http://www.tenaris.com/comunes/view.asp?idarticulo=448&category=51> (last visited Feb. 14, 2005).

⁵¹⁴ This case study was included in the issue paper prepared for the Commission's 58th and 59th Sessions.

⁵¹⁵ 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) (Nov. 1999), *on file with Earthjustice*.

⁵¹⁶ Herbert Needleman et al., 332 *NEW ENG. J. MED.*, 83-88 (1990).

⁵¹⁷ See Earthjustice, *Urgent Cases: Peruvian Smelter Emits Toxic Pollutants*, at <http://www.earthjustice.org/urgent/display.html?ID=59> (last visited Mar. 18, 2005); see also AIDA, *Lead poisoning and the Doe Run lead smelter in Peru*, at <http://www.aida-americas.org/aida.php?page=laoroya&PHPSESSID=1d8879013bd13b7556a531a544e50e6b> (last visited Mar. 18, 2005).

⁵¹⁸ *Id.*

⁵¹⁹ See Peter Shinkle and Sara Shipley, *Doe Run says it can't clean up Peru smelter*, *ST. LOUIS POST-DISPATCH* (Dec. 29, 2004), *on file with Earthjustice*.

⁵²⁰ Supreme Decree 046-2004 (issued Dec. 23, 2004), *on file with Earthjustice*.

3) Tambogrande⁵²¹

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. 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.⁵²²

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 June 2, 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.⁵²³ Six months later the people of Tambogrande celebrated International Human Rights Day after learning they had received the Angel Escobar National Prize for "their defense of human rights, especially their right to a clean environment."⁵²⁴

Another victory followed in December 2003, when the Peruvian Ministry of Mining informed Manhattan Minerals that it had not complied with financial requirements, effectively terminating the project.⁵²⁵ Manhattan commenced arbitration proceedings in January 2004, claiming that Centromin, Peru's publicly-owned mining company, failed to follow the procedures spelled out in the option agreement in cases of alleged non-compliance. Until this procedure is put into effect, Manhattan argues that the company's rights under this agreement remain unaltered.⁵²⁶

⁵²¹ This case study was included in the issue paper prepared for the Commission's 59th Session.

⁵²² See Robert Moran, *An Alternative Look at a Proposed Mine in Tambogrande, Peru* (Aug. 15, 2001), available at http://www.globalminingcampaign.org/theminingnews/assets/pdf/tambogrande_eng.pdf (last visited Feb. 28, 2005); see also Amazon Financial Information Service, *Red List Risk Profile, Tambo Grande Mining Project*, available at <http://www.redlisted.com/tambogrande.pdf> (last visited Feb. 28, 2005).

⁵²³ See Oxfam America, *Tambogrande Speaks Out*, at <http://www.oxfamamerica.org/advocacy/art2763.html> (last visited Feb. 28, 2005).

⁵²⁴ See Oxfam America, *Tambogrande Wins Prestigious Human Rights Award*, at http://www.oxfamamerica.org/newsandpublications/news_updates/archive2002/art3929.html (last visited Feb. 28, 2005).

⁵²⁵ See No Dirty Gold, *Tambogrande Peru*, at http://www.nodirtygold.org/tambogrande_peru.cfm (last visited Feb. 28, 2005).

⁵²⁶ *Id.*

On February 9, 2005, Manhattan Minerals Corporation announced that it had served notice to discontinue the arbitration process for the Tambogrande property. Although Manhattan retains the right to refile its claim for ten years,⁵²⁷ this constitutes a major victory for the recognition of community and indigenous rights over multinational corporate interests.

E. Trinidad

1) Proposed Aluminum Smelter

In May 2004, Alcoa and the Government of Trinidad and Tobago signed a Memorandum of Understanding (MOU) for a low emission aluminum smelter.⁵²⁸ The South Trinidad Chamber of Commerce stated that “[t]his is an opportunity to showcase Trinidad as a leading industrialized nation,” while also acknowledging that “[a] project of this magnitude is bound to come with threats to the natural environment...in this instance the area is LaBrea, with two schools and Vessigny beach virtually on the doorstep of the Union Industrial Estate.” Alcoa claims that approximately 2,000 jobs will be created during the construction phase; however, during operation, only an estimated 600 permanent employees will be needed.⁵²⁹

Run-off water, pot lining waste from the plant, and fluoride emissions present potential harms to the citizens of Trinidad and neighboring countries. Alcoa has admitted that it will be “difficult to prevent excessive run-off water from leaving a smelter site during heavy rain,”⁵³⁰ which could create a substantial problem on a tropical island subject to heavy rainfall. Exposure to sodium aluminum fluoride – linked to central nervous system defects, cognitive brain defects in children and adults, and Alzheimer’s – is also a serious concern.⁵³¹ Additionally, families that have lived in LaBrea and neighboring cities since 1887 will be displaced,⁵³² violating their right to property and culture.

Local residents oppose the construction and operation of this smelter that stands to violate their rights to health, safety, water, and a healthy environment among others. In September 2004, Alcoa announced that it would begin an environmental impact assessment for the proposed aluminum smelters, promising to consult widely within the community throughout the process. Despite Alcoa’s assurances, opposition to the smelter project is gaining momentum. A local community member, Yvonne Ashby, has become chairperson for a newly formed group

⁵²⁷ See Money Sense, *Manhattan Discontinues Arbitration Process and Maintains Rights to Tambogrande Mining Project*, at http://www.moneysense.ca/news/shownews.jsp?content=20050209_200504_1_cnw_cnw (last visited Feb. 28, 2005).

⁵²⁸ See Alan Fein, *Alcoa Begins Environment Impact Assessment For Two Aluminum Smelters* (Sept. 13, 2004), available at http://www.axcessnews.com/environmental_091304b.shtml (last visited Mar. 7, 2005).

⁵²⁹ See Alcoa, *Environmental FAQs*, at http://www.alcoa.com/trinidad_tobago/en/environment/questions.asp (last visited Mar. 7, 2005).

⁵³⁰ *Id.*

⁵³¹ See Gar Smith, *Why Fluoride Is an Environmental Issue*, available at http://www.earthisland.org/ejournal/fluoride/fluoride_index.html (last visited Mar. 7, 2005).

⁵³² See Mark Meredith, *Smelter with Trimmings*, TRINIDAD AND TOBAGO EXPRESS, available at http://www.trinidadexpress.com/index.pl/article_features?id=63200496 (last visited Mar. 7, 2005).

of residents in Southern Trinidad who are directly impacted by the proposed smelter (Chatham/Cap de-Ville Environmental Protection Group, CEPG). Influential local politicians have also joined the effort to oppose the smelter.⁵³³

⁵³³ *Id.*

APPENDIX

CONSTITUTIONAL PROVISIONS RELATING TO ENVIRONMENTAL PROTECTION

1. Afghanistan

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

2. The Republic of Albania

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

3. The Republic of Algeria

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

4. The Principality of Andorra

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

5. People’s Republic of Angola

The 1992 Constitution provides that “all citizens shall have the right to live in a healthy and unpolluted environment.” Part II, Article 24(1). The Constitution directs the State to “take the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance.” *Id.*, Article 24(2). The Constitution further provides that “acts that damage or directly or indirectly jeopardize conservation of the environment shall be punishable by law.” *Id.*, Article 24(3).

6. Argentina

The 1994 Constitution provides that “all residents enjoy the right to a healthy, balanced environment which is fit for human development and by which productive activities satisfy current necessities without compromising those of future generations.” Part I, Chapter 2, Article 41. The Constitution directs the State to “provide for protecting this right, for utilizing natural resources rationally, for preserving the natural and cultural patrimony and that of biological diversity, and for providing environmental information and education.” *Id.*

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

7. Austria

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

8. The Republic of Armenia

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

9. The Azerbaijan Republic

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

10. The State of Bahrain

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

11. The Republic of Belarus

The 1996 Constitution provides that “everyone is entitled to a wholesome environment.” Section II, Article 46. The Constitution makes it the duty of the State to “preserve and restore the environment.” *Id.* The Constitution also establishes the right to “compensation for loss or damage caused by the violation of [the right to a wholesome environment].” *Id.* The Constitution prohibits the use of property in a manner “harmful to the environment.” *Id.*, Article

44. The Constitution further provides the right of the citizens to “receive, store and disseminate complete reliable and timely information . . . on the state of the environment.” *Id.*, Article 34.

12. Belgium

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

13. The Republic of Benin

The 1990 Constitution provides that “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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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”).

21. 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).

22. 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.

23. 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).

24. 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.*

25. 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.

26. 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.

27. The Federal Islamic Republic of the Comoros

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

28. 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.*

29. 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.*

30. 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.*

31. 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.

32. 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.

33. Democratic Republic of Congo (formerly Zaire)

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

34. 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.”

35. 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.

36. 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.

37. Equatorial Guinea

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

38. 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.*

39. 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.

40. 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).

41. 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.*

42. France

The amended 1958 Constitution includes an Environment Charter, which states that all French citizens have the right to live in a “balanced environment, favorable to human health.” Preamble. It further calls for the application of the precautionary principle in any circumstance that may pose irreparable harm to the environment. Additionally, the Charter enshrines several new principles, including polluter-pays and prevention, into national law and mandates their application in policymaking. *Id.*

43. 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).

44. 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.

45. 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).

46. 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.*

47. 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.*

48. 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.*

49. 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).

50. 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.

51. 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.

52. 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.

53. 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.*

54. 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).

55. The State of Kuwait

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

56. 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).

57. 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.

58. 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.

59. 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.*

60. 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.

61. 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.*

62. 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).

63. 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.*

64. Malta

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

65. 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.

66. 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.

67. 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).

68. 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).

69. 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.

70. 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.*

71. 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.

72. 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.

73. 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.

74. 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.*

75. Democratic People's Republic of Korea (North Korea)

The amended 1972 Constitution states that the government “shall adopt measures to protect the environment . . . , preserve and promote the natural environment and prevent environmental pollution so as to provide the people with a hygienic environment and working conditions.” Chapter 3, Article 57.

76. 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.*

77. 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.

78. The State of Palestine

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

79. 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.

80. 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.”

81. 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.*

82. 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.

83. 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.

84. 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.

85. 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).

86. Qatar

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

87. 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).

88. 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.

89. 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.

90. 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.

91. 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).

92. 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.

93. 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.

94. 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).

95. 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).

96. 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).

97. 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).

98. 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).

99. 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).

100. 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.

101. 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.

102. 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.

103. 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).

104. 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.

105. 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.*

106. 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.*

107. Turkmenistan

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

108. 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).

109. 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.*

110. 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.

111. The Oriental Republic of Uruguay

The amended 1966 Constitution declares that “the protection of the environment is of common interest.” Section II, Chapter II, Article 47. The Constitution provides that “persons should abstain from any act that may cause the serious degradation, destruction, or contamination of the environment.” *Id.* A 2004 amendment states that “water is a natural resource essential to life,” and that access to piped water and sanitation services are “fundamental human rights.”

112. 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.

113. 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.

114. 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.*

115. 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.

116. 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.*

117. 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.”