

Human Rights, Environment and Forestry

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Executive Summary

Violations of human rights are destroying the world forests and other natural resources. The fulfillment of human rights is a necessary condition to sustainable development in its many dimensions. This demands to place human rights at the center of forestry sector policies. In today's policy making, there is a large set of components that are essential to the jurisprudence and the public support for upholding Environmental Human Rights or the Right to the Environment.

For many years, the Bank has been dealing with issues of property rights. This is particularly the case in the forestry and water sectors. In addition, the experience with land reforms became a fertile ground to link issues of rights to productivity both in economic and social terms.

This note is divided into several parts. The first part addresses the fundamentals of existing jurisprudence to justify The Right To Environment (RTEn). The second part focuses on the most important human rights issues within the forestry sector. The third part makes reference to some country cases that illustrate the Right to Environment. The last part suggests a few policy and operational recommendations.

There are many ways in which the RTEn has been justified and has become increasingly justiciable.

It is important to briefly refer to the general arguments that have led to more sophisticated jurisprudence on this human rights. Herewith some considerations:

- First, the negative results, and the lack of progress made, regarding environmental improvements.

- Second, the need to address the collective significance of many individual human rights.

- Third, the market failures to yield the optimal form of rights allocations, management and control mechanisms (an issue of governance) for attaining environmental improvements.

- Fourth, the aim to reconcile the issues around property rights and knowledge in the context of natural resources, such as biodiversity resources.

- Fifth, society's ability to attain higher levels of human welfare and high values, such as freedom, depends on both the social and the environmental dimensions of human rights.

- Finally, the role played by ethical, moral and spiritual values is changing and there is a significant shift to mainstream those values in public policy making.

There is a large number of treaty provisions that we should have in mind when addressing the Right to Environment. Many of them have to do with the foundations of the RTEn itself, while others focus mainly on issues of remedies, participation and information as strengthening the case for a RTEn. There are many examples in the main text, some listed now: The Protocol on Environmental Protection on the Conservation of Antarctic Fauna and Flora (Madrid, 1991). The Framework Convention on Climate Change. Protocol to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage and the Protocol to amend the International Convention on Civil Liability for Oil Pollution Damage. The Convention on Biological Diversity. International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification.

Given the general issues outlined earlier, it is important now to get closer to the issues of jurisprudence. In doing so, one has to be aware that there are a number of different “layers” which exist in relation to fundamental elements of jurisprudence. First, some have defined the RTEn in the category of derived rights. This makes our understanding of the present debate more difficult, although making the connection with other human rights will in the end illustrate better the foundations of the right to a clean and safe environment. Because it is a derived human right, its jurisprudence is often linked to many other fundamental rights, examples of which are: right to life; right to an adequate standard of living; right to health; right to food; right to water; right to property; right to information; right to equality; right to

participation; right to cultural preservation and diversity; and the rights of indigenous peoples.

These are all human rights that have extensive jurisprudence and have clear justiciable elements associated to them. While there is no international agreement as to exactly what Environmental Human Rights are, they can be broadly grouped in three areas as: The right to a clean and safe environment; The right to act to protect the environment. The right to information, to access to justice, and to participate in environmental decision-making.

In addition to the above, it is important to capture also the debate linking environmental rights and The Right To Development (RTD). Environmental rights are becoming an integral part of the debate on the RTD because the debates on the latter are often about international economics, finance, globalization, and external effects affecting the abilities of countries to develop themselves. In this context, environmental issues, including forestry, are at the center stage of actions by others affecting the development of third parties, including issues of conservation and management as well as issues of economics and material betterment.

There are a number of issues associated directly to human rights in the forestry sector. Putting these issues in one place responds to the need to create, or raise awareness, of the sort of menu on which the NGOs and other critics are concentrating. These issues also define an important frontier of the possible operational activities the Bank may get involved into in the near future, including the possible benefits in enriching the

policy dialogue with some client countries. Herewith some of the most important issues we found in the literature review: Displacement of indigenous communities; Confiscation of land by TNCs; Persecution of environmental activists; Genetic contamination of local resources; Bio-piracy of traditional genetic resources; Strategic lawsuits against public participation (SLAPP); Illegal smuggling of resources, etc.

The literature brings about a large number of recommendations and lessons learned: Drawing attention to the importance of human rights in relation to forests; Training in human rights for forest activists; Company human rights database; Documenting human rights in forest areas; Regulating corporate behavior; Incorporating consideration of the power imbalance into consultation processes

Three important policy implications for the Bank. First, to carry out a comprehensive gap analysis. Second, the Bank needs to draft a position paper on environment, sustainable development and forestry. Third, the Forestry Team should organize a one-day seminar. Prior to this, the team may consider to design a training program for all those working in the forestry sector and associated activities within the Bank.

Human Rights, Environment and Forestry

Alfredo Sfeir-Younis¹²³

*“This we know: the earth does not belong
to man: man belongs to the earth...
Whatever befalls the earth, befalls the sons of
the earth. Man did not weave the web
of life: he is merely a strand in it. Whatever he
does to the web, he does to himself”
Chief Seattle*

Overview

The violations of human rights are destroying the world forests and other natural resources. The fulfillment of human rights is a necessary condition to sustainable development in its many dimensions. This demands to place human rights at the center of forestry sector policies.

In the context of socioeconomic development, two important

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² The author thanks Ms. Dessi Dimitrova, JPA, The World Bank, who collected, review and organized a significant amount of the material used in the drafting of this paper.

³ The author thanks Ms. Claudia Sobrevila, Senior Biodiversity Specialist, The World Bank, who collected some of the material on biodiversity and human rights.

sets of issues were brought to the fore front in the 20th Century: (a) environment in development sustainability and (b) human rights. As we enter into this new millennium, it seems that the ground is prepared for an organismic integration of these two themes; understanding its synergies and addressing the respective challenges. The two themes have a lot in common. More important, there is a significant set of components that are essential to the jurisprudence needed for, and a major public support to, upholding Environmental Human Rights or the Right to the Environment.

The theme of environmental rights is not short of controversies, both conceptually and in its application and implementation. Some of these will be outlined below.

For many years the Bank has been dealing with issues of property rights. This is particularly the case in the forestry and the water sectors. In addition, experience with land reforms has been a fertile ground to link issues of rights to productivity both in economic and social terms. More recently, the Bank's work with indigenous and other minorities has heightened the many human rights issues we face in development programs and projects. A

good example is that of the extractive industries. Finally, there are significant number of Bank-financed operations that are facing issues of human rights, including forestry, environment, land, and other natural resources. While the Bank as an institution may not be implicated directly, these human rights issues are clearly influencing the performance of those projects and have the potential to damage the Bank's reputation as an institution.

The potentially negative levels of reputational risks is one of the most powerful reasons for many development institutions and private sector actors to get more involved into the issues of human rights.

Within the context of the RTEn the situation is more complex, as one deals with straight forward issues of civil and political rights as well as economic, social and cultural rights, the Right To Development and, finally, those rights related the environment (as free standing).

This short note was prepared in response to a request by the World Bank Forestry Team. While not being fully comprehensive, this note touches upon a good number of the fundamental issues

involved which, later on, could be used as a way to propose or define relevant policy, institutional and operational actions in forestry and the environment, in general. The human rights issues in forestry and the environment have (and will have) major implications for the Bank and other economic development institutions.

The note is divided into several parts.

-The first part addresses the fundamentals of existing jurisprudence –the legal foundations-- and the most important reasons that are often used to justify The Right To Environment. It was of interest to dig into the conceptual and practical dimensions of this jurisprudence, in order to identify the major synergies that exist between human rights and sustainable development, with special emphasis on forestry and environment¹.

-The second part focuses on the most important human rights issues within the forestry sector. This section brings some specificity to the international debate on forestry and human rights and suggests a menu of possible themes for research and sector work. The issues go beyond the relationships between

human rights and environment.⁴

-The third part makes reference to some country cases that illustrate how the Right to Environment is now considered justiciable, without pretending to be comprehensive. This initial review of cases may open a few doors for a more comprehensive review of country situations, where the Bank may decide to be involved.

-The last part suggests a few policy and operational recommendations.

This note should be considered only as an initial phase of an exercise that requires much more time and resources than those allocated to this present effort. Also, in the literature one finds a lot of legal-based material that has been collected and published in several books. This material tends to be a little bit dispersed and, at times, unfocused.

Therefore, this note only brings to the fore front what was believed to be essential to illustrate the importance of the Right To Environment (RTEn) for the Bank, as a critical linkage between

⁴ This distinction is made as there is a lot of material on a large number of sustainable development issues (e.g., biodiversity, desertification, marine fisheries, land, air, water). These are all interconnected and mutually reinforcing.

what the Bank does on environment proper (of course, including forestry) and its social policies and practices. This linkages are important as human rights are 'right' towards people, as distinct from "property rights' or other forms of rights.⁵

The Right To Environment: Basic Framework

This section tries to identify the most important threads and lines of argument that make the RTEn a human rights.

There are many ways in which this human rights have been justified (its jurisprudence) and, in some cases, made this human rights justiciable (i.e., to allow those affected to sue the Governments or make legal claims with or in relation to other development actors). These considerations are increasingly important to be able to find the linking arguments and instruments in relation to what the Bank does in economic and social development (forestry included), and to find a common framework in relation to the thinking and practice of sustainable development.

1. Some General Considerations. It is important to briefly refer

⁵ The term 'rights' is much more encompassing than the term 'human rights'. For example, 'rights' would include property rights, animal rights, and in our case environment or ecological rights. 'Human rights' are those rights we have because we are humans. When addressing issues of human rights, the emphasis is on our human interactions (person to person, or in relation to other groups in society), rather than on our environmental interactions. As presented later on in this note, some of the major critics to the existence of the RTEn is exactly this rather biased anthropomorphic approach to human rights.

to the general arguments that have led to more sophisticated jurisprudence on human rights. Herewith some considerations:

First, the negative results, and the lack of progress made, regarding environmental improvements. It is interesting to note that, more often than not, it is the negative results of development (particularly those persistent ones and those that are difficult to reverse with existing instruments), the ones that move public policy and public opinion towards the consideration of a human rights. The arguments get even stronger when these negative impacts create negative externalities, degrade a public good or generate a public bad.

As the public realizes the traditional social and economic instruments and practices are not yielding the expected results in human betterment and welfare, the tendency has been to strengthen the “normative apparatus” as a compensating mechanism. This is why we are witnessing an increased number of legal suits that are related to the environment in many ways. I have been following one in Italy, in the Mountains of Northern Italy, where someone is constructing a large parking lot while the neighbors are suing under the argument that this parking

lot will accelerate water runoff and, thus, affect downstream users of that watershed.

Second, the need to address the collective significance of many individual human rights. Given that many of the human and social interactions are intimately intermingled with environmental interactions, the environment, forestry and other natural resources have become the center stage of new collective human rights. Many of the constitutions have been modified around the world to control and manage the allocation of private individual rights as they affect collective rights. Thus, someone may own a given forest but the law may, in many cases now, stop the exploitation of that forest if it is seen as a medium of human interaction. The same applies to the use of fertilizers and pesticides on the land and there are many more examples in the case of water allocation, use and management. Thus, collective concerns have brought to bear collective norms. And collective norms have brought to bear collective human rights. There is a vast amount of literature on how 'his or hers rights are to be modified by our rights'. Globalization, and the interdependence we experience today at all levels (economic, social, and ecological), have brought new challenges in the

domain of the collective.

Third, the market fails to yield the optimal form of rights allocations, management and control mechanisms (an issue of governance) for attaining environmental improvements. There is a good example that is commonly known as “The Tragedy of the Commons”, where the inappropriate allocation of rights among potential and actual users leads to the total depletion of a forest or any other natural resource. This is the type of cases that economists and policy makers have used to justify the need for public sector interventions. In many ways, this tragedy of the commons also happens in the case of civil and political rights, like was the case of the genocide in Rwanda. The existing governance mechanisms failed to protect the minorities.

Fourth, the aim to reconcile the issues around property rights and knowledge in the context of natural resources, like biodiversity resources. The many debates on environmental rights often happen around the subsidiary products of the forest in relation to people (including indigenous peoples) who have claims over those resources. One of them is that of knowledge and thus, a whole debate in the World Trade Organization (WTO)

on property rights over indigenous knowledge and the trade of pharmaceuticals. But there are other examples.

Fifth, the society's ability to attain higher levels of human welfare and high values, such as freedom, depend on both the social context –the social dimensions of human rights–and the environmental context as well. This has raised a rather interesting controversy as the first concentric influence is seen by many as too anthropomorphic. In particular, it presumes that the assignment of rights is only in relation to human beings and it does not see equal intelligence and equal value in nature (as free standing). This view has been heavily modified lately as there is a much better understanding of how the laws of human transformation are the same as those of nature's transformation. These issues have opened the doors for another interesting debate against the RTEn, as we see many groups defending indigenous and the local populations, against a pristine definition of ecological rights. This is an issue that comes up very often in the context of defining and managing national parks and protected areas.

Finally, the role played by ethical, moral and spiritual values is changing and there is a significant shift to mainstream those

values in public policy making. These values permeate many of the debates on forestry conservation, environment and development sustainability in general. One important theme running through the above considerations is that of the rights of future generations. Whether human rights must protect the living standards of those who will live in this Planet several generations from now. One example is the Earth Charter. Not an easy subject matter to tackle as it gets in to areas of great controversy.

II. Who Says “What” At The International Level.

In 1994, the UN established a Special Rapporteur on Human Rights and the Environment who prepared a report that brought attention to the connection between human rights and environmental issues. Although a lot of work had been done since the 70s, the first formal international meeting on Human Rights and the Environment took place in January 2001 when 20 human rights and environmental law experts were called on by the UN to debate ways on bridging environment and human rights.

There are a large number of treaty provisions that we should have in mind, not with the view to become experts but with the view to have these sites as a source of information and knowledge enhancing. Many of them have to do with the foundations of the RTEn itself while others focus mainly on issues of remedies, participation and information.

Let us list them with one sentence or two on what they add to the international debate.⁶

-1. The Protocol on Environmental Protection on the Conservation of Antarctic Fauna and Flora (Madrid, 1991). According to Article 5, the Parties shall prepare and make available information setting forth and providing lists of Specially Protected Species and relevant protected Areas to all those persons present or intending to enter the Antarctic Treaty area

-2. The Framework Convention on Climate Change (June 4, 1992), Article 4(1)(i) obliges Parties to promote public awareness and to “encourage the widest participation in this process including that of non-governmental organizations.”

⁶ The list has been drawn from Professor Dinah Shelton's paper on “Human Rights and Environmental Issues in Multilateral Treaties Adopted Between 1991 and 2001”. Background Paper No 1. Joint UNEP-OHCHR Expert seminar on Human Rights and the Environment. January 14-16, 2002. United Nations. Geneva.

-3. Protocol to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage and the Protocol to amend the International Convention on Civil Liability for Oil Pollution Damage (London, November 27, 1992) extend the provisions of the 1969 conventions that aim to provide remedies for those who suffer harm from oil pollution damage.

-4. The Convention on Biological Diversity refers in its preamble to the general lack of information and knowledge regarding biological diversity and affirms the need for the full participation of women at all levels of policy-making and implementation. Article 13 calls for education to promote and encourage understanding of the importance of conservation of biological diversity. Article 14 provides that each contracting party, as far as possible and as appropriate, shall introduce appropriate environmental impact assessment procedures and where appropriate allow for public participation in such procedures.

-5. International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (Paris, June 17, 1994) contains numerous

provisions on environmental rights, including in the Preamble, Article 10(2)(e), 13(1)(b), 14(2)(19) and 25. The Convention goes furthest among recent treaties in calling for public participation, embedding the issue throughout the agreement.

-6. The IAEA Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management is based to a large extent on the principles contained in the IAEA document “The Principles of Radioactive Waste Management.” The Preamble of the treaty recognizes the importance of informing the public on issues regarding the safety of spent fuel and radioactive waste management.

-7. The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (London, May 3, 1996) is similar to the Convention on Liability for Oil Pollution Damage. It ensures a remedy for those injured by damage, imposes a mandatory insurance requirement, and establishes limits on liability and a compensation fund.

-8. Article 32 of the UN Convention on the Law of the Non-navigational Uses of International Watercourses (New York, May 21, 1997) concerned with the freedom from discrimination in respect to remedies. It says that watercourse States shall not discriminate on the basis of nationality or residence or place when the injury occurred, in granting to persons who suffered or are under a serious threat of suffering significant transboundary harm.

-9. On September 12, 1997, a Joint Protocol to amend the **Vienna Convention on Civil Liability for Nuclear Damage (21 May 1963)** and the **Paris Convention on Third Party Liability in the Field of Nuclear Energy (29 July 1960)** as amended, updated the provisions imposing civil liability on owners or operators of nuclear facilities and providing remedies for those injured as a result of nuclear incidents.

-10. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (September 10, 1998). Article 15(2) requires each state party to ensure, “to the extent practicable” that the public has “appropriate” access to information on chemical

handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III to the Convention.

-11. Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal, January 29, 2000), Art. 23 concerns public awareness and participation, requiring the Parties to facilitate awareness, education and participation concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking into account risks to human health.

-12. Article 10(1) of the Convention on Persistent Organic Pollutants (Stockholm, May 22, 2001) aims at “protecting human health and the environment from persistent organic pollutants.” The treaty provides that each Party shall, within its capabilities, promote and facilitate provision to the public of all available information on persistent organic pollutants and ensure that the public has access to public information and that the information is kept up-to-date (Art.10 (1)(b) and (2)).

-13. The Espoo Convention on Environmental Impact Assessment in a Transboundary Context, adopted February 25, 1991 during preparations for the Rio Conference, guarantees non-discriminatory public participation in environmental impact procedures”

-14. Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes (Geneva, November 18, 1991), Article 2(3)(a)(4).

-15. The treaty system established by the Convention concerning the Protection of the Alps adopted in Salzburg on November 7, 1991 and complemented by nine protocols, contains broad guarantees of public information.

-16. The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, March 17, 1992) provides considerable detail about procedures of information and is virtually unique among watercourse agreements in doing so. It declares that information on the conditions of transboundary waters, measures taken or planned,

to prevent, control and reduce transboundary environmental impact, and the effectiveness of those measures, shall be made available to the public at all reasonable times for inspection free of charge.

-17. The Convention on Transboundary Effects of Industrial Accidents (Helsinki, March 17, 1992), was the first international treaty to contain the three procedural environmental rights: information, participation and access to remedies (Art.9).

-18. Convention for the Protection of the Marine Environment of the Baltic Sea (Helsinki, April 9, 1992), Article 17. The Convention also provides for the protection of information “related to intellectual property including industrial and commercial secrecy”.

-19. Convention on the Protection of the Black Sea against Pollution (Bucharest, April 21, 1992) contains a rare provision on remedies. Its article 16 specifies that each Contracting Party shall adopt rules and regulations on the liability for damage caused by natural or juridical persons and shall ensure that recourse is available in accordance with their legal systems for

prompt and adequate compensation or other relief for damage caused by pollution of the marine environment of the black Sea. (Art. XVI).

-20. Convention for the Conservation of the Biodiversity and the Protection of Wilderness Areas in Central America (Managua, June 5, 1992). Article 6 calls for stimulating knowledge about biological diversity in the region, while Article 7 calls for recognition and support for the knowledge, practices and technological innovations developed by native groups in the region which contribute to the sustainable use and conservation of biological resources.

-21. Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, September 22, 1992). Article 9 requires the contracting parties to ensure that their competent authorities are required to make available relevant information to any natural or legal person, in response to any reasonable request, without the person having to prove an interest, without unreasonable charges and within two months of the request.

-22. Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano, June 26, 1993). The primary focus of the Convention is on providing access to remedies for environmental harm. Broad standing is provided to environmental organizations to seek the prohibition of an unlawful activity that poses a grave threat of damage to the environment and to seek orders against operators in order to prevent or mitigate damage.

-23. North-American Agreement on Environmental Co-operation (Washington, D.C., September 13, 1993) Art. 2(1)(a), 14. Also known as the NAFTA side agreement, the treaty contains institutional arrangements for public participation. It creates a permanent trilateral body, the Commission for Environmental Cooperation, composed of a Council, a Secretariat and a Joint Public Advisory Committee (Article 8).

-24. Convention on Co-operation and Sustainable Use of the Danube River (Sofia, June 29, 1994). Article 14 requires the Contracting Parties to ensure that their competent authorities are required to make available information concerning the state or the quality of riverine environment in the Danube Basin to any

natural or legal person, with payment of reasonable charges, in response to any reasonable request, without that person having to prove an interest, as soon as possible.

-25. Energy Charter Treaty (Lisbon, December 17, 1994), Art. 19(1)(i) and 20, EMuT, 994:93. Article 19(1)(f) calls on parties to promote public awareness of the Environmental Impacts of energy systems, of the scope for the prevention or abatement of their adverse Environmental Impacts, and of the costs associated with various prevention or abatement measures.

-26. Amendments to the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona, June 10, 1995), Art.15, 16 and 17. Article 15 concerns public information and participation. It requires the Contracting Parties to ensure that their competent authorities appropriate access to information on the environmental state in the field of application of the Convention and the Protocols, on activities or measures adversely affecting or likely to affect it and on activities carried out or measures taken in accordance with the Convention and the Protocols.

-27. Inter-American Convention for the Protection and Conservation of Sea Turtles (Caracas, December 1, 1996). Article 4(2)(g) provides that the appropriate and necessary measures that each Party shall take, “in accordance with international law and on the basis of the best available scientific evidence, for the protection, conservation and recovery of sea turtle populations and their habitats”

-28. Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, (Barcelona, June 19, 1995). Article 19, on publicity, information, public awareness and education was added in 1995 to the original 1982 agreement.

-29. The Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, (Aarhus, June 25, 1998), signed by thirty-five States and the European Community, takes a comprehensive approach. The Preamble 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.” The Aarhus Convention obliges states

parties to collect and publicly disseminate information, and respond to specific requests.

-30. A Protocol on Water and Health to the Helsinki Watercourses Convention, adopted in London on June 17, 1999, details in Article 10 the required content of public information. The objective of that Protocol is to promote the protection of human health and well-being at all appropriate levels, nationally as well as in transboundary and international contexts. See also Art. 5(i).

-31. The Council of Europe Convention on the Protection of the Environment through Criminal Law (Strasbourg, November 4, 1998) provides that each Party may “declare that it will, in accordance with domestic law, grant any group, foundation or association which, according to its statutes, aims at the protection of the environment, the right to participate in criminal proceedings concerning offences established in accordance with th[e] Convention.” (Art. 11).

-32. The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (September 5, 2000, 40 I.L.M. 278 (2001)) adopts a participatory approach to fish stock management in the region. Article 21, entitled “transparency” calls on the Commission created to “promote transparency in its decision-making processes and other activities.”

-33. The Convention on the Rights of the Child (New York, November 20, 1989) refers to aspects of environmental protection in respect to the child’s right to health. Article 24 provides that States Parties shall take appropriate measures to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.” (Art. 24(2)(c).

-34. ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Geneva, June 27, 1989) contains numerous references to the lands, resources, and environment of indigenous peoples. Article 2 provides that actions respecting indigenous peoples shall be developed with

the participation of the peoples concerned.

-35. The African Charter on Human and Peoples' Rights, (Banjul June 26, 1991) contains several provisions related to environmental rights. Article 21 provides that "All peoples shall freely dispose of their wealth and natural resources" and adds that this right shall be exercised in the exclusive interest of the people."

-36. Article 11 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (San Salvador, November 17, 1988), is entitled: "Right to a healthy environment." It proclaims: Everyone shall have the right to live in a healthy environment and to have access to basic public services and The States Parties shall promote the protection, preservation and improvement of the environment.

-37. The European Convention on the Exercise of Children's Rights (Strasbourg, January 25, 1996) aims at ensuring access to information and participation of children in decisions relevant to them, as well as appropriate remedies. Arts. 1, 3.

For most people addressing the debate on human rights and the environment, a sub-sample of declarations, statements or treaties are often in their minds. In particular, one would hear references, for example, on:

- the Resolution of the General Assembly of the United Nations of 1968, which makes explicit reference to the role of the quality of the human environment on the quality of life of people;

- the 1972 Declaration of Stockholm, which was a direct result of the First Conference on Development and Environment;

- the Hague Declaration which makes reference to the linkages between the Right to Life and the quality of the human and natural environment;

- the General Assembly of the United Nations declaration in 1990, which said that people are entitled to live in an environment that is healthy and appropriate for their well-being;

- the Resolution of the Commission on Human Rights specifically on human rights and the environment (first time!); (f) The Rio Declaration of 1992 which was the result of the Second

Conference on Development and Environment;

- the OECD Declaration as regards the Right To Environment as a fundamental rights (“live in a decent environment”);

- the United Nations Economic Commission for Europe where the issue of protection of the environment and forests for both the present and future generations (interesting comment on the rights of those who do not exist yet!); and

- the several statements made by the Council of Europe and the European Union.

III. The Fundamentals of Jurisprudence.

Given all the antecedents outlined above, it is important to get closer to the issues of jurisprudence. As such, this section is rather dry. One reason is that, by necessity, it has to address theoretical and rather academic issues that become very important when the Bank eventually decide to establish a coherence statement of position on forestry and human rights.

In addressing this theme, one has to be aware of a number of

different layers existing in relation to what one can say about the fundamental elements of jurisprudence. The first layer of jurisprudence is constituted either by cases (see a later section of this paper) or international agreements, conventions and policy decisions –like the ones listed in the previous section-- that become the source of international behavior by the states or the citizens of those states.

In terms of these institutional instruments (formal and informal), the foundations of human rights jurisprudence on the environment and forestry is very fertile and diverse. While it will not be possible to list each and everyone of these instruments, an attempt is made here focus on a good sample of these and add a sentence or two explaining their net contributions.

Let me start by saying the environmental rights are, for the moment, derived rights. This makes the debate rather difficult, although the connection with other rights illustrate better some of the foundations of the right to a clean and safe environment.

Its jurisprudence is linked to many other fundamental rights, examples of which are:

-right to life –people will not be able to live if the natural environment is destroyed;

-right to an adequate standard of living –the environment is a major source of human betterment and material welfare;

-right to health –a dirty environment implies diseases and illnesses that decrease human wellbeing;

-right to food –the production of basic foods comes mainly from land, water, and other natural resources and, thus, to destroy the environment will create hunger and famines;

-right to water –as in the other natural resources, humans cannot live without clean and safe water;

*-right to property*⁷ –this is an essential right in relation to the way in which natural resources are accessed, allocated, managed

⁷ There are some interesting statements made in the context of indigenous peoples, showing the fact that human rights are clearly indivisible. Under CERD, states parties are obligated, inter alia, to respect and observe the right to “own property alone as well as in association to others” (article 5 (d)). In a 1997 general recommendation, CERD elaborated on state obligations and indigenous rights under the Convention (CERD 1997).

and controlled;

-right to information –it is essential to inform the public of the hazards and negative externalities caused by the progressive deterioration of the environment or the depletion of natural resources (e.g., biodiversity);

-right to equality –this has to do with issues of burden in terms of both who is affected by a deteriorated environment (ozone layer depletion, global warming, depletion of Amazon) and who is to bear the cost of abatement or of implementing a comprehensive precautionary principle-based development strategy;

-right to participation –as the natural resources in the ultimate, belong to the human collective, or have clear collective dimensions, the participation of potential beneficiaries or those who will be affected by changes in environmental quality, participation is seen as an essential right;

*-right to cultural preservation and diversity*⁸—the environment is an essential component of cultures and their capacity to

⁸ This is also linked to the rights of indigenous peoples, as presented immediately below. But some important statements must be acknowledged: that indigenous peoples should not be denied the right, in community with the other members of their group, to enjoy their own culture. This has been interpreted to include: “ the right of persons, in community with others, to engage in economic and social activities which are a part of the culture of community in which they belong” which means that indigenous’ people’s subsistence finding and other economic activities is an integral part of their culture.

survive in this age of globalization and, thus, the connections between the quality of the environment and culture (there are other dimensions); and

*-the rights of indigenous peoples*⁹ –the ancestral nations who actually have protected and maintain the Earth resources for thousands of years are to participate and heard, and their rights protected, respected, and realized¹⁰.

These are all human rights that have extensive jurisprudence and, in most cases, have clear justiciable elements associated to them. Attempts to link human rights and the environment have been made for a number of years.

While there is no international agreement as to exactly what Environmental Human Rights are, but they can be broadly grouped in three areas as:

-The right to a clean and safe environment. These are ‘substantive’ rights. They are the most basic rights, and the hardest to define.

Many organizations would support the idea that “clean water

⁹ the rights of the indigenous people address 3 other rights: the right to self-determination, the right to enjoy one’s own culture, the right to have equal rights in society and the right to property.

¹⁰ ILO: Convention # 169 & #107 explicitly focuses on the rights of indigenous people (the only such international conventions). Its art. 7 states that: “ the people concerned shall have the right to decide their own properties for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the land they occupy or otherwise use”

and food security” are “basic human rights”.

-The right to act to protect the environment. This right is inherent in the UN Declaration and associated Conventions, through the right to organize and to free assembly.

-The right to information, to access to justice, and to participate in environmental decision-making. These rights enable citizens to play an active part in creating a healthy environment, and they are directly linked to the key points in several UN Conventions and Declarations. In Europe these rights are enshrined in the UNECE ‘Aarhus Convention’ (the European Convention on Access to Information, Public Participation and Access to Justice in Environmental Decision-Making). Other regions will need to consider how best to deliver these rights within local circumstances.

In terms of chronology, initially the environment and human rights occupied two different spheres in international law. Then, the right to health and the right to life were the first rights identified as core rights linking human rights and the environment. Major human rights landmarks were the 1948 Universal Declaration

on Human Rights and the 1966 Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights, while the major environmental landmarks were the 1972 Stockholm conference and the 1992 Rio Conference. The international community later recognized that all human experience takes place within the biosphere.

Initially, most environmentalists tried to use the existing human rights legislation to protect the environment, such as the 'Right to Life', defined by article 2 of the European Convention on Human Rights which states that "everyone has a right to life protected by law" but this has not been sufficient. Therefore, as early as 1972, international agreements, such as the resolution from the Stockholm Conference listed above have tried to establish an explicit human rights environmental links and laws. Today, according to the Northern Alliance for Sustainability, almost sixty nations have constitutions or pieces of legislation intended to ensure the right to healthy environment (e.g., the Argentina constitution recognizes the right to a healthy and suitable environment since 1994).

In 2001-2002, the Organization of American States (OAS) passed

two resolutions related to human rights and the environment. An important forum in the Americas for the promotion of human rights and the environment is the Inter-American Commission on Human Rights. In 2001, for the first time, the Inter-American Court on Human Rights recognized explicitly the link between human rights and the environment in the Awas Tingni case.

In January 2002, UNEP and the UN High Commission for Human Rights organized the first joint seminar on this subject – this was a ground-breaking event that led to better understanding of the links between human rights and the environment. This meeting followed the Earth Summit in Rio in 1992, which marked the first time that official recognition was made of the link between environment and development. However, the World Summit on Sustainable Development (WSSD) held in Johannesburg in August 2002, rather than moving forward, focused on ensuring commitment to old goals.

Historically there has been a division between procedural and substantive rights.

A procedural approach to environmental rights focuses on the

rights to participation, information and remedy. International instruments that have guaranteed these rights of participation include the environmental side agreement to NAFTA, the Aarhus Convention, the 1997 Charter of Civil Society for the Caribbean Community, and the 2000 Inter-American Strategy. In terms of substantive rights, the particular situation of indigenous peoples is essential highlighting their special spiritual and physical links to their environments. Any assault on the environment affects their cultural and physical integrity and violates their right to life, land, and culture, and offered specific jurisprudence in the Americas.

Environmental Rights and The Right To Development (RTD). There is a very strong connection between the debate on environmental rights and the RTD. Most of the debates on the RTD are about international economics, finance and globalization. In this context, environmental issues, including forestry are at the center stage, including issues of conservation and management as well as issues of economics and material betterment.

Many developing countries are building a stronger line of argument. This begins with the empirical fact that present

models of growth and development create unsustainable situations via production or consumption. The present model is mainly led by developed nations. As a result, developing countries are facing a large number of issues and, some claim, cannot develop. Thus, deterioration in the natural environment is causing serious violations in the RTD. More and more cases, including the impacts that trade has on human rights, are creating the basis for both jurisprudence and justiciability of the RTEn.

This connection between RTEn and RTD brings about a series of macroeconomic coherence-related issues, as these affect sustainable development in most countries. It also heightens the importance of structural adjustment operation and debt relief in relation to public expenditures that should go (advocates say) to fulfill the RTEn. The newly conceived environmental adjustment loans must also be assessed and reviewed in light of the above mentioned situations.

IV. National Jurisprudence Upholding Environmental Rights:

Numerous constitutions of the nations of the world guarantee a right to a clean and healthy environment or a related right.

According to EarthJustice research, of the approximately 191 nations in the world,²¹⁰ there are now 109 national constitutions that mention the protection of the environment or natural resources. One hundred of them recognize the right to a clean and healthy environment and/or the state's obligation to prevent environmental harm. Of these, 53 constitutions explicitly recognize the right to a clean and healthy environment, and 92 constitutions make it the duty of the national government to prevent harm to the environment. Fifty-four constitutions recognize a responsibility of citizens or residents to protect the environment, while 14 prohibit the use of property in a manner that harms the environment or encourage land use planning to prevent such harm. Nineteen constitutions explicitly make those who harm the environment liable for compensation and/or remediation of the harm, or establish a right to compensation for those suffering environmental injury. Sixteen constitutions provide an explicit right to information concerning the health of the environment or activities that may affect the environment¹¹. Further detail on each constitutional provision for all 109 abovementioned countries can be found in Annex III of this paper.

¹¹ This research was conducted by EarthJustice and published in a paper for the 60th session of the United Nations Commission on Human Rights:
<http://www.earthjustice.org/regional/international/2004UNreport.pdf>

Human Rights and Forestry: Issues At A Glance¹²

There are a number of issues on human rights in the context of the forestry sector. The idea to put these issues in one place responds to the need to create or raise awareness of the sort of menu NGOs and other critics are concentrating on. In addition, the list of issues provide an important frontier of the possible operational activities the Bank may get involved into in the near future. This benefit is in addition to the possible enrichment of the policy dialogue with some client countries.

It is also important to note that there are many Bank operations fraught with human rights issues, some include forestry (e.g., Cambodia). In a recent Bank-led review of the literature on private sector and human rights, based on the internet and direct interviews with the largest and most prominent human rights NGOs, there is a long list of Bank-financed projects that are crowded with human rights concerns. Some have even reached courts around the world.

Herewith the seven most important issues found in the literature reviewed here:

¹² Clearly, a thorough review of Forestry Operations will expand the list of issues summarized in this paper. This maybe a follow up activity on this paper.

-Displacement of indigenous communities. There is a great deal of debate on the issue of indigenous peoples' human rights and the environment, or the ecological foundations of environmental rights. As stated earlier, some of the critics of human rights as opposed to environmental rights is their anthropomorphic biases.

These are the trigger for the expansion and promotion of values that have been responsible for the environmental degradation we see around the world. One of this values is that of individual property and freedom in light of the collective challenges faced by environmental degradation and biodiversity depletion. On the other hand, it is essential that there be some anthropomorphic content in human rights and environmental rights. In the end, the pursue of any rights, including human rights, is human transformation and betterment.

Thus, one find two literatures ion the RTEEn: one that is all around creating this right and its justiciability, and the other that denies this pristine right that it is sought as not superceding the human rights of indigenous peoples and minorities. The debate is difficult to reconcile as the international debate on them tends

to take place in silos and, thus, very little is brought to connect them.

The other dimension of the abovementioned problems is the big divide –conceptually and as regards implementation—between national provisions and those legal instruments at the national level. There are many situations where indigenous land, by law, belongs to governments who decide to implement various infrastructure projects on the indigenous people's land, which leads to indigenous people's displacement.

-Confiscation of land by TNCs. Most often than not, transnational corporations are involved in violation of rights in forestry projects and the like. The issue begins at the level of assignment of property rights over the forests and land. In some cases, the rights are given to the products that come from the sub-soils, generating major strategic contradictions with such programs as forestry preservation and management.

There are many cases in which indigenous land by law belongs to governments, but not under customary law, who, in turn is sold to TNCs. While under the law this is a sale, under customary

and traditional arrangements, such land transfer is considered as being, in effect, an open confiscation. This situation has created major social instability and the loss of benefits and yields from economic and financial assets that worth millions of dollars. This is a case that demonstrates the major linkages that exist between human rights and economic development.

-Persecution of environmental activists. The many conflicts generated by the perceived and actual violations of rights in forestry projects has been followed up by major local organizational problems. One of these has to do with the role of the police and the persecution of local leaders and environmental activists. The literature shows numerous examples of harassment, imprisonment, and even the murdering of environmental activists and indigenous people protecting their land

-Bio-piracy of traditional genetic resources: robbery by pharmaceutical and other corporate entities of native healing and other methodologies. On 19 April the United Nations Convention on Biological Diversity (CBD), meeting in The Hague, adopted a landmark set of international guidelines intended to protect developing countries from having their native plants

and traditional remedies exploited solely for the benefit of drug, biotechnology and seed companies, most of which are in the developed world. Compliance with the guidelines is voluntary, but they provide the first widely accepted criteria for national licensing of access to genetic resources and are expected to influence legislation in many countries. The guidelines also propose concrete ways for profits from products derived from biological sources to be shared “fairly and equitably,” both with the source countries and with indigenous groups whose traditional uses typically inspire bioprospecting researchers. The CBD, to which 182 countries are parties, established the principle that states have sovereignty over their own genetic resources and are entitled to the “fair and equitable sharing of the benefits” those resources provide. The new guidelines are an effort to translate this precept into practice.

-Strategic lawsuits against public participation (SLAPP): a legal injunction most commonly used by large corporations to freeze protest activities and is usually accompanied by an exorbitant claim for compensation for economic damage supposedly caused by the protest. Because the legal process is complicated and drawn out, a SLAPP suit can tie-up a protestor’s

or organisation's resources for a long time, rendering him/it unable to continue campaigning, or only with greatly reduced effectiveness. In fact, the real purpose of a SLAPP may not be to win the case, but simply to prevent informed public debate about issues of concern. In the USA, nearly 90% of all SLAPPs that go to court are unsuccessful and the cases are often viewed by judges as nothing more than legal harassment.

-Illegal smuggling of resources (mostly illegal forest logging): even in cases where there is legislation for protection of environmental resources, large TNC continue to abuse indigenous countries' environmental resources (see case studies).

-Genetic contamination of local resources: Construction of various infrastructural improvements is executed without consideration for indigenous people's rights. An example is the building the Mesoamerican biological corridor, which will contaminate the Chiapas' corn supply affecting 600 million people.

Let us illustrate the above with some cases:

Case 1: Indonesia: At least seven forest activists (Thomas Jalong, Wong Meng Chuo, Jok Jau Evong, Gara Jalong, Raymond Abin, Harrison Ngau and Andy Mutang) from Sarawak have had their passports removed or not renewed, some for as long as eight years. Thomas Jalong, an indigenous activist from Sarawak, had his passport removed when he tried to travel to Tokyo for the International Tropical Timber Organisation meeting in 1992. Officials stated that he had been stopped because of his involvement in an antilogging campaign outside the country. Despite appeals to the courts, Jalong's passport had not been returned by December 2000, more than eight years later. More recently, Raymond Abin, also an activist from Sarawak, had his passport taken from him at Kuala Lumpur airport in March 1997, as he tried to leave for a conference of the International Alliance of the Indigenous Tribal Peoples of the Tropical Forests. According to Malaysian immigration, attending NGO meetings made him a dangerous person.

Case 2: Philippines: The offices of the Cordillera People's Alliance (CPA) in the Philippines were raided in April 2000 by four

men believed to be from the government's Military Intelligence Unit. The CPA is federation of Indigenous Peoples organizations in the central mountain region of Northern Luzon that has been at the forefront of the indigenous peoples' struggles for land and resources. Important documents and equipment were removed during the raid.

Case 3: Philippines: Subanen people in the mountains of Zamboanga Norte, Philippines, were reportedly beaten and kicked by miners from a Canadian mining company, TVI, and armed police as they tried break-up a non-violent blockade by the Subanen on September 1999. Two people were detained for two days then released. The Subanen, whose claim to the forested mountains was officially recognized in 1997, are trying to prevent large-scale mining on their land. In August 1999, the multinational company Rio Tinto withdrew from its interest in mining on Subanen territory, but TVI remains.

Case 4: India: Harassment and intimidation of opponents to the Sardar Sarovar Dam in India is ongoing. The dam would flood 39,000 ha of land in Gujarat, Maharashtra and Madhya Pradesh states, 13,700 ha of which is classified as forest land. A further

4,200 ha of forest land has been cleared so far to relocate people displaced by the project. At least 43,500 families will be directly affected by the reservoir. Since 1994, violence and intimidation has taken place on a regular basis, with violations occurring in at least 40 tribal villages in the affected area. Recent incidents have included the ransacking of the offices of Narmada Bachao Andolan (NBA – the leading group opposing the dam) in December 1999; the arrest of around 100 people on their way to a rally in Gujarat in Aug. 2000 and the arrest and physical abuse of two people, one of whom was volunteering for NBA, in October 2000.

Case 5: Canada: Environmentalists at Bella Coola in British Columbia, Canada, were subject to numerous violent attacks by anti-environmentalists in the summer of 1997, including assaults on a woman on board a fishing boat the MV Starlet on 12 July 1997. The environmentalists were helping people from the local community and the Nuxalk Nation protest against the logging of rainforest on their Land.

Case 6: Canada: The Elaho valley in British Columbia, Canada, has been the scene of a bitter forest dispute. Environmentalists

protesting at logging in the valley by Interfor (International Forest Products) were beaten by a mob and their camp destroyed in September 1999. In September 2000, activists Betty Krawczyk (72 years old) and Barney Kern were sentenced to one year in jail for their part in the peaceful anti-logging protests (although their sentences were later reduced); six others were also found guilty, including one journalist who was at the scene simply to video the events. In contrast, five loggers found guilty of the September 1999 violence were given one year's probation and sent on a conflict-management course. Gavin Edwards of Forest Action Network was attacked in 1994 by a group of 25 men after participating in a protest against Interfor's logging operations in Ure Creek north of Whistler, British Columbia. Edwards was dragged from his tent at night, assaulted and forced to leave the camp, which was then burned down.

Case 7: Canada: Jack Ross, arrested at a protest to prevent construction of a logging road at Perry Ridge in the Slocan Valley, British Columbia in February 1998, spent 70 days in jail without a trial because he refused to sign an agreement to stay away from the blockade site. Ross was acquitted of all charges against him when his case came to court and the injunction

that led to his arrest was later overturned. The British Columbia government is now seeking a permanent injunction to keep local residents away from the area so that logging can go ahead, despite scientific evidence that logging would result in a high risk of serious and potentially dangerous landslides.

Case 8: Canada: Organisations that have faced SLAPPs (See issues) in Canada, because of their participation in logging disputes include Friends of Christmas Mountain, sued by Repap for trying to save the last old-growth forest in New Brunswick and The Carmanah Forestry Society, sued by Fletcher Challenge (now Timber West) after protests against its logging the Walbran Valley on Vancouver Island. The Fletcher Challenge SLAPP also named around 40 individuals. Other individuals that have faced SLAPPs for their participation in forest campaigns include 10 activists challenged by Interfor for their campaign to prevent the company logging in Nuxalk territory near Bella Coola. Academic John McInnis faced by a suit from Mitsubishi because his outspoken criticism of the company.

Case 9: Colombia: Kenowuia Nury Bokota, Mauricio Diaz and Jorge Anikuta, three children from the indigenous U'wa

population, Colombia, died in February 2000 during police action to evict some 450 people from a road blockade using tear gas, riot sticks and bulldozers. Three other children were injured. The U'wa have been mounting a massive struggle against oil exploitation by the US corporation Occidental Petroleum in forest they claim to be their ancestral territory. Thousands of soldiers and police have been involved in protecting the interests of the company and there are numerous incidents of brutality and abuse of the U'wa. For example, protests by the U'wa and their supporters were violently attacked by police on 24 and 25 June 2000. Several people were injured and over 30 people arbitrarily detained.

Case 10: Chile: An employee of the forestry company Mininco in Chile admitted in September 1999 that he had been bribed to falsely accuse a group of Mapuche Indians of vandalism against the company's property. The Mapuche are involved in a long-running struggle for recognition of their rights and have been subject to repeated harassment over many years. Forestal Mininco has established massive monoculture plantations on land claimed by the Indians and many observers (including local government officials) suspect that several instances of

sabotage of the company's property and plantations may have been carried out by people associated with the company or their security firms, in an attempt to discredit the Mapuche.

Some Conclusions and Final Thoughts

The literature brings about a large number of recommendations and lessons learned. Here, we list some of them based on Forrest of Fear 's Policy Recommendation:

-Drawing attention to the importance of human rights in relation to forests

As this report has highlighted, respect for fundamental civil and political rights is a pre-requisite for a strong environmental movement. Truly participatory decision-making processes and the organization of public opposition to damaging proposals are vital in ensuring the sustainable use of the world's forests. Addressing human rights abuses is therefore essential to the future of the world's forests.

Environmental NGOs are urged to give the strengthening and

upholding of human rights and the promotion of truly participatory processes a central place in their campaigns.

-Training in human rights for forest activists

Most countries have ratified legally binding international agreements on human rights. Redress for violations that occur can thus be sought under the complaints mechanism for the agreement. Challenging companies in their home country may be another way forward.

Forest activists and indigenous groups should be trained in human rights and the use of human rights agreements to prevent violations. Such training would include the sharing of experience between groups from different countries and regions.

-Company human rights database

As companies become increasingly global in their activities, knowledge of the human rights records of a company in one country can be extremely helpful to communities faced with a proposal from a multi-national corporation. Location of such

information may not be straightforward.

An NGO-run database of the human rights record of major multinational corporations, their policies and how these are translated into practice should be established, and its availability widely promoted. The database would include contact groups for those people that have suffered from the rights abuses.

-Documenting human rights in forest areas

Although it is clear that every year hundreds of people are killed while trying to protect their forests and many more are injured, unlawfully arrested or harassed, there is no catalogue of human rights abuses against forest defenders. Such a database would clearly strengthen the case to put human rights abuses at the forefront of forest protection.

NGOs, in co-operation with research institutes, should systematically document human rights abuses linked to forest protection, and present these facts to intergovernmental forest fora.

-Regulating corporate behavior

The relevance of human rights issues to business is increasingly being acknowledged by large corporations. Alongside the efforts of individual corporations, there is a plethora of guidelines or initiatives that address the social responsibility of multinationals (see Appendix C), but none is legally binding or has any enforcement mechanism.

The UN should develop a binding multilateral legal regime for corporate conduct, accompanied by an enforcement mechanism.

-Incorporating consideration of the power imbalance into consultation processes

Policy Implications For the Bank. There are three important policy implications for the Bank:

-First, it would be essential to carry out a comprehensive gap analysis in the realm of human rights and forestry, and then expand it to biodiversity and environment. This will be a practical way to demystify the issue of human rights and understand

its significance within the context of policy, institutional development and operations.

-Second, the Bank needs to draft a position paper on environment, sustainable development and forestry, to look closely at a series of human rights that are unique to the collective activities of many countries, and the world at large. This piece will be of unique significance with regard to our dialogue with other international agencies and multilateral development Banks.

-Third, the Forestry Team should organize a one-day seminar to debate forestry sector issues and human rights. Many invited people should be from outside the forestry sector. This will increase the probability of success. Prior to this, it may be indispensable to design a training program for all those working in the forestry sector and associated with several activities within the World Bank programs and projects.

-Fourth, further research is needed in the area of operational issues in order to make this paper more comprehensive and applied.

Annex I: Further Forestry Issues:

Indonesia: Paper Industry Threatens Human Rights

Background:

Indonesia's pulp and paper industry has rapidly expanded since the late 1980s to become one of the world's top ten producers. But the industry has accumulated debts of more than U.S.\$20 billion, and expanding demand consumes wide swathes of Sumatra's lowland tropical forests. This land is claimed by indigenous communities, who depend on them for rice farming and rubber tapping. The loss of access to forests, together with companies' hiring from outside the province, has been devastating to local livelihoods, leading to violent conflicts.

Asia Pulp & Paper (APP) is Indonesia's leading paper producer, and owner of one of the largest stand-alone pulp mills in the world, the Indah Kiat mill in Riau, Sumatra. The mill's primary fiber supplier, Arara Abadi, established its pulpwood plantation in the 1980s-90s, under then President Soeharto. Arara Abadi, backed by state security forces, routinely seized land for the

plantations from indigenous communities without due process and with little or no compensation.

Since the fall of Soeharto in May 1998, local residents have attempted to press their claims, but have met with unresponsive law enforcement. With no remedy for their grievances, communities have increasingly turned to vigilantism. Arara Abadi has responded with violence and arrests.

Case Description:

There were three cases in 2001 in which local villagers in Mandiangan, Betung, and Angkasa/ Belam Merah, frustrated by unresolved disputes with Arara Abadi, set up blockades or began logging plantation trees. Hundreds of club-wielding company militia attacked residents, seriously injuring nine and detaining sixty-three. Indonesian police, who trained the civilian militias and also were present during the attacks, were complicit in all three cases. Incidents of ongoing violence against villagers refusing to give up their land to APP suppliers continued to be reported in Riau last year.

Out of hundreds of assailants, only two who were brought to trial, and those two, convicted of assault and battery, were released after thirty days' time served. The use of excessive force by company-funded militia cannot be justified, and impunity for those responsible for the beatings is directly fuelling the cycle of vigilante justice. Further abuses are likely to continue under current conditions of impunity, financial pressure, and lack of internal corporate guidelines for security.

“The acquiescence of state security forces and, sometimes, their direct assistance in the company militia attacks has meant that villagers have nowhere to go for help,” said Jendrzejczyk. “The lack of rule of law and spiraling rural violence threatens not only the well-being of rural communities, but also foreign investment and national economic growth.”

The majority of police and military spending (70 percent) comes from off-budget business ventures, many of which are in the forestry sector. These business ties set up an economic conflict of interest in law enforcement. In addition, Arara Abadi's security personnel have no guidelines for the use of force and are not held accountable for violations of the rights of local people.

Mr Rasyid, a 32 year old Indonesian from Lubuk Jambi village in Riau province, Sumatra, Indonesia, was stabbed to death by a security guard on 15 July 1998, during a demonstration of villagers against Riau Andalan Pulp and Paper (RAPP), a plantation company that has taken over their land. Nine months earlier, on 8 October 1997, two people needed hospital care and many others were hurt after police violently dispersed another demonstration against the same company. In April 1998 Marganti Manalu, the lawyer acting for three villages in their land claims against the company, was sentenced to three years in jail for incitement and sabotage of RAPP's property – charges which he vehemently denies.

These incidents are part of a long-running dispute over land and forests used by RAPP and their parent company APRIL (with support from Finnish giant UPM Kymmene) for a pulp and paper mill. The conflict has centred on land, used for the mill and associated developments, claimed by three villages (Kerinci, Seringand Delik). The operation allegedly involves clearing some areas of natural forest to supply the mill and make way for Acacia plantations; this, and the role of UPM-Kymmene in the enterprise, has caused further, international controversy. Paper

from the mill has been marketed in Europe under the 'Paper One' label.

The conflict escalated in 1997 when, despite a stalemate in negotiations between villagers and the company about compensation for land used for the mill, RAPP started to build a road through the communities' land. When villagers blocked the road site to prevent construction, RAPP invited the Indonesian military to help them, and in June 1997 the locals were forced to leave the site. In September, the villagers blockaded the road once again. On 8 October, the mobile police arrived and dispersed the demonstration using violence and tear gas, resulting in the injuries. Further disturbances followed, in which RAPP property was set on fire by protesters and a RAPP employee was caught by villagers and harassed. Several community leaders were arrested, including Manalu; the others were released without charge but Manalu was detained.

The 1998 stabbing occurred during a demonstration near Lubuk Jambi village in the Cerenti sector of APRIL's concessions in southern Riau. Villagers claim that about 2,000 ha of their traditional village land has been planted with Acacia by RAPP.

The demonstration was dispersed by RAPP security forces using a bulldozer, and several village motorcycles were destroyed. Mr Rasyid was chased by one of the guards and stabbed three times; he died two days later in hospital.

This conflict is one of many in Indonesia between plantation companies and local communities. Land has been allocated to commercial interests, often controlled powerful political figures, with little regard for the local communities that depend on it for their livelihood. Violence and repression of villagers trying to exert their rights frequently follows.

Source: FoE Finland; Down to Earth, UK.

More information from Friends of the Earth Finland

The Penan and Dayaks, Malaysia

Thirty Penan people from Sarawak, Malaysia, were injured and four were arrested when trying to deliver a letter to the logging giant Samling on 13 March 1997. The incident happened when some 75 Penan attempted to meet Samling officials near their village of Long Kerong, in the Ulu Baram area. The Penan were met

by the Police Field Force who, according to witnesses, beat them indiscriminately. The four who were arrested (Pusu Bujang, Wan Musang, Beripin Wan and Jangin Jalong) were kept on remand until 21 March, during which time Pusu Bujang and Wan Musang were kicked and hit by police. On 21 March they appeared in court charged with illegal assembly, and were released on bail. However, on leaving the court, they were immediately re-arrested and charged with stealing a chainsaw.

The police eventually withdrew all the charges against the four.

This is just one incident in the long-running struggle of the indigenous Penan and other Dayak groups to protect their forest from logging and to gain recognition to their traditional rights over the land. Since the mid-1980s over 700 Penan have been arrested. The Penan are heavily dependent on the forest for hunting and gathering and see themselves as guardians of resources for future generations. Sarawak's Chief Minister, Abdul Taib Mahmud, estimates that 90% of Sarawak's forest has been logged or degraded in the past 20 years (Barui, 2001). The struggle to save the forests gained international media attention in the late-1980s when the failure of the authorities to listen

to letters, petitions and delegations forced them (and other indigenous groups) to resort to peaceful blockades to keep out the loggers.

Throughout the struggle, the Penan and other indigenous groups have met with repression and violence by the authorities. In November 1987, the Sarawak government passed an amendment to the Forest Act to allow anyone erecting blockades to receive up to two years in jail and a fine of up to US\$2,000. Despite this, thousands of indigenous people participated in mass blockades, some of which lasted for several months. Often the authorities resorted to violence to dismantle the protests, and literally hundreds of people were arrested (e.g. 21 Penan arrested on 10 December 1988 – ironically, World Human Rights Day; 105 Penan arrested in January 1989; and 117 Penan and Kelabit, another indigenous group, arrested in September 1989). Some of those arrested were released, others were held in detention or charged. For example, 86 of the 117 arrested in September 1989 were held for two months in overcrowded cells before being released.

Although the media attention has declined, the land struggle,

and the abuses of both civil and indigenous rights, is on-going in Malaysia. Blockading is also continuing: Penan from the Apoh/Tutoh area mounted blockades in August 2000 to halt the activities of three timber companies, Lajung Lumber Sdn.Bhd., Shin Yang Sdn.Bhd. and Rawood Sdn.Bhd., on what they claim is their land. The blockade was lifted in late August when the people needed to attend to their farms, but it was resumed in January 2001. The communities have been struggling against Lajung Lumber for several years: six Penan from Long Sayan village have filed a suit against the police for wrongful arrest, false imprisonment and malicious persecution after they were arrested at a blockade on their customary land in 1996.

Sources: IDEAL (1999); IDEAL (2000); Bruno-Manser-Fonds (www.bmf.ch); Rengah Sarawak (www.rengah.c2o.org); Sarawak People's Campaign (www.rimba.com).

More information from Bruno-Manser-Fonds: www.bmf.ch or e-mail info@bmf.ch

Rodolfo Montiel Flores and Teodoro Cabrera Garcia, México

Rodolfo Montiel Flores and Teodoro Cabrera Garcia, farmers from Guerrero state, Mexico, were sentenced in August 2000 to six years eight months and ten years in respectively. Montiel, the co-founder of the Organization of Campesino Ecologists of the Sierra de Petatlán and Coyuca de Catalán, was a leading campaigner against the uncontrolled logging in the region's forests. On 2 May soldiers stormed into the village of Pizotla and arrested him and his colleague Cabrera for supposed illegal weapons possession and marijuana cultivation. Another farmer, Salomé Sánchez Ortiz, was shot in the head and killed as he tried to run away from the soldiers.

The Sierra de Petatlán, with mountains reaching nearly 10,000 feet above sea level, contains some of North America's most pristine old-growth forests. The forest is an important watershed for the land below, where farmers grow their crops. Heavy logging in the 1990s has resulted in serious deforestation: satellite images of the Sierra de Petatlán and Coyuca de Catalán from 1992 and 2000 show that nearly 40% of the region's forest has been lost in the past eight years (Greenpeace Mexico, 2000).

In 1995, the US company Boise Cascade signed a contract to buy wood from commercial loggers in the region. As the logging accelerated, the farmers on the slopes below observed a decrease in water supply, increased soil erosion and a decline in crop quality. Seeing their land dry up, Montiel and others began to take action. Calling themselves 'farmerecologists', Montiel and colleagues founded the Organization of Campesino Ecologists to try to protect the forests. The organisation undertook a range of activities to tackle deforestation including promoting environmental awareness, reforesting exploited lands, and challenging excessive logging through peaceful protests and legal procedures. Their activities were met with silence.

Faced with inaction from the authorities, the farmers organised their first action in February 1998, blockading the roads to prevent the transport of timber from the forests. The road blockades were repeated over the following months. In mid-1998, Boise Cascade withdrew from the area, citing difficult business conditions.

However, the excessive and illegal logging continued. Following their arrest in May 1999, Montiel and Cabrera were

held incommunicado for five days, after which they signed confessions admitting to charges of weapons possession and marijuana cultivation. The Mexican government's National Human Rights Commission and a Danish medical team that examined the two men have both confirmed that the pair were tortured prior to signing the confessions, although the Federal Government's Attorney General denies these allegations.

The health of both men is deteriorating in jail. Montiel has complained of intense pain in his abdomen since being tortured and Cabrera had to undergo an operation because of severe beatings to his back suffered during army detention. Prison conditions are bad and food is scarce. Montiel's wife and six children have twice been forced to flee their home because of threats. Amnesty International has declared both men Prisoners of Conscience, and on 6 April 2000, Rodolfo Montiel was awarded the Goldman Environmental Prize in recognition of his efforts to prevent deforestation.

Annex II: Further Forestry Issues:

Bio-piracy of traditional genetic resources: robbery by pharmaceutical companies of indigenous healing methodologies.

Example:

The world's largest collection of plant germplasm, some 6,00,000 plant accessions, are in a safe custody under the control of the US Department of Agriculture, now classified as a national property and not a mankind's heritage under the Convention on Biological Diversity signed at Rio in 1992. But the genetic resources with the USDA are outside the purview of CBD. The countries from where these were collected have no control or say over these resources. In fact, efforts are now being made to draw intellectual property rights over these resources, with the countries of origin having no benefit or control.

Ever since the early 1980s, when Anand Chakravorty got the first life patent on a bug that he had created by genetic engineering, seed and life sciences companies have realised the importance

of these genetic resources. The US has these resources, has the finances for research and has the mastery over genetic engineering. But what is coming in the way is as to what to do with these genetic resources. After all, you cannot work out the chemical composition and find out the pharmaceutical properties of each and every plant stored at Fort Collins. The best way is to revert back to the countries, which originally had these plant resources. To find out from the local communities as to how and what uses they were putting these plants to. And that would give the companies the chemical route to decipher the knowledge, draw industrial uses, seek patents and market the product back to those countries where it has been traditionally been used for centuries.

The UNDP, UNCTAD, the DFID, SIDA, CIDA, GTZ and almost all other donors are pumping in grants for documentation of the traditional knowledge. The Indian Council of Agricultural Research (ICAR) and the Council for Scientific & Industrial Research (CSIR) is also promoting such documentation. No one knows what these documentation are for. No one wants to know why have we become suddenly so conscious of the fast eroding traditional knowledge. And who is using the documentation that

is being done so speedily?

The answer is that we all are facilitating the process of biopiracy. And we are doing it legally and with the backing of the international donors. Once again, such documentation are safely going into the hands of the companies who need them desperately. But unlike the genetic resources, it will not take 30 years for these companies to draw IPR over traditional knowledge. International effort has already begun on how to draw a sui generis system over traditional knowledge. It is a matter of few years. The documented traditional knowledge will then be out of the control of the communities, which nurtured them

Indigenous People's Right to Lumber in their Land:

The commercial exploration of lumber on indigenous community lands is a controversial question which has been receiving different analyses, either in the conceptions of the indigenous communities themselves, or by anthropologists, environmentalists, specialists in law, public institutions and non-governmental organizations. The central aspect of the

controversy is whether the indigenous communities can or cannot explore or commercialize wood on their lands. This controversy has been the result of a lack of a clear interpretation of pertaining legislation and consistent public policies to support the sustainable development of indigenous communities.

Various sectors assumed a position, which was completely contrary to the exploration of lumber in the indigenous territories or lands, alleging, in short, that this activity generates a consequent invasion of persons foreign to the communities, the degradation of the environment and a negative cultural impact. This argument for a long time was reinforced by the understanding that the forest located on the indigenous peoples lands was subject to rules of permanent preservation and conservation, and furthermore, to the prohibition of placing a lien, alienating or selling the lumber on the property, which presumably belonged to the federal government, according to the civil law principles that the accessory of the assets accompanies the asset itself. That is to say, as the indigenous lands pertain in the dominion of the federal government and no lien can be placed on them and cannot be sold, the forest resources pertaining to these lands cannot be sold or subject to any form of commercialization.

However, despite the vehement degree the sectors defended the prohibition of the sale or commercialization of lumber from the indigenous lands, millions of cubic meters of wood have been extracted illegally from these lands, enriching only the owners of the lumber companies. This shows that it is simply not enough to establish regulations, which prohibit the commercialization of the lumber and resources of these lands to protect the interests and patrimony of the indigenous communities. The debate should concentrate on the de facto situation of the communities and their concerns regarding their resources

Right to Free, Prior and Informed Consent (FPIC)

FPIC means the consensus/consent of indigenous peoples determined in accordance with their customary laws and practices. This does not necessarily mean that every single member must agree, but rather that consensus will be determined pursuant to customary law and practice. In some cases, indigenous peoples may choose to express their consent through procedures and institutions that are not formally or entirely based on customary law and practice, such as statutory councils or tribal governments. Regardless of the nature of the

process, the affected indigenous people(s) retain the right to refuse consent or to withhold consent until certain conditions are met. Consent must be obtained without coercion, prior to commencement of activities, and after the project proponent's full disclosure of the intent and scope of the activity, in language and process understandable to the affected indigenous peoples and communities.

In its procedural form, FPIC is an administrative process which enables both the affected indigenous people(s) and the project proponent(s) to put all their concerns on the table and identify solutions to problems before the affected people(s) decides on whether to give consent. It may be required in a number of project stages, i.e., options assessment, social, cultural and environmental impact assessment, exploration, exploitation or closure.

FPIC is important because threats to indigenous peoples' rights and well-being are particularly acute in relation to resource exploitation projects, regardless of whether the projects are state- or corporate-directed. Many of these projects and operations have had and continue to have a devastating impact

on indigenous peoples, undermining their ability to sustain themselves physically, spiritually and culturally. Numerous reports confirm that this experience with EI is not confined to the past and is “one of the major human rights problems faced by [indigenous peoples] in recent decades.”

The WBG has also recognized that indigenous peoples “have often been on the losing end of the development process” and that the vast majority of development benefits go to others. Indeed, the WBG’s first policy on indigenous peoples - Operational Manual Statement 2.34 Tribal People in Bank-Financed Projects – was adopted in response to “internal and external condemnation of the disastrous experiences of indigenous groups in Bank-financed projects in the Amazon region.” Specifically on EI projects, an internal WBG review observes that mining and energy projects “risk and endanger the lives, assets, and livelihoods of [indigenous peoples]. Moreover, modern technology allows interventions in hitherto remote areas, causing significant displacement and irreparable damage to IP land and assets. In this context, IP living on these remote and resource rich lands are particularly vulnerable, because of their weaker bargaining capacity, and because their customary rights are not recognized

in several countries.”

Writing as UN Special Rapporteur on indigenous land rights, Daes observes that

The legacy of colonialism is probably most acute in the area of expropriation of indigenous lands, territories and resources for national economic and development interests. In every sector of the globe, indigenous peoples are being impeded in every conceivable way from proceeding with their own forms of development, consistent with their own values, perspectives and interests.

Much large-scale economic and industrial development has taken place without recognition of and respect for indigenous peoples' rights to lands, territories and resources. Economic development has been largely imposed from outside, with complete disregard for the right of indigenous peoples to participate in the control, implementation and benefits of development.

For indigenous peoples, secure and effective collective property rights are fundamental to their economic and social

development, to their physical and cultural integrity, and to their livelihoods and sustenance. Secure land and resource rights are also essential for the maintenance of their worldviews and spirituality and, in short, to their very survival as viable territorial and distinct cultural collectivities. The Inter-American Court of Human Rights recognized this in 2001, stating that:

the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element that they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.

This multifaceted nature of indigenous peoples' relationship to land, as well as the relationship between development and territorial rights, was emphasized by Mary Robinson in her December 2001 Presidential Fellow's Lecture at the World Bank. She opines that, for indigenous peoples:

economic improvements cannot be envisaged without protection

of land and resource rights. Rights over land need to include recognition of the spiritual relation indigenous peoples have with their ancestral territories. And the economic base that land provides needs to be accompanied by a recognition of indigenous peoples' own political and legal institutions, cultural traditions and social organizations. Land and culture, development, spiritual values and knowledge are as one. To fail to recognize one is to fail on all.

In short, without secure and enforceable rights to lands, territories and resources, including the right to control activities affecting them, indigenous peoples' means of subsistence, their identity and survival, and their socio-cultural integrity and economic security are permanently threatened. There is therefore a complex of interdependent human rights all converging on and inherent to indigenous peoples' various relationships with their traditional lands and territories – lands and territories that form “the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival” – as well as their status as self-determining entities that necessitates a very high standard of affirmative protection. That standard is FPIC, which is all the more necessary in relation to EI that have proved in most cases

to be highly prejudicial to indigenous peoples' rights and well being.

In addition to respect for human rights guarantees, there are also a number of practical reasons why FPIC is necessary for indigenous peoples that are clearly related to human rights guarantees and the underlying rationale for protection. For example, decisions about whether and how to exploit natural resources are normally justified in the national interest, which is generally interpreted as the interest of the majority. The result is that the rights and interests of unrepresented groups, such as indigenous peoples and others, will often be subordinated to the majority interest and conflict, sometimes violent, often ensues. FPIC (in theory at least) guarantees that the rights and interests of indigenous peoples will be accounted for and respected and minimizes potential for conflict. It also provides the basis for ensuring that indigenous peoples will benefit from any extractive project on their lands and that negative impacts will be properly assessed, avoided and mitigated.

Finally, it may be argued that FPIC makes economic sense given the costs often incurred in forcing indigenous peoples (and

others) to accept EI projects (police and military expenditures, for instance), and related to litigation. According to some estimates, restarting the Panguna copper mine in Bougainville, “where corporate practices were directly implicated in provoking civil war, allegedly cost [the mining company,] Rio Tinto, \$3 billion.” WBG studies, as well as other studies, have recognised the economic costs of discrimination against indigenous peoples. Companies also often place an economic value on their reputation, i.e. reputational costs, which may be severely damaged in conflicts with indigenous peoples. None of these costs are factored into cost-benefit analyses of WBG investments in EI.

Annex III: Further Forestry Issues: Constitutional Provisions Relating to Environmental Protection

1. The Republic of Albania

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

2. The Republic of Algeria

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

the different zones, the natural maritime zone, the waters and the forests.” Id., Chapter III, Article 17.

3. The Principality of Andorra

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

4. People’s Republic of Angola

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

5. Argentina

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

6. The Republic of Armenia

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

7. The Azerbaijan Republic

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

8. The State of Bahrain

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

9. The Republic of Belarus

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

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

10. Belgium

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

11. The Republic of Benin

The 1990 Constitution provides that “everyone person has the right to a healthy, satisfying and lasting environment.” Title II, Article 27. The Constitution makes it the duty of the State to “watch over the protection of the environment.” Id. The Constitution also makes it the duty of every person to “defend the [environment].” Id. The African Charter on Human and Peoples’ Rights, annexed to the Constitution of the Republic of Benin, provides that “all peoples have the right to a general satisfactory environment favorable to their development.” Part I, Chapter I, Article 24.

12. The Republic of Bolivia

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

13. The Federative Republic of Brazil

The Constitution, as amended in 1998, provides that “everyone has the right to an ecologically balanced environment, which is a public good for the people’s use and is essential for a healthy life.” Title VII, Chapter VI, Article 225. “The Government and the community have a duty to defend and preserve the environment for future and future generations.” *Id.* In particular, the Government has the responsibility to: I. preserve and restore essential ecological processes and provide for ecological management of species and ecosystems; II. preserve the diversity and integrity of the Country’s genetic patrimony and to supervise entities dedicated to research and manipulation of genetic material; III. define, in all units of the Federation, territorial

spaces and their components that are to be specially protected, with any change or and suppression permitted only through law, prohibiting any use that compromises the integrity of the characteristics that justify their protection; IV. require, as provided by law, a prior environmental impact study, which shall be made public, for installation of works or activities that may cause significant degradation of the environment; V. control production, commercialization and employment of techniques, methods and substances that carry a risk to life, the quality of life and the environment; VI. promote environmental education at all levels of teaching and public awareness of the need to preserve the environment; VII. protect the fauna and the flora, prohibiting, as provided by law, all practices that jeopardize their ecological functions, cause extinction of species or subject animals to cruelty. Id., Paragraph 1. The Constitution provides that “the Brazilian Amazon Forest, the Atlantic Forest, the Serra do Mar, the Pantanal of Mato Grosso, and the Coastal Zone . . . shall be utilized, as provided by law, under conditions assuring preservation of the environment.” Id., Paragraph 4. The Constitution also provides that “conduct and activities considered harmful to the environment shall subject the infractors, be they individuals or legal entities, to criminal and

administrative sanctions.” Id., Paragraph 3. The Constitution also establishes the general obligation of such infractors to “repair the damages caused” to the environment. Id. The Constitution also requires “those who exploit mineral resources . . . to restore any environmental degradation.” Id., Paragraph 2. The Constitution makes inalienable “vacant governmental lands or lands seized by the State through discriminatory actions, which are necessary to protect natural ecosystems.” Id., Paragraph 5.

14. The Republic of Bulgaria

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

15. Burkina Faso

The amended 1991 Constitution recognizes “the right to a healthy environment.” Title I, Chapter IV, Article 29. The Constitution

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

16. The Republic of Burundi

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

17. The Kingdom of Cambodia

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

18. The Republic of Cameroon

The amended 1972 Constitution declares that “every person shall have a right to a healthy environment,” that the “State shall

ensure the protection and improvement of the environment,” and that the “protection of the environment shall be the duty of every citizen.” Preamble (Part XII, Article 65 provides that the “Preamble shall be part and parcel of this Constitution”).

19. The Republic of Cape Verde

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

20. The Republic of Chad

The 1996 Constitution provides that “every person has the right

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

21. The Chechen Republic (Chechnya)

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

22. The Republic of Chile

The amended 1980 Constitution provides for the “right to live in an environment free from contamination.” Chapter III,

Article 19(8). The Constitution makes it the duty of the State to “watch over the protection of this right and the preservation of nature.” Id. The Constitution authorizes the State to enact laws, which “establish specific restrictions on the exercise of certain rights or freedoms in order to protect the environment.” Id. The Constitution, in particular, authorizes the State to “establish the manner to acquire property and to use, enjoy and dispose of it” for the purpose of “the conservation of the environmental patrimony.” Id., Article 19(24). The Constitution also establishes the right to appeal to the courts for protection “when the right to live in a contamination-free atmosphere has been affected by an arbitrary or unlawful action imputable to an authority or a specific person.” Id., Article 20. The Constitution requires the court to “immediately take the steps that it deems necessary to . . . ensure due protection to the person affected.” Id.

23. The People’s Republic of China

The 1982 Constitution makes it the duty of the State to “ensure the rational use of natural resources and protect rare animals and plants.” Chapter 1, Article 9. The Constitution also provides that the “State protects and improves the living environment and the ecological environment, and prevents and remedies

pollution and other public hazards.” Id., Article 26. In addition, the Constitution states that “the State organizes and encourages afforestation and the protection of forests.” Id. The Constitution also prohibits the “appropriation or damage of natural resources by any organization or individual by whatever means.” Id., Article 9.

24. Colombia

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

with other nations in the protection of the ecosystems located in the border areas.” Id. The Constitution makes it a duty of every individual “to protect the country’s cultural and natural resources and to keep watch that a healthy environment is being preserved.” Id., Chapter 5, Article 95.

25. The Federal Islamic Republic of the Comoros

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

26. The Republic of the Congo

The 1992 Constitution provides that “each citizen shall have the right to a healthy, satisfactory and enduring environment.” Title II, Article 46. The Constitution directs the State to “strive for the protection and the conservation of the environment.” Id. The Constitution establishes the obligation to compensate for “all pollution resulting from an economic activity”; such compensation is “for the benefit of the populations of the exploited zones.” Id. The Constitution also makes it the duty of each citizen to “defend the [environment],” and of each individual “to contribute to the improvement of the quality of life and the preservation of his natural milieu as well as to the protection

of the environment.” Title III, Article 65. The Constitution also makes it the duty of every individual “not to negatively effect his environment nor the well-being of his neighbors.” Id.

27. The Republic of Costa Rica

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

28. The Republic of Croatia

The 1990 Constitution provides that “everyone has the right to a healthy life.” Section III, Part 3, Article 69. The Constitution directs the State to “ensure citizens the right to a healthy environment.” Id. The Constitution also directs “citizens, government, public and economic bodies and associations . . . to pay special attention to the protection of human health, nature and the

human environment.” Id.

29. The Republic of Cuba

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

30. The Czech Republic

The 1992 Constitution, as amended, provides that “everybody has the right to a favorable environment.” Chapter 4, Article 35(1). The Constitution also provides that “in exercising his rights nobody may endanger or cause damage to the living environment, natural resources, the wealth of natural species, and cultural monuments beyond limits set by law.” Id., Article 35(3). In particular, the Constitution provides that the exercise

of ownership rights “ must not cause damage to human health, nature and the environment beyond legal limits.” Chapter 2, Part 1, Article 11.

31. East Timor

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

32. The Republic of Ecuador

The 1998 Constitution provides for the “right to live in an environment that is healthy and ecologically balanced, and that guarantees sustainable development.” Chapter 5, Section 2, Article 86. The Constitution requires the State to enact laws to preserve the environment, conserve ecosystems and biodiversity, prevent environmental pollution, restore degraded natural spaces, and establish a system of protected natural areas

that will guarantee the conservation of biodiversity. Id. In case of doubt concerning the negative environmental consequences of an action or omission, the State is to implement preventive measures even if there is no scientific evidence of harm. Id., Article 90. The Constitution also requires the establishment of procedures for holding responsible those who harm the environment. Id., Article 87. The State is also responsible for environmental damage caused by its agents or institutions. Id., Article 91. The Constitution guarantees the prior informed participation of affected communities in governmental decisions affecting the environment, id., Article 88, and provides for the right of any person to use legal actions to protect the environment. Id., Article 91.

33. El Salvador

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

34. Equatorial Guinea

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

35. Eritrea

The 1997 Constitution directs the State “to work to bring about a balanced and sustainable development throughout the country, and shall use all available means to ensure all citizens to improve their livelihood in a sustainable manner, through their development.” Chapter II, Article 10(2). The Draft Constitution makes it the responsibility of the State to “regulate all land, water and natural resources and to ensure their management in a balanced and sustainable manner and in the interest of the present and future generations.” *Id.*, Article 10(3). The Draft Constitution further directs the State to “create the right conditions for securing the participation of the people to safeguard the environment.” *Id.*

36. The Republic of Estonia

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

37. The Federal Democratic Republic of Ethiopia

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

38. Finland

The amended 1919 Constitution directs “public authorities to strive to ensure for everyone the right to a healthy environment as well as the opportunity to influence decisionmaking concerning his living environment.” Part II, Section 14a. The Constitution also states that “everyone shall be responsible for the natural world and for its diversity, for the environment and for the cultural heritage.” Id.

39. The Republic of Georgia

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

surrounding environment and rational use of nature.” Id., Article 37(4). The Constitution further provides that “a person has the right to receive complete, objective and timely information concerning the state of the environment of his residence and working conditions.” Id., Article 37(5).

40. Federal Republic of Germany

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

41. The Republic of Ghana

The 1992 Constitution directs the State to “take appropriate measures needed to protect and safeguard the national environment for posterity,” and to “seek cooperation with other states and bodies for purposes of protecting the wider international environment for mankind.” Chapter 6, Article 36(9). The Constitution also makes it the duty of every citizen “to protect and safeguard the environment.” Chapter 5, Article 41(k).

42. Greece

The 1975 Constitution provides that “the protection of the natural

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

43. The Republic of Guatemala

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

44. The Co-Operative Republic of Guyana

The 1980 Constitution provides that “in the interests of the present and future generations, the State will protect and make rational use of its land, mineral and water resources, as well as

its fauna and flora, and will take all appropriate measures to conserve and improve the environment.” Part 1, Chapter II, Article 36. The Constitution also makes it a duty of every citizen “to participate in activities designed to improve the environment.” *Id.*

45. Haiti

The Constitution of 1987 strictly forbids “any practice that might disturb the ecological balance.” Title XI, Chapter II, Article 253. The Constitution forbids the introduction “into the country wastes or residues of any kind from foreign sources.” *Id.*, Article 258. The Constitution directs the State “to organize the enhancement of natural sites to ensure their protection and make them accessible to all,” *id.*, Article 254, and “to encourage the development of local sources of energy” in order to “protect forest reserves and expand the plant coverage.” *Id.*, Article 255. The Constitution authorizes the State to punish violations of the law, which “specifies the conditions for protecting flora and fauna.” *Id.*, Article 257. The Constitution also makes it a duty of the citizen to “respect and protect the environment.” Title III, Chapter III, Article 52-1(h).

46. The Republic of Honduras

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

47. The Republic of Hungary

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

48. India

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

lakes, rivers and wild life, and to have compassion for living creatures.” Part IVA, Article 51A.

49. The Islamic Republic of Iran

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

50. The Republic of Kazakhstan

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

51. The State of Kuwait

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

52. The Kyrgyz Republic (Kyrgyzstan)

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

53. Lao People’s Democratic Republic

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

54. The Republic of Latvia

The Amended Constitution of 1922 (amended 1998) provides that the “State shall protect the right of everyone to live in a

benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.” Section 8, Article 115.

55. The Republic of Lithuania

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

56. The Republic of Macedonia

The 1991 Constitution provides that “everyone has the right to a healthy environment to live in,” and directs the State to establish conditions for the exercise of this right. Chapter II, Part 2, Article 43. The Constitution recognizes the fundamental

need for “proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development.” Chapter I, Article 8. The Constitution makes it everyone’s obligation to “promote and protect the environment.” Chapter II, Part 2, Article 43.

57. The Republic of Madagascar

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

58. The Republic of Malawi

The 1994 Constitution directs the State to “actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at . . . manag[ing] the environment responsibly in order to (i) prevent the degradation of the environment, (ii) provide a healthy living and working environment for the people of Malawi, (iii) accord full recognition to the rights of future generations by means of

environmental protection and the sustainable development of natural resources, and (iv) conserve and enhance the biological diversity of Malawi.” Chapter III, Article 13(d).

59. The Republic of Mali

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

60. Malta

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

61. Mexico

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

62. The Federated States of Micronesia

The Preamble to the amended 1978 Constitution “affirm[s]

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

63. The Republic of Moldova

The 1994 Constitution provides that "every human being has the right to live in an environment that is ecologically safe for life and health, to obtain healthy food products." Title II, Chapter II, Article 37(1). The Constitution holds "private individuals and legal entities" responsible for "any damages they may cause to personal health and property due to an ecological offense." *Id.*, Article 37(4). The Constitution provides that the "right of private property carries with it the duty to observe the rules regarding the protection of the environment." *Id.*, Article 46(5). The Constitution also makes it "the duty of every citizen to protect the natural environment." Title II, Chapter III, Article 59. The Constitution also provides that "the State guarantees every citizen the right

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

64. Mongolia

The 1992 Constitution, as amended, provides that “the citizens of Mongolia shall enjoy ... the right to a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance.” Chapter Two, Article 16(2). The Constitution further provides that “the land, its subsoil, forests, water, fauna and flora and other natural resources shall be subject to . . . state protection.” Id., Article 6(1). The Constitution authorizes the State to “hold responsible the landowners in connection with the manner the land is used, to exchange or take it over with compensation on the grounds of special public need, or confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection and national security.” Chapter One, Article 6(4). The

Constitution also makes it a “sacred duty” for every citizen to protect nature and the environment. Chapter Two, Article 17(2).

65. The Republic of Mozambique

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

66. The Republic of Namibia

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

and toxic waste on Namibian territory.” Id.

67. The Kingdom of Nepal

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

68. The Kingdom of the Netherlands

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

69. The Republic of Nicaragua

The amended 1986 Constitution provides that “Nicaraguans have the right to live in a healthy environment.” Title IV, Chapter III, Article 60. The Constitution makes it the obligation of the State “to preserve, conserve and recover the environment and the natural resources.” Id. The Constitution also provides that

“the preservation of the environment, and the conservation, development and rational exploitation of the natural resources are responsibilities of the State.” Title VI, Article 102.

70. The Republic of Niger

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

71. The Kingdom of Norway

The amended 1814 Constitution provides that “every person has a right to an environment that is conducive to health and to natural surrounding whose productivity and diversity are preserved.” Section E, Article 110b. The Constitution mandates that “natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will

be safeguarded for future generations as well.” Id. “In order to safeguard their right [to a healthy environment],” the Constitution establishes the right of citizens “to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.” Id.

72. The Republic of Palau

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

73. The Republic of Panama

The amended 1972 Constitution provides that “the State has the fundamental obligation to guarantee that its population lives in a healthy environment, free of contamination (pollution), and where air, water and foodstuffs satisfy the requirements for proper development of human life.” Title III, Chapter 7, Article 114. The Constitution also provides that it is the obligation of the State, and all inhabitants of the national territory, to “promote economic and social development that prevents environmental contamination, maintains ecological balance, and avoids the destruction of ecosystems.” Id., Article 115. The Constitution

directs the State to “regulate, supervise, and apply, at the proper time, the measures necessary to guarantee rational use of, and benefit from, land, river and sea life, as well as forests, lands and waters, to avoid their misuse, and to ensure their preservation, renewal, and permanence.” Id., Article 116. The Constitution further directs the State to regulate “benefits gained from non-renewable natural resources . . . to avoid social, economic and environmental abuses that could result.” Id., Article 117.

74. The Independent State of Papua New Guinea

The amended 1975 Constitution establishes the goal that the country’s natural resources and environment “be conserved and used for the collective benefit of all and be replenished for the benefit of future generations.” Section: “National Goals and Directive Principles” 10. The Constitution accordingly calls for “(1) wise use to be made of natural resources and the environment . . . in the interests of development and in trust for future generations; and (2) the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities; and (3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.” Id. The Constitution

makes it the obligation of all persons “to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations.” Section: “Basic Social Obligations.”

75. The Republic of Paraguay

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

76. Peru

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

77. The Republic of the Philippines

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

78. The Republic of Poland

The 1997 Constitution makes it the duty of public authorities

to protect the environment. Chapter II, Article 74(2). The Constitution directs the authorities to “pursue policies ensuring the ecological safety of current and future generations.” *Id.*, Article 74(1). The Constitution further directs the authorities to “support the activities of citizens to protect and improve the quality of the environment.” *Id.*, Article 74(4). The Constitution also provides that “everyone is obligated to care for the quality of the environment and shall be held responsible for causing its degradation.” *Id.*, Article 86.

79. The Portuguese Republic

The 1976 Constitution, as amended, provides that “all have a right to a healthy and ecologically balanced human environment.” Part I, Title III, Chapter II, Article 66(1). The Constitution makes it a fundamental responsibility of the State to “protect and enhance the cultural heritage of the Portuguese people, to protect nature and environment, conserve natural resources and to ensure the proper development of the national territory.” Article 9(e). The Constitution requires the State “to prevent and control pollution, and its effects, and harmful forms of erosion,” to make ecological balance an objective in national planning, to establish nature reserves and guarantee nature conservation, and to “promote

the rational use of natural resources, while safeguarding their capacity for renewal and ecological stability.” Part I, Title III, Chapter II, Article 66(2). The Constitution further provides that, “in economic and social matters” a primary duty of the State is to adopt a national policy for energy that is in keeping with conservation of natural resources and a balanced ecology.” Part II, Title I, Article 81 (I).

80. Romania

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

81. The Russian Federation

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

peoples living on their respective territories.” Id., Article 9(1). The Constitution also establishes the right of every person “to compensation for the damage caused to his or her health or property by ecological violations.” Id., Article 42. The Constitution further prohibits owners of land or natural resources from using their property in a manner that harms the environment. Id., Article 36(2). The Constitution also makes it everyone’s obligation to “preserve nature and the environment, and care for natural wealth.” Id., Article 58. The Constitution further provides that everyone has the right to “reliable information” about the condition of the environment. Id., Article 42.

82. São Tome and Principe

The amended 1975 Constitution makes preservation of the “harmonious balance of nature and of the environment” a prime objective of the State. Part I, Article 10(c). The Constitution provides for the right of all to “housing and to an environment of human life.” Part II, Article 48(1). The Constitution also makes it the duty of all to “defend” the environment. Id., Article 48(1). The Constitution also provides that “it is incumbent upon the State to promote the public health which has as objectives the physical and mental well-being of the populations and their

balanced fitting into the socio-ecological environment in which they live.” Id., Article 49.

83. Saudi Arabia

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

84. The Republic of Seychelles

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

85. The Slovak Republic

The 1992 Constitution, as amended, provides that “every person has the right to a favorable environment.” Chapter 2, Section VI,

Article 44(1). The Constitution directs the State to “provide for an efficient utilization of natural resources, a balanced ecology, an effective protection of the environment.” *Id.*, Article 44(4). The Constitution also provides that “every person is obliged to protect and cultivate the environment and cultural heritage,” *id.*, Article 44(2), and that “nobody may endanger or damage the environment, natural resources and cultural monuments beyond the limits stipulated by law.” *Id.*, Article 44(3). The Constitution also prohibits the exercise of ownership rights in a manner that damages the environment. *Id.*, Section II, Article 20(3). The Constitution further provides the right of every person to “complete and current information on the condition of the environment and the causes and consequences of this State.” *Id.*, Section VI, Article 45.

86. The Republic of Slovenia

The 1991 Constitution, as amended, provides that “all persons shall have the right to a healthy living environment.” Section III, Article 72. The Constitution also makes it the duty of the State to “ensure a healthy living environment.” *Id.* The Constitution directs the State to “define under what conditions and to what extent the causer of damage is obliged to make restitution for

damage to the living environment.” Id. The Constitution makes it the obligation of the State and local community to “ensure the preservation of the natural and cultural heritage,” and of all persons “to protect natural points of interest and rarities and cultural monuments.” Id., Article 73.

87. The Republic of South Africa

The 1996 Constitution provides that “everyone has the right to an environment that is not harmful to their health or well-being,” and “to have the environment protected, for the benefit of present and future generations.” Chapter 2, Article 24. The Constitution directs the State to “prevent pollution and ecological degradation,” “promote conservation,” and “secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” Id., Article 24(b)(i)-(iii).

88. The Republic of Korea (South Korea)

The 1988 Constitution provides for the right of all citizens “to a healthy and pleasant environment.” Chapter II, Article 35(1). The Constitution directs the state and all citizens to “endeavor to protect the environment.” Id. The Constitution directs the State

to “protect the land and natural resources,” and to “establish a plan necessary for their balanced development and utilization.” Chapter IX, Article 120(2).

89. Spain

The 1978 Constitution provides that “everyone has the right to enjoy an environment suitable for the development of the person.” Title I, Chapter III, Article 45(1). The Constitution directs the public authorities to “concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment.” Id., Article 45(2). The Constitution also makes it a duty of everyone to preserve the environment. Id., Article 45(1). The State is to establish penal and administrative sanctions for environmental harm, and those responsible for such harm “shall be obliged to repair the damage caused.” Id., Article 45(3).

90. The Democratic Socialist Republic of Sri Lanka

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

its riches.” Id., Article 28(f).

91. The Democratic Republic of Sudan

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

92. Suriname

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

93. Switzerland

The New Constitution of 1998 establishes the rights and duties of the Confederation regarding environmental protection. The Constitution sets forth the manner in which to provide for sustainable development, protection of the environment, adequate territorial planning, water and forest use, nature and heritage protection, and the protection of animals. Title 3, Chapter 2, Article 73-80.

94. Taiwan

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

95. The Republic of Tajikistan

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

96. The United Republic of Tanzania

The 1977 Constitution, as amended, directs the State to ensure that “the affairs of the Government are carried out in such a way as to ensure that the natural resources of the nation are

developed, preserved and utilized for the benefit of all citizens in general and also to guard against exploitation of man by man.” Section 2, Article 9(1)(c). The Constitution provides that “everyone has the responsibility of conserving the natural resources of the Union Republic.” Section 3, Article 27(1). The Constitution also states that “everyone is expected to protect with care properties under care of the State, and of collective nature, to combat all forms of destruction.” Id., Article 27(2).

97. The Kingdom of Thailand

The amended 1991 Constitution directs the State to “promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance with persistent development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare and quality of life.” Chapter V, Section 79. The Constitution also provides that “every person shall have a duty to . . . conserve natural resources and the environment.” Chapter IV, Section 69.

98. The Republic of Togo

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

99. The Republic of Turkey

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

100. Turkmenistan

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

101. The Republic of Uganda

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

102. Ukraine

The 1996 Constitution provides that “everyone has the right

to an environment that is safe for life and health.” Chapter II, Article 50. The Constitution makes it the duty of the State “to ensure ecological safety and to maintain the ecological balance on the territory of Ukraine, [and] to overcome the consequences of the Chernobyl catastrophe -- a catastrophe of global scale.” Chapter I, Article 16. The Constitution also establishes the right “to compensation for damages inflicted through the violation of [the right to a safe environment].” Chapter II, Article 50. The Constitution further provides that “everyone is obliged not to harm nature . . . and to compensate for any damage he or she inflicted.” Id., Article 66. The Constitution also provides that “the use of property shall not . . . aggravate the ecological situation and the natural qualities of land.” Id., Article 41. The Constitution further provides that “everyone is guaranteed the right of free access to information about the environmental situation, ... and also the right to disseminate such information.” Id., Article 50. The Constitution forbids anyone to make such information secret. Id.

103. United Arab Emirates

The 1971 Provisional Constitution provides that “the natural resources and wealth in each Emirate shall be considered

the public property of that Emirate,” and that “society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy.” Chapter 2, Article 23.

104. The Oriental Republic of Uruguay

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

105. The Republic of Uzbekistan

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

106. The Republic of Vanuatu

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

107. The Republic of Venezuela

The 1999 Constitution addresses the environmental rights of Venezuelan citizens, declaring that “[e]very person has a right to individually and collectively enjoy life and a safe, healthy and ecologically balanced environment.” Chapter IX, Article 127. Additionally, “it is a fundamental obligation of the State ... to guarantee that the population develops in an environment free of contamination, where the air, the water, the coasts, the climate, the ozone layer, the living species are especially protected in conformity with the law.” *Id.*

108. The Socialist Republic of Vietnam

The 1992 Constitution provides that “state organs, units of armed forces, economic organizations, and individuals have the duty to implement state regulations on the rational use of

natural resources and protection of the environment.” Chapter 2, Article 29. The Constitution prohibits “all acts of depleting natural resources and destroying the environment.” *Id.* The Constitution requires organizations and individuals “to protect, replenish, and exploit [land allotted to them] in a rational and economical fashion.” *Id.*, Article 18.

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

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

110. Zambia

The Preamble to the amended 1991 Constitution declares that

“we shall . . . conduct the affairs of the state in such manner as to preserve, develop, and utilize its resources for this and future generations.”

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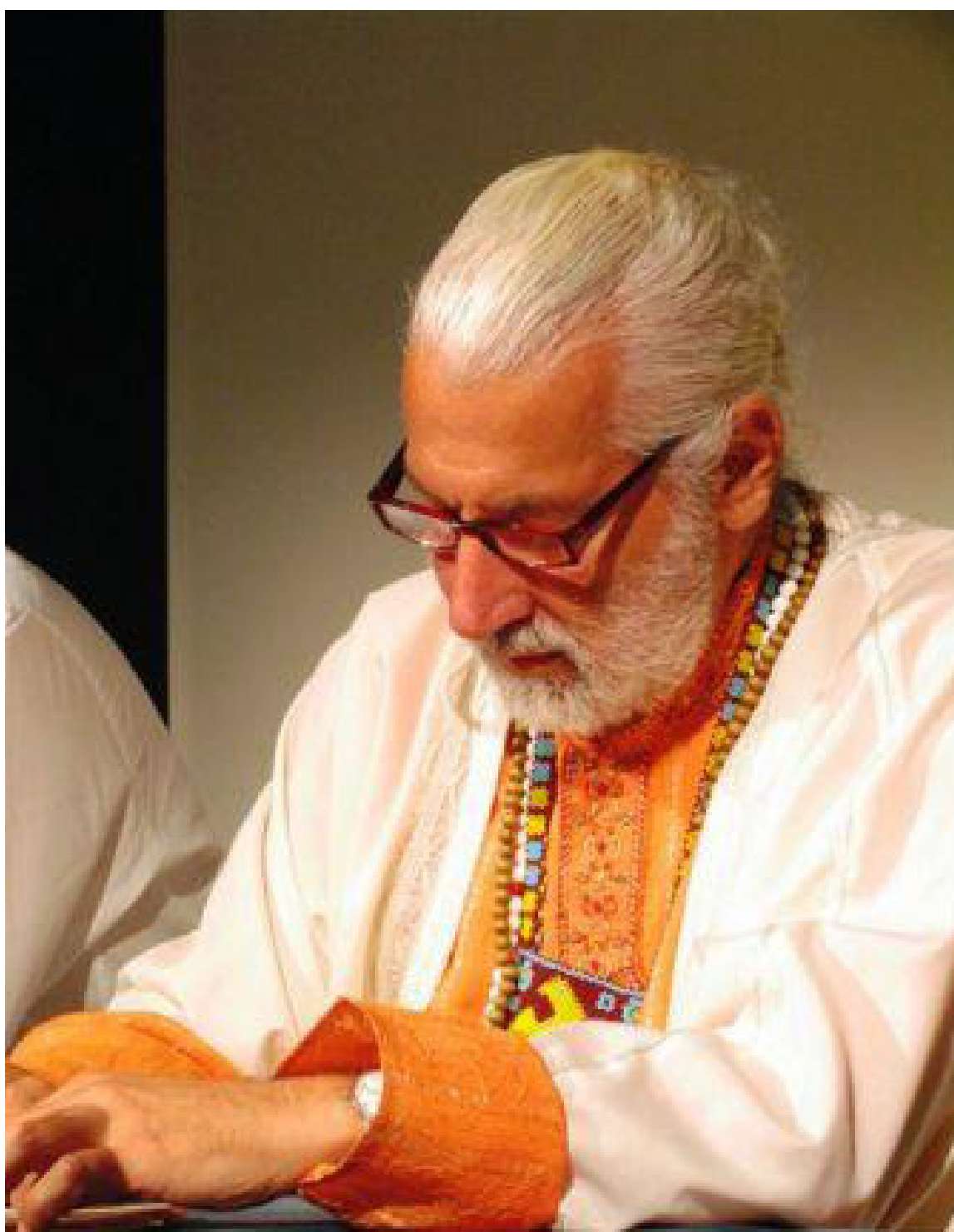
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-----Dr. Alfredo Sfeir-Younis
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